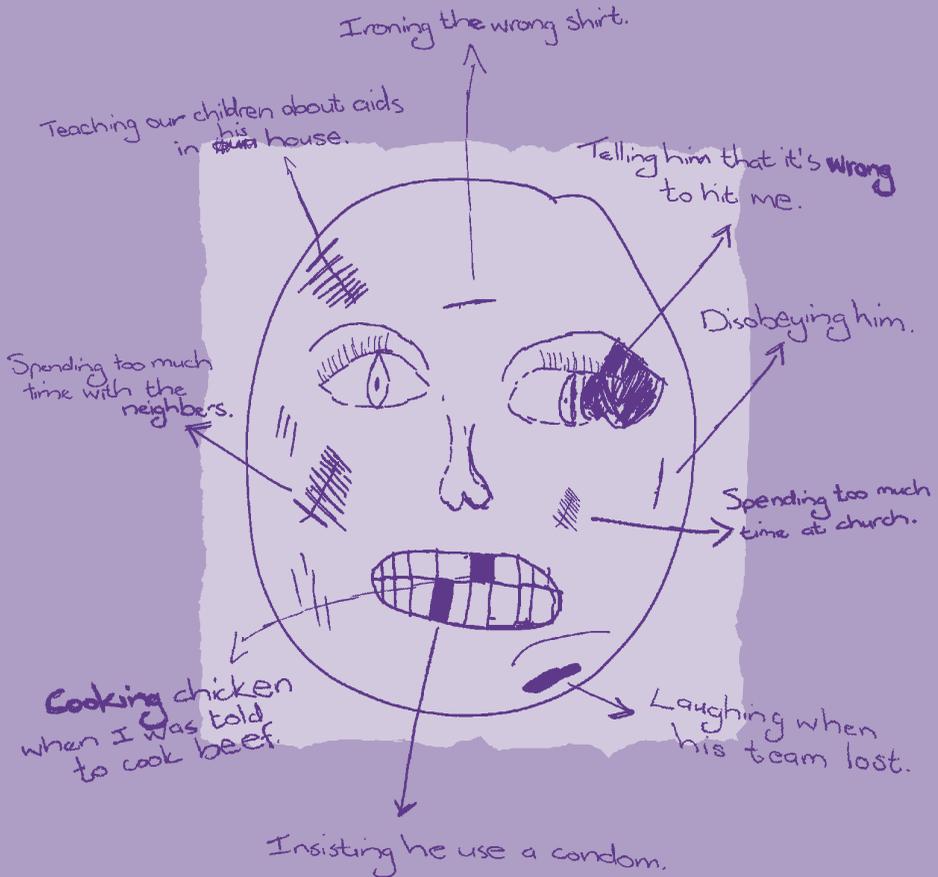


# IT'S AN ORDER!

## A simple guide to your rights

Rolene Miller



the doj & cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



MOSAIC  
TRAINING, SERVICE &  
HEALING CENTRE FOR  
WOMEN

DEPARTMENT OF  
**SOCIAL  
DEVELOPMENT**  
FOR SUSTAINABLE COMMUNITIES

*The Department of Justice and Constitutional Development, in partnership with Mosaic (a non-governmental organisation that provides free support services to all victims of domestic violence at our courts), is proud to produce this booklet aimed at educating the victims of domestic violence and other crimes on their rights.*

*The Constitution of the Republic of South Africa, Act 108 of 1996, gave birth to our fundamental rights and is the highest law of our democratic country. The right to equality and the right to dignity are but two of the many fundamental rights protected in our Constitution. These protected rights places the Constitution at the forefront of the struggle to eradicate violence of any form against women and children.*

*Domestic violence happens behind closed doors and destroys its victims physically and emotionally. It does not affect only the quality of life of the family but that of the fabric of society. Therefore, appropriate implementation of the Domestic Violence Act to reduce and prevent domestic violence is critical. The Domestic Violence Act was promulgated to empower people, especially our women and children, to exercise their right to a safe environment free of abuse of any nature.*

*We hope that through this booklet we will assist in empowering women and children to exercise these protected rights.*

Adv Hishaam Mohamed  
Regional Head Western Cape:  
Department of Justice and  
Constitutional Development



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

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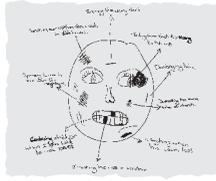
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## A simple guide to your rights



### ORDERS THAT PROTECT AGAINST VIOLENCE AND ABUSE

Mosaic gratefully thanks its partner the Department of Social Development, Western Cape whose generosity has made the printing of the Fourth Edition of this Protection Order Booklet possible.

Grateful acknowledgement for their expertise and valuable contributions also goes to the following special people:

Mosaic staff and court workers

Members of the Western Cape Network on Violence Against Women

Judiciary and Administrative staff of the Department of Justice and Constitutional Development.

Ann Moskow for help with the editing of this Booklet.

**Rolene Miller**

(TTD, DSE CLIN REM, B SOC SCI, B SOC WK HONS)

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# CONTENTS

<b>FOREWORD</b>	<b>4</b>
A. Dedication	4
B. About the Department of Justice and Constitutional Development (DOJCD)	4
<b>SECTION 1: WHAT IS IN THIS BOOKLET</b>	<b>5</b>
1. Why was this Booklet written?	5
2. Is there anything special about the language in this Booklet?	5
3. How should I use the Booklet?	6
<b>SECTION 2: LEGAL ORDERS</b>	<b>7</b>
4. What kinds of Orders are discussed in this Booklet?	7
5. Who are the people involved in the Protection Order procedure?	7
6. What is 'abuse'?	8
<b>SECTION 3: PROTECTION ORDERS</b>	<b>8</b>
7. What is the Protection Order?	8
8. Who can get a Protection Order?	9
9. Can I get a Protection Order for somebody else?	9
10. What are some of the problems I could have in getting a Protection Order?	10
11. What are all the steps to get a Protection Order?	12
<b>A: The steps to APPLYING for a Protection Order</b>	<b>12</b>
- The APPLICATION process explained more fully	13
12. Where do I go to apply for a Protection Order?	13
13. Where do I go to when I get to the court?	13
14. What days can I go to court?	13
15. What do I do if I think I am in real danger right now?	14
16. How many times do I have to go to court?	14
17. How long will it take to make the application?	14
18. What papers must I take with me to court?	15
19. What other papers would be useful?	15
20. How do I get a J88 form for the doctor to fill in?	16
21. What do I do with the J88 form for the doctor?	16
22. How do I apply for a Protection Order?	16
23. How do I tell the court about the abuse?	17
24. Is there a special way in which I must write my Affidavit?	18
25. What are the different kinds of abuse that I can write about in my Affidavit?	19
26. What do I do if my children are also being abused?	21
27. What do I do when my Application form and Affidavit have been completed?	22
28. What happens after the magistrate reads my form?	22
29. What happens after the magistrate makes his decision to grant me an Interim Protection Order?	23
30. How will my abuser know about the Interim Protection Order?	23
31. Do I have to pay for the papers served on (given to) my abuser?	24
32. How long should it take for the papers to be served on my abuser?	24
33. How will I know if my abuser has been served with the papers?	24
34. How do the police have to help me?	24
35. What are the kinds of problems that I may experience with the serving of the Protection Order?	25

36.	How do abusive people react when they are served with an Interim Protection Order?	26
37.	What do I do if my abuser breaches (breaks) the Protection Order?	26
38.	What happens if my abuser does not agree with my Affidavit?	27
39.	How long will it be before I go back to court?	27
	<b>B: The steps to FINALISING your Protection Order</b>	<b>27</b>
	- FINALISING the Protection Order explained more fully	28
40.	How do I know when I have to go back to court?	28
41.	Do I have to do anything to get ready for the court hearing?	28
42.	How long will I have to be in court when I go for the hearing?	28
43.	Why would the hearing be postponed?	28
44.	How could the postponement affect me?	29
45.	What happens if only one of us arrives at court on the return date?	29
46.	What happens when my abuser and I both go to court?	30
47.	What do I do if the magistrate does not finalise the Protection Order?	30
48.	What else may the magistrate decide to do on the return date?	30
49.	Can I change my mind and withdraw the application for a Protection Order?	31
50.	How do I withdraw the Protection Order?	31
51.	Why would I want to withdraw the Interim Protection Order?	31
52.	What must I consider if I withdraw my application for a Protection Order?	32
53.	What happens if my abuser sets aside (disagrees with) the Protection Order?	32
	<b>C. Steps to USING the Protection Order</b>	<b>33</b>
	- The USE of the Protection Order explained more fully	33
54.	What happens if I get a Protection Order?	33
55.	How do I get a Warrant of Arrest?	33
56.	What do I do if I am abused again?	33
57.	What do I do if the police will not help me?	34
58.	What do I do if there is a change in the way that I am abused?	34
59.	How long do Protection Orders last?	35
60.	How should I use my Protection Order?	35
	<b>SECTION 4: PEACE ORDERS</b>	<b>35</b>
61.	Who can get a Peace Order?	35
62.	How do I get a Peace Order?	36
63.	How can I try and make a Peace Order work for me?	36
	<b>SECTION 5: FINAL WORD</b>	<b>37</b>
	<b>SECTION 6: ABOUT MOSAIC</b>	<b>38</b>
	Who or what is Mosaic?	38
	How can I get hold of Mosaic?	38
	What courts does Mosaic work in?	39
	Mosaic's Outreach Centres	39
	<b>SECTION 7: MY RECORD OF INFORMATION</b>	<b>40</b>
	<b>SECTION 8: WORDS AND THEIR MEANINGS</b>	<b>41</b>

# FOREWORD

## A. DEDICATION

This Booklet is dedicated to everyone who has been abused and to all those who work to stop the violence. We acknowledge and respect those who are abused. They are not 'victims'. They are skilful survivors against tremendous odds. Their actions show their courage and their strength to survive.

**You are not alone. You can get help. You can help yourself. You can help others.  
May the Spirit of Love and Light fill and surround all of us and restore Peace and Joy to  
our troubled world.**

## B. ABOUT THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT (DOJCD)

The DOJCD shares a deep concern for the pressure that family life is subjected to by the difficulties of modern society. We are particularly concerned by the effect of these pressures on vulnerable members of society, such as women, children, the disabled and elderly. The services of the Family Courts seek to help protect the integrity of the family. The Department seeks to improve the circumstances of children in need through the transfer payment of Child Maintenance and the Guardian's Fund. Combating both sexual offences and domestic violence are some of the corrective actions the Department takes against violence directed at women.

The DOJCD has one of its Key Strategic Performance Areas, a focus on Special Services to Vulnerable Groups such as Women; Children; Disabled and the Aged. The DOJCD will achieve this objective through:

- ▶ training and mentoring all Justice Staff on the rights equitable treatment of Vulnerable Groups;
- ▶ prioritising the treatment of cases that deal with Vulnerable Groups;
- ▶ fostering closer cooperation with Cluster partners in the delivery of services to Vulnerable Groups; and
- ▶ forming partnerships with Community Organisations such as Mosaic.

To all for better access to Justice and more efficient Justice Services for Vulnerable Groups, the Department has established and expanded specialised courts (Family Courts, Sexual Offences Courts, Equality Courts, etc) and also appointed and trained more Maintenance Officers, Domestic Violence Clerks and Maintenance Investigators; we will also be mainstreaming family courts into the main court stream and reduce settlement times for maintenance and domestic violence cases.

## SECTION 1: WHAT IS IN THIS BOOKLET

There are laws that help stop abuse and violence. The laws do this through different kinds of 'Orders' that are legal papers that 'order' people how to behave.

We talk about the Protection Orders in this Booklet but we also mention the Peace Order. The Protection Order is the only Order that is an instrument of the *Domestic Violence Act, Act 116 of 1998*. A Protection Order used to be called an Interdict.

Everybody who uses this Booklet needs some or all of the information to help stop abuse. But not everybody will use it the same way.

- ▶ If you are being abused, you may need only some of the information.
- ▶ If your job is to help those who are being abused, you will probably need all of it at some time.
- ▶ If you are working with the justice system, as a court clerk, police officer, sheriff or magistrate, you may use it to understand the 'system' from an abused person's position.

Because you are all looking for information, we have used the question and answer layout. We have put in the questions that we think you may have asked and we have given you the answers that we hope will help you with a plan of action.

### 1. Why was this Booklet written?

We wrote the Booklet so we could tell you about the Protection Order, what it is, how you apply for one, when you use it and what the differences are between the Protection Order and the Peace Order.

We want to help you:

- ✓ understand the Orders, what they are and how they work;
- ✓ to think more clearly and remember what you have to do; and
- ✓ gain and keep the courage to use the Orders to stop the violence.

### 2. Is there anything special about the language in this Booklet?

- ▶ We are talking about legal papers and court processes that are complicated and can be hard to understand. To make it as easy as we can, we have tried to keep the language simple:
- ▶ We refer to the abuser as a man and the person who is being abused as a woman. This does not mean that we think that men are never abused; it does not mean that women never abuse. It is just easier than saying 'he or she' all the time. The sad reality is that most abused people are women and most abusers are men.
- ▶ We know that there are female magistrates and police, and male clerks. However, we refer to magistrates and police as men and Domestic Violence Clerks as women because that is also mostly true. We have also shortened the Clerk of the Domestic Violence Court's title in the Booklet; we use 'clerk' only because it is quicker to read.
- ▶ When we use 'you' we write as if we are talking with the person who has been abused.
- ▶ When we mention the Act, we refer to the Domestic Violence Act, Act 116 of 1998.
- ▶ This Booklet is about legal processes. In some places we have used legal words. When we do, we give you an explanation. We have also put a list of the words and their meanings at the end.



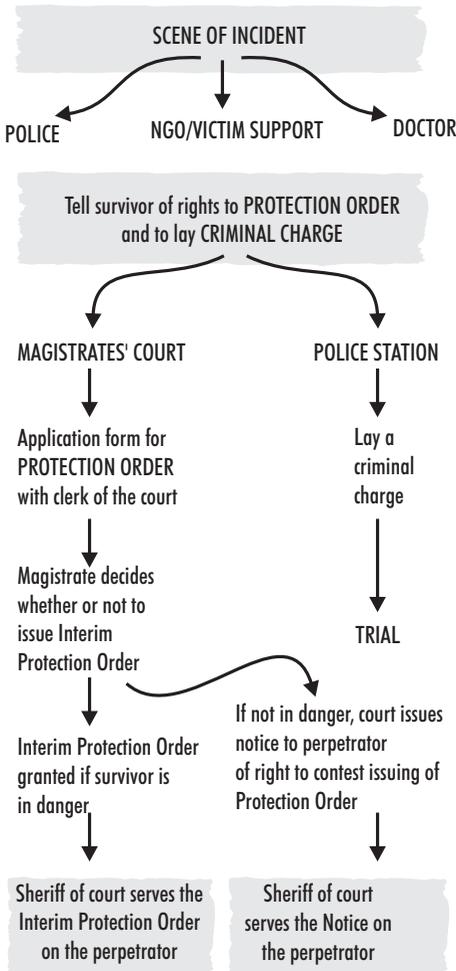
### 3. How should I use the Booklet?

As you read the Booklet, you can underline the parts that are important for you to remember. You can also write down questions if you need to ask for more information. If you need to apply for a Protection Order, you can use it as a guide. Take it with you to court so that you can remind yourself about what is happening and what will happen next.

The following flow-charts summarise the process of obtaining a Protection Order and what happens in the magistrate's court:

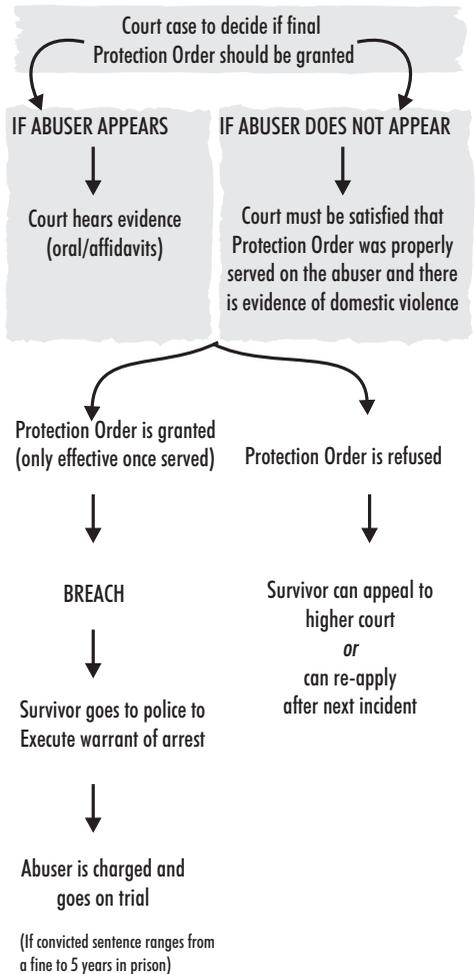
#### OBTAINING A PROTECTION ORDER

(Acknowledgement: Institute of Criminology UCT)



#### MAGISTRATE'S COURT

(Acknowledgement: Institute of Criminology UCT)



## SECTION 2: LEGAL ORDERS

This section tells you about the two different kinds of legal Orders that protect against abuse and violence and explains who is involved in making them work.

### 4. What kinds of Orders are discussed in this Booklet?

There are two kinds of legal Orders discussed in this Booklet that protect against abuse and violence. They are:

- ▶ Protection Orders
- ▶ Peace Orders.

### 5. Who are the people involved in the Protection Order procedure?

When you apply for a Protection Order you will be called the '**applicant**'. This is because you are *applying* for a Protection Order. You may also be called the '**complainant**' because you are *complaining* about the abuse. However, you are usually only be referred to as a complainant in a criminal proceeding.

The person who you say is abusing you is called the '**respondent**' because he has the right to *respond* to the complaint. In this Booklet we refer to him as 'your abuser' but in court he may be called 'the respondent'. He could also be called the '**accused**' in a criminal proceeding because he is *accused* of committing a crime.

The **Domestic Violence Clerk** makes sure that all the correct forms have been filled in, that the right people get what they need, when they need it.

**The magistrate** will decide if you can get a Protection Order or not. He is the person who will read your Application for a Protection Order and your Affidavit. In court he will ask questions, hear your story and then he will hear your abuser's side of the story to see if the Protection Order will be made final.

If you have the money, you can pay for a **lawyer** to represent you. Your abuser can also pay for a lawyer. If your lawyer represents you, only he is allowed to ask questions on your behalf and only he will be able to answer the magistrate's questions. You will have the chance to speak when you are in the witness box. However, if you are not represented by a lawyer, you will be allowed to ask any questions and answer the magistrate's questions yourself. The same applies to your abuser.

If you receive an Interim Protection Order, **the sheriff or the police** must serve the papers on your abuser (give them to him) so that he knows you have applied and that he has to come to the court to answer questions about the abuse. The Interim Protection Order has to be properly served on your abuser by the sheriff or the police for it to be granted.

If your abuser breaks the conditions of the Protection Order and you have a Warrant of Arrest, the **police** should arrest him. However, according to the Act, it is up to the police to decide if the situation is serious enough for them to arrest your abuser. They cannot be forced to arrest him. Whenever you go to a police station *always* ask the policeman to give you his name as you may need this if you want to speak to him again or if you want to report him for not giving you the help

that you should receive. You may also ask the police to show you their identity cards.

## 6. What is 'abuse'?

You are abused if you, your family or your property are repeatedly threatened, harmed or damaged in any way.

The Act will protect you if you experience the following kinds of abuse:

- ▶ Physical abuse
- ▶ Sexual abuse
- ▶ Emotional abuse
- ▶ Psychological abuse
- ▶ Verbal abuse
- ▶ Economic abuse
- ▶ Harassment which makes you frightened
- ▶ Intimidation which makes you frightened
- ▶ Stalking
- ▶ Damage to your property
- ▶ Entering the property without your consent when you no longer share the same residence with your abuser

## SECTION 3: PROTECTION ORDERS

### 7. What is the Protection Order?

The Protection Order is the legal document of the Act. The Protection Order **never** expires.

The Protection Order used to be called an **Interdict** (the legal document of the old Family Violence Act). If you received an Interdict several years ago you may need to check it because some Interdicts were only granted for a year and it may have expired. It is therefore better to reapply and get a Protection Order even if you have an Interdict.

A Protection Order is an Order issued by the court that tells the abuser what he must not do (for example, the Protection Order may tell him that he must not beat you). It can also tell him what he must do (for example, it may tell him that he must give you money to pay for medical costs that you had to pay because of the abuse).

It is a good idea to give a copy of your Protection Order to someone who you trust so that they can keep it safe for you in case yours gets lost or destroyed. Or, you can take a copy to your nearest police station and ask them to open a file and keep your Protection Order for you. **You can always get another copy at the court where it was granted to you.**

## 8. Who can get a Protection Order?

Not everyone who is abused can get a Protection Order.

You are able to get a Protection Order if you are abused and if:

- ▶ Your abuser is a blood relation of yours. That means that your abuser is your mother, father, grandmother, grandfather, child, brother, sister, aunt, uncle, or cousin.
- ▶ Your abuser is a blood relation of your partner or ex-partner by 'marriage' (in-laws). This means anybody related by blood to your partner through a legal, customary or religious marriage. It does not include the blood relations of homosexual couples living together or 'in-laws' of common law (after 2 years) marriages.
- ▶ You are in an intimate relationship with your abuser or if you have been in an intimate relationship with your abuser in the past and your abuser is not your blood relation. It does not matter how long the relationship lasted. It just means that you and your abuser were or are dating, engaged, married, divorced, or separated no matter how long or short the relationship.
- ▶ You are living together with your abuser.
- ▶ You have some parental responsibility. You may not be the legal guardian or parent but you share responsibility as a 'parent figure' with your abuser for a child.
- ▶ There is a relationship with your abuser based on adoption.
- ▶ Your abuser perceives (believes) that there is a relationship between you even if you do not. It does not matter if he thinks there was a relationship and you do not. As long as your abuser acts as if you are in a relationship with him, that will be enough for the courts to grant you an Order.
- ▶ You live under the same roof as your abuser even if you are not related to your abuser by blood or marriage or if there is no intimate relationship at all. For example, he can be your sister's boyfriend or your flat-mate or a lodger living in the same 'house' as you.

**You can get a Protection Order against your child who abuses you if he/she is younger than 18 years old.** However, if your child of 17 years old (or younger) abuses you, when he or she appears in court the magistrate may decide that the case should be referred to the Children's Court. You can go to a social worker who can write an order for the temporary removal of the child and the court may agree with this depending upon the serious nature of the case and how his or her abuse affects everyone at home.

## 9. Can I get a Protection Order for somebody else?

You can get a Protection Order for somebody else if you get his or her written permission to say that you may apply on this person's behalf. **It must be written permission.** The reason that you are applying on that person's behalf could also be that he or she is unable or too afraid to come to court. The person can be a friend, neighbour or someone you know at work or from the community. You may have a professional relationship with the person if, for example, you are the person's teacher, social worker, counsellor, member of the police or a health service provider (doctor or nurse).

If the person cannot write, he or she may 'sign' the document with his or her thumb print or give permission in a verbal Affidavit (a statement) before a commissioner of oaths who will write and 'commission' the statement.

In your Affidavit written on behalf of the person you must say why they cannot make the

application themselves. The court will have to agree that it is a good enough reason. If the person cannot write he or she may go to court and give verbal permission that you may apply on his or her behalf.

However, under the following circumstances, the court will accept **unwritten** permission for a Protection Order if the person

- ▶ is a minor and cannot write
- ▶ is mentally retarded
- ▶ is unconscious
- ▶ Or if there might be other circumstances that the court may accept.

NOTE:

Remember that you do not need your child's written or verbal permission to apply for the Protection Order on his or her behalf. Your child may be your natural, adopted or foster child.

Your child can apply for a Protection Order, even if a minor, without requiring your assistance as the parent or guardian. However, the matter will be referred to the children's court.

## 10. What are some of the problems I could have in getting a Protection Order?

**This section is not meant to frighten you or make you afraid to apply for a Protection Order.** The problems are listed here because it is important that you have the information and know what kinds of difficulties you could experience with a Protection Order application. It does not mean that you will experience them. However, most people have some problems because getting a Protection Order is not an easy thing to do.

**BUT REMEMBER** even if it is difficult to get the Protection Order, it is still an important way to try and stop the abuse. It is better than not doing anything at all and allowing the abuse to continue.

If you are fortunate, you will be helped by clerks, magistrates and police who are sensitive to your situation and who truly want to help you and support you through the experience. Unfortunately there are other clerks, magistrates and police who are not as sensitive and they can make it difficult to get a Protection Order. But, if you know your rights and what could happen, it will be easier for you to deal with them and the problems they cause. This is the reason why the following information is included here for you.

- ▶ **Going to court is not easy emotionally.** Almost everyone feels scared and upset. Even if you know what is going to happen and what you have to do, it can feel like a very big thing to do. It is completely natural and understandable to feel like this.
- ▶ **The clerks, magistrates and police may upset you by the way they speak to you and treat you.** They may not show respect, may be rude to you, and may not be patient. They may not understand how you are feeling. You may be scared to tell them how they make you feel.
- ▶ **A magistrate from the criminal court may hear your case in the same way that he would hear a criminal case.** The domestic violence court is not a criminal court but

sometimes they use magistrates from the criminal court to hear domestic violence cases. You may feel as if the magistrate treats you like the person who is accused of committing the crime.

- ▶ **You may not be told what you have to do to get the Protection Order.** The people who are supposed to help you may not explain things to you properly and you may not clearly understand what is going to happen.
- ▶ **You may not remember what you have been told.** Because you are so upset and confused you may not remember what the clerk, magistrate or the police have told you.
- ▶ **It may take a long time for anything to be done.** Sometimes you have to wait a whole day or a few days to hear if you have been granted an Interim Protection Order. You may have to wait a few weeks for the return date to appear in court to hear if the Protection Order will be made final. Court hearings are often postponed and so it may take weeks until you know if your Protection Order will be granted. Postponements may be a problem if you have a job and have to stay away from work each time the court hearing is postponed.
- ▶ **You may not have enough money to pay for transport to get to the court.** It can be expensive, especially if the hearing gets postponed.
- ▶ **You may have to start over again because you did not get to the court in time.** Although there may be a very good reason why you were late, your name may be removed from the court roll so that the magistrate may not hear your case on your return date. *If this happens you must go to the clerk and set another date with the clerk of the court.*
- ▶ **The magistrate may believe your abuser.** This can happen even if you tell the truth and you know that your abuser is not telling the truth in court.
- ▶ **The magistrate may decide that the abuse is not serious enough because the Affidavit doesn't contain enough information and therefore he may not give you a Protection Order.** This could happen even if you know that the abuse is serious. Therefore make absolutely sure that your Affidavit is strong and contains important information.
- ▶ **When your abuser breaches the Order and has to appear in the criminal court he may get a sentence that is not supportive of you.** He may get a very light punishment. It could even put you and your children's safety at risk.
- ▶ **The police may give you wrong information.** Sometimes this is because they don't have the right information, or they may not give you the right information even if they have it.
- ▶ **The police may refuse to serve the Protection Order or arrest your abuser.** They have the freedom of choice to arrest him or not, depending on their belief if it is serious or not. This could put your life in danger.
- ▶ **Sometimes you just feel like giving up.** You may lose hope of getting justice. You may feel too tired to do anything more about it. Sometimes you feel too scared or just feel like you have had enough. This can happen even if you are still being abused and you know that you have the right to protection and peace in your life.
- ▶ **You might go to court wanting to apply for a Protection Order and the court may refuse to see you that day.** There are certain courts that will only see a certain number of applicants on each day (quota system) and security may turn you away if you come too late. Some courts only handle Protection Order applications in the mornings or on certain days of the week. Some courts will not take applications after 3 pm, but might do so only if it is urgent. **According to the Act it is your right to get a Protection Order at any time during court hours and after court hours.**

## 11. What are all the steps to get a Protection Order?

There are a lot of things that have to be done if you want to get a Protection Order. We summarise all these steps and then explain them in more details in the question section. Everything may look very complicated but if you read the steps carefully, you should gain a good idea of how the procedure works.

It is important to know that the courts all work slightly differently. Therefore the procedure that most courts follow is summarised below.

The steps in the Protection Order procedure are:

- A. Applying for a Protection Order
- B. Finalising a Protection Order
- C. Using a Protection Order

### A: The steps to APPLYING for a Protection Order:

1. At your nearest magistrate's court you fill in an Application form for a Protection Order and write out a statement (Affidavit) about the abuse.
2. You make a sworn statement to the clerk that what you have written is true and you sign the Application form.
3. The clerk signs and stamps your Application form, opens a file for you and puts your papers into your file.
4. The clerk gives your file to the magistrate who reads through your Application form and decides if you qualify for (if you can get) an Interim (Temporary) Protection Order or not.
5. The clerk tells you if you were granted (given) an Interim Protection Order or not.
6. If the magistrate grants you an Interim Protection Order, the clerk tells you the return date when you have to come back to court and she gives you your Application Number.
7. The magistrate will issue a Notice to Appear in court to your abuser that will inform him that an application for a Protection Order has been made and that he must appear on the return date to give his side of the story.
8. The clerk puts the original Application and Interim Protection Order forms into your file and gives you three copies. Two copies are for the sheriff or for the police. The other copy is for you to keep.
9. If you are able to pay for the sheriff to serve the Interim Protection Order, you must take two copies of your Application and Interim Protection Order forms to the sheriff's office.
10. If neither you nor the Court are able to pay for the Interim Protection Order to be served on your abuser, you have to get the police to serve the Interim Protection Order. You then take the two copies of the forms to the police. The clerk will also give you a Return of Service form to take to the police.
11. The police or sheriff then goes to the address that you have written on your form and serve the copy of the Interim Protection Order on your abuser.
12. The police or the sheriff fills in the Return of Service form and they have to return it to the court when the Protection Order has been served on the respondent. They give the Return of Service form to the clerk who puts it into your file.

**NOTE:** 13. When the Protection Order has been served on your abuser you are entitled to receive an Interim Warrant of Arrest, but this means that you will have to go back to the court to get it. That is why some courts may only give you a Final Warrant of Arrest when you appear in court for the Protection Order to be made final. **The Act states that you must get an Interim Warrant of Arrest.** If the clerk does not give you one, you must demand one or report it to the chief magistrate.

## The APPLICATION process explained more fully

### 12. Where do I go to apply for a Protection Order?

The Act states that you must go to the **Magistrate's Court nearest to:**

- ▶ where you live or work; or
- ▶ where your abuser lives or works; or
- ▶ where the abuse happened

If you are not sure of which court to go to, telephone the clerk at the court nearest to you. She will tell you which court you must go to. In some communities, people who live across the road from each other have to go to different courts so it is better to call and ask.

**Don't sit in the corridor all day only to find out that you are at the wrong court!** It is best to telephone before you leave for the court or ask the clerk as soon as you get to the court. You will be upset if you have wasted all that time and money and have to travel to a different court to get help.

### 13. Where do I go to when I get to the court?

You must go to the **Domestic Violence section** of the court. If you are not sure where to find the Domestic Violence section, ask security to direct you.

**Make sure that you are in the correct place in the court.** If you are not sure, ask at the clerk's office or ask security. You will waste a lot of time if you sit in the wrong place/section of the court.

### 14. What days can I go to court?

**According to the Act it is your right to go to court to apply for a Protection Order from Monday to Friday. You can apply at the court on any day of the week but for after-hour applications you must go to the police station and the police must contact a magistrate or clerk to assist you in this matter.**

However, in reality, this is not how all the courts work. Some courts only handle Protection Order applications on certain days, some will see you every day but in the morning only, and some may be working a quota system where they only take a certain number of applications each day.

Telephone the clerk to ask on what days and at what times you can apply for a Protection Order at her court.

**Remember that according to the Act it is your right to apply for a Protection Order during court hours and after court hours. If you want a Protection Order you must insist on it.**

### **15. What do I do if I think I am in real danger right now?**

If this happens during the week, immediately contact the clerk and tell her that your life is in danger and that you need her help **right now**. She should help you to get a Protection Order right away. However, you should also go to the police station to lay a criminal charge of assault. **The police have to allow you to lay a charge. Do not allow them to refuse you.** It is your right. You may lay a charge **AND** get a Protection Order at the same time.

If you are in danger after court hours, the court **MUST** help you to get an after hours application for a Protection Order. The police must help you to do this by contacting the relevant court personnel. Every police station has the name of a magistrate who is on duty for bail applications and this magistrate must help you.

However, remember that the police will not necessarily arrest your abuser when you lay a charge of assault.

### **16. How many times do I have to go to court?**

You go to court at least twice. The first time you go is to apply for a Protection Order. The second time you go to court is on your return date when the magistrate decides if you can get a Final Protection Order.

Sometimes you may have to go back again if the hearing is postponed. Most of the time, you only go twice.

Sometimes you will not get to make your application the first day you go to court because the court may operate on a quota system or the clerk may not help you for some other reason.

Although this should **not** happen, the clerk may tell you to return to the court after a few days to hear if your application for an Interim Protection Order has been granted.

### **17. How long will it take to make the application?**

Most courts take applications on a 'first come, first served' basis. This means that you should go early. Even so, if the court is very busy you may have to wait all day. You should take something to eat and drink. This is important, especially if you take your child with you. However, you will only be allowed to eat outside the court building.

- ▶ Most courts open at 7.45am, close for lunch between 1pm and 2pm and close at 4pm. However, formal court hours are from 9am to 4pm.
- ▶ Try to be at court by 9am at the latest. Most courts will help you in the same order that you arrive so the earlier you go the quicker you will be helped. If you are the last person to arrive, you will be the last person to be helped.
- ▶ Once you get to see the clerk, it could take you from 15 minutes to half an hour to fill out the

application form and to write your statement that is called and Affidavit. It depends on how much you have to write. How long it takes will also depend on if you fill out the forms and the Affidavit on your own or if you get help.

- ▶ The clerk then has to take your application to a magistrate to decide if your application will be granted. It can take quite a long time, especially if there are not enough magistrates available.

**Remember that:**

- ▶ The clerks work under pressure so be patient if you have to wait until they can speak to you.
- ▶ Lots of people want Protection Orders and everyone has to wait their turn.
- ▶ If you get there late, it will take you longer. It can take you most of the day to apply for a Protection Order.

**18. What papers must I take with me to court?**

You **MUST** have:

- ✓ **Your Identity Document (ID).** If you don't have your ID, you must know when you were born (your date of birth);
- ✓ **Your abuser's ID.** If you don't have his ID, you must know when he was born (his date of birth) or know his age; and
- ✓ the **address** where your abuser lives or works. **You cannot get a Protection Order if you do not know the address of your abuser.**

**19. What other papers would be useful?**

You don't have to take the following things but it will help if you also have:

- ▶ **Pictures of the physical abuse** done to you. If you can, you should take pictures so you can show how you were hurt and give the magistrate a better idea of what you have suffered.
- ▶ **A picture of your abuser.** It can be a photocopy of a picture. This is useful so that the police or sheriff can recognise him when they give him the Protection Order.
- ▶ **Papers showing who bought the items** if your goods or property (like furniture, clothes or your house) were damaged.
- ▶ **Pictures of the violence.** If any property or things were damaged, pictures will show the magistrate what was done.
- ▶ **Letters that support you and the fact that you have been abused.** You can get letters from doctors, social workers or people who have helped you with psychological treatment.
- ▶ **Statements** from people who saw the abuse happening.
- ▶ **A J88 form filled in by a doctor.** A doctor fills in a J88 form if you have been physically abused (for example, if you are bruised, have broken bones or stab wounds). The J88 form has drawings of people on it and the doctor marks your injuries on the drawings. You do not have to have a J88 form but if you have one it is powerful evidence for the court.

**Remember, do not give the originals of these pictures/letters. Keep the originals and give your copies to the court.**

## 20. How do I get a J88 form for the doctor to fill in?

To get a J88 form, you must first go to the police station. You must ask the police for a J88 form. The police **MUST** give you a J88 form. If the police say that they do not have any J88 forms at their police station, you must ask to speak to the station commissioner. You can also report them to the clerk where you get your Protection Order. If you have an Interim Protection Order, take it with you to the police station.

The J88 form is a legal document to do with criminal proceedings. Therefore you must first lay a criminal charge of assault against your abuser **or** you must ask them to open a skeleton docket (file) for the J88 form. The skeleton docket is a file that is opened when a charge is not yet laid but the matter needs further investigation before a charge is laid. Don't allow the police to stop you from laying a charge. After you have laid the charge, the police must give you a case number.

The police must put your case number on the J88 form, then stamp and sign it and give it to you.

## 21. What do I do with the J88 form for the doctor?

- ▶ You must take the J88 form from the police to a doctor at a Provincial Hospital or to a district surgeon. The doctor will examine your injuries and fill it out for you.
- ▶ You must make two copies of the J88 form after the doctor has filled it out.
- ▶ Take the original J88 form back to the police station for them to put into your file.
- ▶ Take one copy to the clerk to put into your court file and keep the second copy for yourself.

It may seem like a lot of work to get the J88 form but it is definitely worth the time and effort. The magistrate can see very clearly where you have been hurt and how bad it was. It is also good because this comes from the doctor and helps you prove your story.

## 22. How do I apply for a Protection Order?

Firstly, the clerk must tell you if you qualify for a Protection Order or you can check this for yourself under the section in this Booklet where it tells you about who can apply for a Protection Order.

If you qualify, the first form that you have to fill out to get a Protection Order is called an **Application form**. You get the Application form from the clerk. The forms are quite hard to understand so you may want to ask for help. The forms are only printed in English or Afrikaans. If you do not speak or write these languages, you will need someone to translate and write for you.

**Always get the person who writes for you to read it back to you.** If you said something and the person did not write it into your Application form and Affidavit, then you must tell the person that they have left out the information and that they must add it to what was written.

**When you fill out an Application form for a Protection Order (that includes your Affidavit) make sure that you always use the same pen to write everything.** If you do not fill out the form in the court, then you will have to take the same pen to court with you in case you need to change anything or add anything when you get to court. The magistrate will not grant you a Protection Order if you use different pens!

In some courts the clerk or a helper will assist you to fill out the Application form. In other courts, you will have to fill out the form on your own. In most of the courts in and around Cape Town Mosaic court workers are there to help. Ask the clerk if Mosaic's court workers or volunteers from other organisations are available to help you to fill out the forms.

On the application form you fill in:

- ▶ information about yourself (for example, your name, your address);
- ▶ information about your abuser (for example, his name, his address) - you must be sure to write the address of your abuser clearly and fully on the Application form otherwise it will take longer to serve or may not be served at all;
- ▶ when was the last time you were abused;
- ▶ who all the people are who are affected by the abuse (for example, if your children live at home and they are also abused or if they are affected by what your abuser does to you);
- ▶ how urgent your application is. **You need to say how you and/or your children will suffer (what hardship you will experience) if the matter is not dealt with and the Protection Order is not granted immediately.**
- ▶ what you want the abuser to stop doing (for example, you may want him to stop beating you) or what you want him to start doing (for example you may want him to pay for his children's school fees);
- ▶ you can ask for the police or someone else to fetch your personal property if you are afraid to fetch it on your own.

**If you have any pictures of the abuse, medical certificates, support letters or any other additional statements from other people you must give these to the clerk together with your Application for your Protection Order.** These become part of your application so that when you appear in court the magistrate can have a greater understanding about your abuse.

It is extremely important that your **do not give the original certificates, letters or pictures to the clerk** but that you keep the originals and give the clerk the copies. It is also very important that when you appear with your abuser on your return date, you take copies of the same information into court with you. This safeguards you if any of the information is missing from your file and the magistrate can then have the replaced copies that you have brought to court.

### 23. How do I tell the court about the abuse?

You tell the court about the abuse by writing a statement that is called an **Affidavit**. What you say here is **very** important.

In your Affidavit you must say what happened or what you think is going to happen. You must write about what is happening to you at the moment and also about the history of the abuse and how it has been for you in the past, and what you have done to try and cope with the abuse.

Your Affidavit must contain all the important information about the abuse (it must be strong enough) so that the magistrate will decide to give you an Interim Protection Order. The only way the magistrate can understand that the abuse is really serious is by what you say in your Affidavit.

You must write down **all the ways** you have been abused and what each did to you. You must write down if the abuse happened just one time or many times.

If you do not write down everything in your Affidavit, you could have a problem later on when you go to court. Your abuser's lawyer may challenge you in front of the magistrate if you tell him completely different information not written in your Affidavit when you are in court.

**NOTE:** However - this is important - you are allowed to make what is called a 'supplementary statement' (an extra statement) to the court on your return date and during the court hearing. It can be written or verbal. This is when you ask the magistrate if you can add to your Affidavit (if he will grant you more orders) because things may have changed between the time that you wrote your original Affidavit and when you and your abuser appear in court.

The Application forms only have a small amount of space to write the Affidavit. If the court only lets you use this small space you must make sure that you put the information in as strongly and exactly as possible. Other courts will let you write a longer Affidavit. Even if you have another page, keep your Affidavit to the point but include all the most important information.

In your Affidavit you must say if you have children and if they are being affected by the abuse and how they are being affected.

It will cost you money to have a Protection Order served on your abuser (see Question 29). **If you cannot afford to pay for the papers to be served on your abuser you must ask the court if the State can have it served free of charge for you and you must write this in your Affidavit.** You must say why you want it served free of charge.

#### **24. Is there a special way in which I must write my Affidavit?**

We have given you a long list of the different kinds of abuse in the next section. Read it carefully and take out all the information that you may need to fill into your Affidavit about what happened.

- ▶ In your Affidavit, the first thing that you must tell the magistrate is when it was that you were last abused and you must say what happened to you. Ask the clerk if she wants this information at the beginning or at the end of your Affidavit.
- ▶ The next thing that you must tell the magistrate is when the abuse happened for the first time and for how long it has been going on. You must also say if the abuse is happening more often now.
- ▶ Then you must say what kinds of abuse you have experienced since the first time you were abused. Again, you must read the next section that will give you information that you can use to describe the abuse that you have suffered from since the first time you were abused.
- ▶ Then you must say how you and/or your children/ or family have been affected by the abuse (what it has done to you and these people). You must also write down who has witnessed the abuse.
- ▶ Then you must say if your abuser has been convicted of other crimes before and you must say what they were (what criminal activities he was involved in).
- ▶ Then you must say if your abuser uses drugs or drinks lots of alcohol.
- ▶ It is important for you to write about how urgent the application is. You must ask if the court could please give you your Interim Protection Order urgently and say what you believe will happen to you if it is not granted immediately.

**NOTE:** In the Affidavit you will find a sentence that says that he mustn't commit any acts of domestic violence. It is extremely important to tick the box next to this sentence because it safeguards you if you have left out any other kinds of abuse in your Affidavit.

**The following things are very important to include if they apply to you:**

- ▶ That he must not enter your premises or the shared premises or any particular parts of the premises if you are living together. You must give the addresses of these premises.
  - ▶ That you want your abuser to be removed from your home. You must explain that you believe that you and your children are at risk with him in the home.
  - ▶ That he must not enter your place of employment and you must give the address.
  - ▶ That he must not prevent you and/or your children from entering the premises if you live in the premises and that he must not throw you and/or your children out of the shared premises or part of the premises.
  - ▶ That the court must ask a peace officer to accompany you to collect your and/or your children's belongings.
  - ▶ That a member of the police must take away any dangerous weapons that he has. You must describe the weapons which can include screwdrivers, pangas, axes.
  - ▶ That he must not commit any other act of abuse that you don't want him to commit if it is different to anything in the next section of this Booklet.
- NOTE:* ▶ If you do not want him to know where you are staying ( the address that you have written in your Affidavit) you **MUST** tick the box that tells the court not to let him see your address.
- ▶ You must write the name of the police station where it is most likely that you will go to report the abuse if he breaks the terms of the Protection Order.

You can also ask for the following requests in your Affidavit but you may only receive **temporary** 'remedies' (solutions) for about 3-6 months. The reason for this is that these matters are dealt with by other regional or high courts and the other courts may overrule these requests from the Domestic Violence court. I have included the other courts in brackets so that you may know where to apply for **Permanent Orders** to be made. You may ask in your Affidavit

- ▶ That the abuser has to pay for the rent or mortgage (permanent Orders may only be granted in the maintenance court or divorce court if you are getting divorced)
- ▶ That he gives you temporary emergency monetary relief (permanent orders may only be granted in the maintenance court)
- ▶ That he is refused contact with any of your children or that he may be granted contact but only at certain times that you ask for. Or you may want the children to be supervised when he sees them (permanent orders may only be granted in the children's court or divorce court if you are getting divorced)

## **25. What are the different kinds of abuse that I can write about in my Affidavit?**

Different kinds of abuse are described here. Sometimes you may only experience one or two kinds of abuse but usually it is more than two kinds that are experienced together.

### **Physical Abuse**

**This is when your body has been repeatedly hurt or injured: when you have been beaten, choked, punched, stabbed, kicked, or assaulted in any other way.** When you write about the abuse, you must say what kind of physical abuse it was and what happened to you. For example, if you were physically abused, you may say that he kicked you and so you had internal injuries. You must then add the other physical symptoms that you have experienced

because of the abuse. For example you must say if you are having disturbed sleep, or eating problems, or if you have diarrhoea, or if you keep on vomiting.

**It is very important to say if your abuser has a gun, knife or another kind of dangerous weapon that he may use and that will result in a serious physical or lethal (deadly) injury.** You must say if you believe that he will use it and that you are frightened that he will use it. You must write down if your abuser has used the weapon before or if he has threatened you with it before. **You must ask for the gun or dangerous weapon to be taken away.**

### ► Sexual Abuse

**This is when you are forced to have sexual intercourse or perform sexual activities against your will and the person intentionally performs or continues to perform the sexual act with you using force, persuasion or threats to harm you (if you don't allow it) or who gets other people to do this to you. This can include penetration with a penis, or any other object such as a bottle, finger or stick.**

There are different kinds of sexual abuse. These are:

- **rape** (including rape in marriage);
- **abnormal sexual acts** (when you are made to do things with another person that you are uncomfortable with and that distress you);
- **incest** (when a *blood relation* such as a father, brother, son or grandfather has sex with you);
- **withholding sex** from you on a regular basis especially if the abuser is having an affair.

### ► Verbal Abuse

**This is when words and language are repeatedly used in cruel ways to hurt, scare or break you down. This also includes threats.**

It is important to write down as close as you can to what your abuser actually said. If he swore at you, write down the actual swear words, especially if they are rude, because the magistrate needs to know how serious the verbal abuse is. If he insulted, criticised, accused or shouted at you, write down what he said. You must write if you have lost confidence because he criticises you all the time.

**If he threatens you it is important to write down the kinds of threats that he has made.**

These can be threats that he will kill you or others, or himself, or that he will do harm to others such as family members, pets or your partner that you are together with at the moment. You must say if he has threatened to use a gun or weapon, or throw you out of the house or hurt you when he gets home. You need to write that you are scared and worried that he will carry out his threats. If any of this was done in front of other people, write down who was there.

### ► Psychological Abuse

**This is when the abuse is meant to affect your mind in negative, harmful ways: it is used to confuse, worry and scare you and make you feel as if you are going crazy.**

You must also tell how this psychological abuse has affected you. You must say if you have suffered from a mental (nervous) breakdown or if you are not able to concentrate or function properly at home or at work because you live in a constant state of worry and fear. For example you must write if you have had to be on medication or have had to be hospitalised because of the abuse.

It is very important that you say if you are thinking of committing suicide or if you have tried to kill yourself before.

**You must write down if he has been stalking you** (following you, pestering you or challenging you when you go out). You must write down if you are worried and frightened when this happens and also say when and where this happens.

### ► Emotional Abuse

**This is when the abuse is meant to hurt your feelings or manipulate your emotions so that you suffer from fear, stress, tension and anxiety.**

Emotional abuse is very close to psychological abuse and some people describe them together. We have separated them so that you can understand them better.

You need to write down what your abuser has done to emotionally disturb your feelings. You must say if you suffer from depression or panic/anxiety attacks or if you have had to take medication to help you cope with what he has done or will do to you and/or your children.

### ► Economic Abuse

**This is when money or possessions are used to abuse you.** You need to say if you are not given money for the basic things that you (and your children) need. For example, if you and your children have starved or if the children could not go to school because he would not pay the children's school fees. You need to say how you (and your children) have suffered as a result.

You must say if he steals your money or demands that you give him your money. You may say what he spends your money on. You must also say if your abuser is giving money to other people (like a mistress or his family) and that you are suffering as a result.

**You must say if he has done any damage to the property.** You must also say if he is not paying the bond or rent or is selling or giving away property.

You must also say if things that belong to you or that you bought have been taken from you, sold, damaged or destroyed, or if he has burnt your clothes.

### ► Harassment

**This is when he pesters you and makes a nuisance of himself.** It does not only have to be sexual harassment, it can be when he watches where you are going; hangs around the place where you are staying or working and starts trouble; makes phone calls or sends letters to you that you don't want to receive. You must say if this makes you upset, annoyed or frightened. **You must say if he enters your property without your permission if you are not staying together.**

## 26. What do I do if my children are also being abused?

If your children are being abused, you can write this in your own Affidavit or you can apply for a separate Protection Order on behalf of your children. If you are specific enough about what the abuse does to your children you can include it in your own Affidavit/Protection Order. Children can be abused in the same ways as you and can suffer from the same kinds of abuse. When you write about their abuse, check the list above to make sure that you write about all the ways that they are abused.

## **Just watching or hearing you being abused can also be emotional/psychological abuse for them.**

You must say how the abuse has affected the children. When children are abused, they may react/be affected in various ways. Your children may:

- ▶ be nervous, frightened, or stressed;
- ▶ experience disturbed sleep and eating problems, vomiting or runny tummies;
- ▶ want to kill themselves;
- ▶ not be able to go to school because school fees have not been paid;
- ▶ have discipline problems at school;
- ▶ not be able to concentrate on their schoolwork so that they may not pass their grades;
- ▶ carry out criminal activities;
- ▶ become street children; or
- ▶ use drugs or alcohol.

### **27. What do I do when my Application form and Affidavit have been completed?**

You have to make a sworn statement in front of the clerk that what you have written down is the truth and you sign the Application form. She should explain the terms of the oath to you such as that it will be binding on your conscience, which means that you will have a guilty conscience if you say it's the truth and it is not. If you have said anything that is untrue (if you knowingly lied) then you could have a criminal charge laid against you.

The clerk will then open a file for you. She will give you an application number that will go onto your file and your Application form. The clerk will sign and stamp your forms and put them into your file. The clerk will take your file to the magistrate.

### **28. What happens after the magistrate reads my form?**

The 'test' that the magistrate uses for granting you a Protection Order is one of 'undue hardship' which means 'danger and suffering'. You have to prove to the magistrate that if you don't get a Protection Order you will suffer or be in danger. Therefore remember to put enough information into your Affidavit so that the magistrate will understand the serious nature of your application.

*NOTE:* If the magistrate decides that you qualify for an **Interim Protection Order** he will grant it to you. In this case, 'interim' means 'the time between when you apply for a Protection Order and when you have to appear in court on your return date to finalise the Protection Order'.

If the magistrate has decided not to give you an Interim Protection Order, the clerk may not be able to tell you why he has made that decision. Remember that even if you legally qualify for a Protection Order, the magistrate may decide not to give you one and he may not give you any reasons why it was not granted. In this case, you should complain to the Chief Magistrate. Some times, the magistrate will be ordered to hear your case again.

If the magistrate is not sure about the abuse, he may want to speak to your abuser before making his decision. To do that, he serves your abuser with a **Notice to Appear in Court**. That tells your abuser that he must go and talk to the magistrate.

Remember that the magistrate sees you and your abuser and deals with the Application for the Protection Order in his own office. It is only when you go to court on your return date to see if the Protection Order will be made final that you appear in the actual courtroom. Everything before this date is dealt with in the magistrate's office.

### **29. What happens after the magistrate makes his decision to grant me an Interim Protection Order?**

After he has made his decision, the magistrate will give the file back to the clerk. She will call you and tell you if the magistrate has made his decision to grant you an Interim Protection Order. If the magistrate grants (gives) you an Interim Protection Order, the clerk will give you the return date when you have to come back to Court and she must also give you your Application Number.

Then the clerk will put the original Application and Interim Protection Order forms into your file and give you three copies. Two copies are for the sheriff or police because they have to serve one copy of the Protection Order on your abuser (give it to him), and they have to return the other one back to court. The third copy is for you to keep. **Some courts will only give you two copies to take to the sheriff or police. You should ask if you can have a third copy which you can keep for yourself.**

It is also a good idea to have two copies of your Interim Protection Order for yourself. You may want to keep one and give the other copy to someone who you trust. You may need it in case you lose your own copy or if your abuser finds your copy and tears it up. You may also open a skeleton file at the police station and keep a copy of your Protection Order in the file in case you need it.

Remember that you can ALWAYS get another copy of your Protection Order from the court. If you write down the date when you got your Interim Protection Order and keep a note of the case number (application number) it will be easier for the court to find your original form and make you another copy.

If you or the Court are able to pay the sheriff to serve the Interim Protection Order you take two copies of your Application and Interim Protection Order forms to the sheriff. If the court has money to pay for you, you also take a note to say that the State has agreed to pay the sheriff to have the Protection Order served on your abuser. You do not need to take a Return of Service form to the sheriff as he has copies in his office. The clerk will direct you to the sheriff's office.

If neither you nor the Court are not able to pay for the Interim Protection Order the police must serve the Protection Order. Take two copies of the Protection Order forms to the police. The clerk will also give you the Return of Service form to take to the police.

### **30. How will my abuser know about the Interim Protection Order?**

The sheriff or police will serve your abuser with a copy of the Interim Protection Order containing your Affidavit. He will also be given notice of the date when he has to appear in court with you and the magistrate. He will also be told that he can be represented by a lawyer. Remember that he can 'anticipate' the court date (bring it forward) as long as he does this within 24 hours after being served with the Interim Protection Order.

### **31. Do I have to pay for the papers to be served on ( given to) my abuser?**

It depends on who serves the papers and if you can afford to pay.

**If you have no money, you can ask the clerk if the State will pay to serve the Protection Order and you must write this request into your Affidavit.** It is important to write into your Affidavit that you have no money or that you are unemployed.

If the court will pay the sheriff for you, the clerk will stamp and sign the Protection Order form to say that the State is paying for it. The sheriff then gets his money directly from the court.

If you are able to pay the sheriff he usually charges between R40 and R100 depending on where your abuser lives or works. You can ask the clerk how much it will cost you but she may not know. When you give the Interim Protection Order papers to the sheriff, you must have the money with you to pay him. The sheriff's office may be far from the court and you may have to take transport.

You do not have to pay the police if they serve the Protection Order.

### **32. How long should it take for the papers to be served on my abuser?**

How long it takes depends on if the sheriff or the police serve the papers. If the sheriff serves the papers he should only take one day. It can sometimes take the police up to two weeks.

### **33. How will I know if my abuser has been served with the papers?**

Once the papers have been served, the sheriff or police have to fill out a Return of Service form and they have to return it to the court to prove that the Interim Protection Order has been served. They give the Return of Service form to the clerk who puts it into your file. The sheriff has copies of the Return of Service forms at his office but the police do not. So, if the police serve the order, the clerk must give you a Return of Service form to take to the police.

It is really important that the sheriff or police take the Return of Service form back to the court. If they don't, the magistrate will not hear your case because he will think that your abuser has not been served with the papers.

### **34. How do the police have to help me?**

Apart from the duties already described in other sections of this Booklet, the Act describes many duties and roles that the police have to take in actually being involved and assisting complainants and seeing that the Protection Order procedure is carried out properly. They play a very important part in the whole process.

The Act especially states that if you go to the police station the police **MUST** do the following for you:

- ✓ explain everything in a language that you understand or get an interpreter to explain it to you
- ✓ ask you about how you are feeling physically and emotionally (that is, if you are injured or if you are frightened that your abuser will abuse you even more because you have reported him)
- ✓ inform you of your rights such as that you can apply for a Protection Order **AND** at the same time, lay a charge of assault against your abuser

- ✓ help you to find a place of shelter and/or get medical attention if necessary
- ✓ tell you what you must do to make sure that you get your rights according to the Act
- ✓ serve the Protection Order and the Notice to Appear in court on your abuser
- ✓ arrest your abuser if they find ANY proof that there has been violence committed against you
- ✓ arrest your abuser if they suspect that you are in immediate danger
- ✓ arrest your abuser if he breaches the Protection Order AND is drunk/drugged at the time
- ✓ give your abuser a Notice to Appear in court on charges of breaking the Protection Order if there is not enough proof to arrest him
- ✓ go with you to fetch your personal belongings
- ✓ **take away any dangerous guns or weapons** from your abuser if he has threatened you, **or** told you that he will use them to injure or kill you or himself or any person in your family **or** if they believe that he is using drink or drugs **or** if they believe that he is not in a good state of mind or mental condition **or** even if you tell them that you feel that his having the weapon/gun is not in your best interests.

According to the Act the police must take reasonable steps to enter into the property if they suspect that there has been violence, **or** if your abuser is inside the property and won't allow you in, **or** if the police believe that you are inside and are in danger.

If you are injured or very shocked and upset the police must open a skeleton docket for you until you are able to make a full and proper statement to them about what happened to you.

NOTE:

Remember that if the police are not doing what the Act says that they must do, you must report them to the Station Commissioner who has to then keep a record of complaints received against the police in the police station and start disciplinary proceedings against the police concerned. If the Station Commissioner does not believe that the police have done something wrong, he has to write to the Independent Complaints Directorate and tell them why the police don't have to be disciplined. **Recording your complaint is very important.**

### 35. **What are the kinds of problems that I may experience with the serving of the Protection Order?**

If the police serve the Interim Protection Order, you may have some problems:

- ▶ sometimes they *do not want* to serve the Interim Protection Order and will give you many excuses why they can't serve it
- ▶ sometimes they *will not* serve the papers even if you think that they have done so; and
- ▶ **often they do not sign and bring the Return of Service back to court.**

Do not be frightened by the police. If the police have not served the Interim Protection Order, you have the right to know why they haven't done this. Do not let them give you excuses for not serving the Interim Protection Order. If you are not satisfied with the answer from the police, you must tell the clerk or the station commissioner of the police station.

**Always ask for the name(s) of the police who serve you.** That way, you have their names if they don't help you properly. It will make it much easier if you want to make a complaint.

If the sheriff serves the Interim Protection Order, he will bring the Return of Service back to court after it has been served, but the police are not always as reliable. It is safer to check that the police have signed and brought the Return of Service back to court. **Sometimes it is better for you to collect the Return of Service from the police station and take it to the court yourself.**

You can call the clerk and ask her to check your file to make sure that the Return of Service Form is in court and that the Interim Protection Order has been served.

### **36. How do abusive people react when they are served with an Interim Protection Order?**

When your abuser is served with the Interim Protection Order, it may change his behaviour.

- ▶ **He may stop abusing you.** This may be because he realizes that if he doesn't stop the abuse he will be arrested or get into trouble with the law.
- ▶ **He may change how he abuses you.** For example, he may stop physically abusing you and start verbally abusing you instead. **Remember that in order to make sure that you are protected against all of the different kinds of abuse always tick the box in the Application form that says that he 'may not commit any acts of domestic violence'.**
- ▶ **He may keep abusing you or even get more violent.** If this happens, your abuser is breaking the conditions of the Protection Order ('breaching the Protection Order'). The court takes this seriously and he will have to appear in the Criminal Court. Your abuser could be sentenced to prison for up to five years although this hardly ever happens.

Remember that however he reacts, you have the legal *right* to use the Interim Protection Order to try and stop his abuse **after** the Order was served on him by the police or the sheriff.

### **37. What do I do if my abuser breaches (breaks) the Protection Order?**

If your abuser breaches the Interim Protection Order you can have him arrested. However, before the police can arrest your abuser, they need a Warrant of Arrest. You are required by the police, and in terms of the DVA, to make an affidavit at the police station. Remember that everything you say is under Oath and therefore has to be the truth. If you willfully lie under Oath or make a false statement, you may be criminally charged in terms of the Act, and could face a 2 year imprisonment sentence, if convicted. You need to take your Interim or Final Protection Order and your Interim or Final Warrant of Arrest to the police station and ask them to arrest your abuser.

Remember that the police have the discretion (can make the decision) to arrest him or not, depending on whether they believe that you are in very real danger and that you will experience immediate harm. Whether he is arrested on the basis of breaching the Order or not, you can also lay a criminal charge of assault or intent (plan) to do you bodily harm.

Everything that applies to the breaching of the Interim Protection Order also applies to the breaching of the Final Protection Order.

Each time the police will take the Warrant of Arrest away from you when they arrest your abuser. If you are abused again, you must go back to the court, report it to the clerk and get another Warrant of Arrest.

Remember that according to the Act you are entitled to receive an Interim Warrant of Arrest after the Interim Protection Order has been served on your abuser. If the clerk of the court tells you that you can only receive a Warrant of Arrest when you appear in court for the Protection Order to be made final, you may need to inform her of your rights and report the matter to the Chief Magistrate.

### **Q. What happens if my abuser does not agree with my Affidavit?**

When your abuser gets the Interim Protection Order, he may not agree with what you have written in your Application form/Affidavit. He can say this when you go to court on the return date.

*NOTE:* In some cases abusers apply for their own Protection Orders in reaction to having the Order served on them. Then you will be served with a Notice to appear in court. However, you must inform the magistrate that you have a Protection Order against him and that you believe that the Order that he has taken against you is in response to you having applied for a Protection Order against him. The magistrate will very seriously consider the circumstances under which your abuser applied for the Protection Order. If the magistrate is aware that this is a counter order (an order in response to yours) then he will take this into consideration.

**Remember that if there is anything that you do not agree with that your abuser says in court you need to stand up for yourself and tell the magistrate.** As with your application for the Protection Order you would want to gather as much evidence as possible (statements from family members, doctors certificates) to support you. You also have the right to approach the Legal Aid Board for support. Your attorney or legal representative may be with you when you appear before the Court. You will be informed about your rights to representation at the start of the hearing.

### **Q. How long will it be before I go back to court?**

Your court return date will always be 10 days or longer after the Protection Order was served on your abuser but there is no time limit as to how far in advance the date should be made for the final court hearing. However, if it is set several weeks after you have applied, you can always ask the clerk why there is such a long delay before you can appear in court.

## **B: The steps to FINALISING your Protection Order:**

- 1. The Interim Protection Order lasts until you and your abuser have to go back to court on your return date to find out if you can get a Final Protection Order.**
2. During your hearing in court the magistrate will put questions to you and your abuser. If your abuser has a lawyer he may also ask you questions. If you have a lawyer he will also ask questions.
3. The magistrate will decide if you can have a Final Protection Order on the basis of your Affidavit and on the basis of what is said in court by you or your abuser.
4. With the Final Protection Order, you will also get a Final Warrant of Arrest.
5. The clerk will put a copy of these papers into your file
6. If your Protection Order is lost or destroyed, it can always be replaced if you go back to court and ask for another copy.

### 40. How do I know when I have to go back to court?

When you are granted the Interim Protection Order the clerk will tell you the day and time you must go back to court and she will write this onto your Interim Protection Order. She will also tell you what court you must go to. Ask the clerk who you must report to when you get to the court when you have to appear in court.

**Make sure that you get to court early and that you know which part of the court you have to be in.** Prepare yourself with transport money the day before you have to appear and leave as early as you can. When you get there, check to make sure that your name is on the court roll (list). In some courts they just call out your name when it is time for you to appear in court so listen very carefully. If you miss hearing your name, it is like being late: you will probably have to start all over again.

If you appear late at court, or you are absent when your name is called by the magistrate, then your matter might be struck off the roll and the warrant of arrest of your abuser cancelled. This means that you will have to apply afresh for a Protection Order. It may also mean that your Interim Protection Order could be set aside / cancelled by the Magistrate. If you don't turn up your file is usually closed automatically.

### 41. Do I have to do anything to get ready for the court hearing?

**You cannot appear in court for a Final Protection Order if the Return of Service form has not been returned to court.** A few days before the court date, phone the clerk and ask if the Return of Service has been sent to the court. If it has not, you must go to the police station or to the sheriff to find out what has happened.

You should read your Affidavit again before you go into the courtroom. This will help you remember what you wrote when you applied for the Protection Order. Remember to tell the magistrate exactly the same things that you wrote in your Affidavit. If you need to add extra information, ask the magistrate if you can do this. It is called a **Supplementary Statement**.

### 42. How long will I have to be in court when I go for the hearing?

You may have to wait a long time before your case is heard on your return date. Even if you have been given a time that you have to be there, you may have to wait because a magistrate may not be available or there may be many cases that have to be heard.

It also depends on how difficult your case is and it may take longer if you or your abuser has a lawyer.

### 43. Why would the hearing be postponed?

The hearing could be postponed if:

- ▶ your abuser wants to get a lawyer;
- ▶ his lawyer says that he has not had time to talk to his client;
- ▶ the Return of Service form has not been sent back to the court.

There can be more than one postponement, usually two. If this happens, weeks or months can pass before you finally get your court hearing. Each time there is a postponement, you have to go back to court again.

If you feel that there are too many postponements you may ask the magistrate for the next postponement to be the final postponement. You may object to the postponements and this will then go on record so that it cannot be postponed again. However, if the magistrate believes that the postponements have been reasonable he may not allow the next postponement to be the last one. He has the discretion to make it final or not. Despite this, it is beneficial for you to object and have your objection recorded.

**This is very important information: If there is a postponement you must ASK THE MAGISTRATE IF HE CAN PLEASE CHANGE THE DATE ON THE INTERIM PROTECTION ORDER so that you will still be able to use your Interim Protection Order until the 'postponed' return date.**

#### **44. How could the postponement of the return date affect me?**

You can feel that this is very unfair to you, especially if the delays and postponements are caused by your abuser. Each time you have to go to court, it costs you money and you may have to take time off work.

If you think that the delays are putting you in more danger, go back to the clerk right away and tell the clerk why you are afraid. Make sure you have your copy of the Interim Protection Order and an Interim Warrant of Arrest.

You may feel that the court is supportive of your abuser and not of you. This could also be a way for your abuser or his lawyer to make things even harder for you. Don't let them make you give up. Be patient a little bit longer.

#### **45. What happens if only one of us arrives at court on the return date?**

If for any reason you cannot appear on your return date please call the clerk of the court and ask to have the hearing date postponed. You should be able to do this over the telephone.

**If you are present but your abuser is not at the court on the day of the hearing (the return date), you are entitled to get your Protection Order.** The magistrate may finalise the Protection Order if he is convinced that the Notice to Appear was properly served on your abuser and there is evidence (proof) from your Application form that there was domestic violence.

If you do not arrive at court and your abuser is in court but he does not agree with what you have said in the papers, the magistrate will either

- ▶ postpone the finalisation of the order to another return date, or
- ▶ change some of the information to suit your abuser or
- ▶ set the order aside which means that you have to apply all over again.

Even if neither of you do not arrive at court, some magistrates will finalise the Order automatically

(grant you a final Protection Order) if they find that domestic violence has been committed and are satisfied that the Interim Protection Order and Notice to Appear were properly served on the respondent. However, it is MUCH better and really essential that you go back to court for the hearing on the return date that was given to you and that you arrive early.

#### **46. What happens when my abuser and I both go to court?**

The best things you can do are:

- ▶ Answer all the questions honestly.
- ▶ Be calm and strong.
- ▶ Quietly stand up for yourself.
- ▶ If you disagree with what your abuser says in court, speak your truth.

If you and your abuser are both in court, the magistrate can hear both sides of the story and can ask both of you questions.

You will be advised of your rights regarding legal representation, at the commencement of the hearing. A lawyer can represent you if you can afford one or you can apply for legal aid. Your abuser can also have a lawyer. If your abuser has a lawyer he will try and make your abuser seem like a good person, put you in a bad light and make you out to be the person who is at fault. It is important to tell the magistrate if you disagree with anything that your abuser or his lawyer says. If you keep quiet, the magistrate will think that you accept what your abuser or his lawyer says to be the truth.

Each applicant is allowed three people to accompany them into the court. These people may not speak in court but they can provide you with important moral support. You can have witnesses, people who know about how you were abused, someone from an organisation to support you in court, but they can only sit because they are not allowed to say anything to the magistrate.

If you forgot to put something in your affidavit, you must explain to the magistrate that you forgot to include it in your Affidavit. This is called a 'supplementary statement'.

When the magistrate has listened to both of you, he will decide if you can get a Final Protection Order or not.

#### **47. What do I do if the magistrate does not finalise the Protection Order?**

If, on your return date, the magistrate does not believe that the abuse is severe enough to give you a Protection Order, you can go back to the police and lay a criminal charge of assault if you have not done so already. You may also apply for a Peace Order. You may try and re-apply for a Protection Order as your Affidavit may not have been strong enough.

#### **48. What else may the magistrate decide to do on the return date?**

Once the magistrate has heard both sides of the story, he may grant the Final Protection Order but may decide to change some of the conditions of the Order. For example, if you have requested that your abuser cannot have contact with the children, the magistrate may 'vary' the order to state that he may see them only on certain days.

The magistrate may also vary the Protection Order because this is the first time that he will hear both sides of the story. He may believe that some of the things that you have written in your Affidavit need to be more fully explained before making his decision. Therefore be aware that everything that you have applied for in your Affidavit may not all be granted. This is when he may 'vary' the Order.

#### 49. *Can I change my mind and withdraw the application for a Protection Order?*

You can change your mind and decide that you don't want to get a Protection Order. **If you want to withdraw your application for the Interim Protection Order or have the final Protection Order 'set aside' (cancelled) you must make this request to the court in the form of a written Affidavit.**

The Court may consider your application for withdrawal of the Order and grant it. However it may also refuse your application to withdraw on the basis that it believes that you or your family require continued protection from further abuse. The Court may also request that you appear before the magistrate to explain the reasons why you want to withdraw the order.

You can reapply for a Protection Order as many times as you want but the courts really do not like this and may make the application process more difficult for you.

#### 50. *How do I withdraw the Protection Order?*

To stop the Protection Order (withdraw it), you have to write a new Affidavit saying that you want it withdrawn. This new Affidavit will go into your court file. The clerk will write on your file cover that you have withdrawn (stopped) the Protection Order. However, remember that the magistrate makes the final decision about the withdrawal and not the clerk.

**Make absolutely sure that you want a Protection Order before you ask for one. Only withdraw it if you are certain that you will not need it in future.** Before you withdraw your application, ask yourself if you can honestly trust your abuser and if you can be very sure that the abuse won't happen again. Remember how many times your abuser promised to change his behaviour after he abused you before and then ask yourself if he ever kept his promises.

Be very careful not to open yourself to attack again. Many women have found that as soon as they withdraw the Protection Order, the abuse starts all over again, and often it is even worse. Many abusers see the withdrawal of the Protection Order as a sign of their victory and that they are even stronger and that the person they are abusing is weak and easily manipulated.

#### 51. *Why would I want to withdraw the Interim Protection Order?*

You may want to withdraw it because:

- ▶ **You think that the Protection Order will put your abuser into prison** - but this is not true. He will **only** be arrested **if** he does not stop the abuse.
- ▶ **Your abuser is the bread-winner and you don't want him to lose his job.** Remember that this is not likely to happen. As long as he behaves himself, he will not be arrested.
- ▶ **He is threatening/intimidating you;** he's trying to force you to withdraw the Protection

Order. It is hard to be strong and brave when this happens. Sometimes it feels easier to give in because you are scared and he is pressuring you. Remember, if you do give in, he may see this as proof that he can make you do anything or that he can do anything to you again and again.

- ▶ **You believe him when he says that he is sorry, that he won't do it again, that he loves you and asks you to forgive him.** Be sure that he really means it and that he is not being good just because you now have some power and protection. Your abuser may try to manipulate you with kindness when the papers are served on him. When this happens, you may believe that the peace and happiness will last.
- ▶ **You may not really be serious about getting a Protection Order but you just want to teach him a lesson or frighten him.** This is a very dangerous game and you should not play it. If the magistrate can prove that you are lying about the abuse you can be open to a criminal charge being laid against you. Also, the magistrate can make you pay for the costs of your abuser such as for his lawyer.

## 52. What must I consider if I withdraw my application for a Protection Order?

Before you withdraw the Protection Order, remember that there is no guarantee that the abuse will stop and if it starts again:

- ✓ you have to start applying for your Interim Protection Order Interim all over again, right from the beginning;
- ✓ it may be harder the next time to have the determination and the strength to go through it all over again; and
- ✓ the abuse may get worse and not better.

Give **serious** thought before you withdraw your Application for a Protection Order. Remember why you applied for it.

**You may never have to use the Protection Order but it's there for your protection if you need it. You have the right to safety, dignity and respect. You have a right to live without fear. If he really means that he won't abuse you again then the Interim Protection Order is not a threat because you will not have a reason to use it.**

## 53. What happens if my abuser sets aside (disagrees) with the Protection Order?

If the Protection Order is made *final* (not before this), your abuser can apply for a **Setting Aside** of the Protection Order (cancelling the Protection Order). To do this, he has to go to the same court that you went to and he has to fill out a Setting Aside form. The form will be put into your file.

The Setting Aside papers will be served on you just like the Interim Protection Order was served on him. You will be given a date and time to appear in court to see if the magistrate will set aside your final Protection Order (that he will cancel it and you won't be able to use it). However, if your abuser applies for a Setting Aside it does not mean that it will be granted. The magistrate will look at the abuse that has been done to you. Most of the time the Setting Aside is not granted.

Your abuser can have a lawyer to Set Aside the Protection Order and so can you. If you do not have a lawyer you have to stand up for yourself and you must explain carefully to the magistrate in court what it will do to you (and possibly to your children as well) if he sets aside the Protection Order so that you do not have the Protection Order for your protection.

Another thing that you can do when the Setting Aside is served on you, is that you can go to court and write an affidavit answering all of the things that he has accused you of doing. This is called an **'Answering Affidavit'**. In this Answering Affidavit you would say why certain statements in his Setting Aside are not true. You can also add any additional information in answer to the Setting Aside that he has had served on you.

If there are other people who have witnessed the abuse against you and they can confirm (prove) that what you say is true, they can also fill out what is called a **'Confirmatory Affidavit'**. They are confirming (agreeing with) your statement. In order to do this they must write the Confirmatory Affidavit either at court or at the police station. Their Confirmatory Affidavit must then get attached to your Answering Affidavit which has to be taken to the police station to be commissioned by the police and then taken to court.

### **C. Steps to USING the Protection Order**

1. If you are abused after you have received your Interim or Final Protection Order you must take the Interim or Final Warrant of Arrest **and** your copy of your Interim or Final Protection Order to the police so that they can arrest your abuser.
2. You must always return to court to get another Warrant of Arrest when the police take your Warrant of Arrest away from you when they arrest your abuser.
3. If you do not have an Interim Warrant of Arrest then you must take your Interim Protection Order with you to the police station and lay a charge of assault against your abuser.

### **The USE of the Protection Order explained more fully**

#### **54. What happens if I get a Protection Order?**

Once you get the Protection Order, it is up to you to decide when to use it. You now have the power to try to stop the abuse from happening.

#### **55. How do I get a Warrant of Arrest?**

Most courts will give a Warrant of Arrest only when you have received your Final Protection Order. But be aware that the Act specifically states that you are entitled to receive an Interim Warrant of Arrest with your Interim Protection Order.

If you think that your abuser will tear up the Warrant of Arrest, give it to somebody that you really trust to keep for you. You may also ask the police to open a file for you and keep it at the police station. If it is not kept at the police station, you will need to take it together with your Protection Order when you go to the police station to have him arrested. However, if your Warrant of Arrest is lost or destroyed you can always get another one from the court.

#### **56. What do I do if I am abused again?**

If you are abused again after you get your Protection Order, you must go to the police with your Warrant of Arrest and Protection Order. You must tell the police that you are in danger. You will have to write an Affidavit at the police station about what has happened to you.

**Don't be afraid to use the Warrant of Arrest.** It is your legal protection. Don't let the police stop you from having your abuser arrested if he has breached the Protection Order. The Warrant of Arrest is a legal document and they have to respect it.

**The police will keep the Warrant of Arrest when they arrest your abuser.** As soon as you use the Warrant of Arrest, you must go back to the court to get another one in case you are abused again. However, remember that even if he is arrested, your abuser could be released and could come back and abuse you again. If this happens, go back to the police station once again. Be determined, and keep up your courage to stop the abuse.

### **57. What do I do if the police will not help me?**

You should always ask for the names of the police who you speak to. If the police treat you badly or won't help you, you need their names to report them.

You must report the police to the Station Commissioner if the police do not **allow** you to lay a charge of assault or if they do not arrest your abuser. However, remember that the police will only arrest your abuser if they believe that he will harm you again. This is called 'imminent harm'. Therefore explain clearly to the police that you are frightened that he will harm you again. **If they do not arrest your abuser they must issue (give him) a Notice to go to court to respond to your claim that he has breached the conditions of the Protection Order.**

If the police do not arrest your abuser or issue a notice to go to court, you **MUST** report them to their Station Commissioner **and** to the clerk. If you still have problems, you can report them to the **Independent Complaints Directorate (ICD)**. You can get their telephone number from the checklist at the end of the booklet on page 40. If you cannot go to ICD's offices, you must telephone them and write or fax them about how the police refused to protect you. Always send a copy of your complaint (either a letter or fax) to the police station as well. Keep a copy of your letter or your transmission slip if you send a fax, to prove that you have contacted ICD and laid a complaint.

Remember that you have the right to report the police to the Station Commissioner if the police do not allow you to lay a charge of assault or if they do not arrest your abuser.

### **58. What do I do if there is a change in the way that I am abused?**

When your abuser receives the Protection Order, he may realise that he cannot abuse you in the ways that you have described in your original Affidavit as these are the conditions of the Protection Order that he is not allowed to break. So, he may start to abuse you in other ways. If this happens, you have to go back to the court and write another Affidavit. This is called a '**Variation to the Protection Order**' because you are changing it (varying it). **The Variation to the Protection Order used to be called an Amendment.** You can only change (vary) your Protection Order *after it is made final*. But the magistrate may vary it on the return date.

In the Variation to the Protection Order you must state what new and different kinds of abuse you are now experiencing. You must say that you do not want your abuser to abuse you in this different way. This Variation to the Protection Order could change the conditions of your first Affidavit depending on what you ask for.

The Variation also has to be served on your abuser (just like the Interim Protection Order) so you will have to go back to the sheriff or the police to ask them to serve it on your abuser.

### 59. How long is the Protection Order valid for?

Protection Orders never expire. Even if you got a Protection Order a long time ago, you can *still* use it. If it is lost or your abuser tears it up, you can go to the court where you originally got it and ask for another copy. You will have to tell the clerk when you got it and what your case number is. If you don't know the exact date when you got it, tell her as close to the time as you can remember. However, remember that the old Interdict (given to you before the 15th of December 1999) can expire, so if you have an Interdict, it is better to reapply for a Protection Order (that never expires).

### 60. How should I use my Protection Order?

Use your Protection Order to bring peace into your life. The Protection Order will give you some power to stop the abuse where you had no power or very little power before. Don't tease your abuser with it or use the Protection Order as a threat or an excuse to have him arrested. Legally taking away his power to abuse you is sometimes punishment enough.

Remember that if you play games with the Protection Order you are just keeping the cycle of violence going and you want to STOP the violence and abuse and bring peace to your home. Once you get a Protection Order respect it. **Do not abuse it.** Use it **only** to protect yourself, your children and your property.

## SECTION 4: PEACE ORDERS

You may go to court hoping to apply for a Protection Order but then when you get to court the clerk may tell you that you do not qualify for one. If you do not qualify for a Protection Order, the clerk may suggest that you apply for a Peace Order.

### 61. Who can get a Peace Order?

You can get a **Peace Order** if you have been abused but your abuser is:

- ▶ not your relative by blood or marriage; or
- ▶ you have not had a relationship with him; and/or
- ▶ you have not lived together under the same roof.

Your abuser can be:

- ▶ your step-parent who *does not* live under the same roof as you;
- ▶ a relation of your family but not *your* relation (for example, your sister's brother-in-law);
- ▶ a neighbour;
- ▶ a friend;
- ▶ a relation of your friend;
- ▶ an acquaintance;
- ▶ a stranger; or
- ▶ anybody who lives on your property but NOT under the same roof as you (for example, in a bungalow, Wendy house or room outside, on your property).

## **62. How do I get a Peace Order?**

**You can only get a Peace Order at the court nearest to where you or your abuser live, NOT where you or your abuser work.**

If you want a Peace Order, ask Security to tell you where you must go to get one. In some courts you get it in the Domestic Violence section of the court. In other courts you have to apply for a Peace Order in another section of the court. If you get it at the police station you must write and Affidavit and then go to the court.

The process of applying for a Peace Order involves writing an Affidavit that is sent to your abuser via the court. It is not the same procedure as applying for a Protection Order. The magistrate will decide if you are able to get a Peace Order or not.

## **63. How can I try and make a Peace Order work for me?**

**A Peace Order is not as effective as a Protection Order.** There are many problems with the Peace Order but there are some things you can do to try and make it work for you.

Every time your abuser does not obey the Peace Order, you should report it at the court where you got the Peace Order. You must fill out a new Affidavit, and the magistrate will again decide if you can get another Peace Order. If you keep on going back every time your abuser breaks the Peace Order, the magistrate might see that the situation is serious and that the abuse is still going on. He may decide that it is serious enough and he will call (summons) your abuser to court. In some courts this may happen if your abuser breaks the Peace Order 2 or 3 times.

Of course you may lay a criminal charge of assault or threat of assault against your abuser at the police station as well as getting a Peace Order. This gives you more legal power to stop the abuse if you only qualify for a Peace Order. However, remember that not all charges are criminal charges, for example harassment by a neighbour is not a criminal offence and the police will not allow you to lay a charge.

## SECTION 5: FINAL WORD

Even with all the problems associated with Protection Orders and Peace Orders, we encourage you to use the laws to protect yourself as best you can.

If you stand strong, you can help yourself - and you can show other abused women that it can be done. There are more and more women who have taken greater power into their own hands to try to stop domestic violence and abuse.

**You can be part of this growing group of ‘empowered survivors’ who say ‘enough is enough’ and ‘no more abuse!’**

**It may be difficult but there is nothing as exciting as getting out of your abusive situation through your own hard work, determination and courage.**

Remember that the Protection Order is only effective if you use it! However, you have to be strong in yourself and not meet aggression with aggression, or meet aggression with powerlessness. You need to learn to stand up for yourself in a way that your abuser can understand what you are trying to say and that you want to resolve conflict and restore peace in your home. This is what is called ‘being assertive’. In the next section about Mosaic you will note that abuse/assertiveness workshops are regularly held for women in the community. We encourage you to attend these free two-day workshops by contacting Mosaic and reserving a place for yourself.

Bless you and good luck! We hope that this booklet has been useful and that it has helped you gain a greater understanding of abuse and the Protection Order procedure. When you have used it please pass it on to someone who you believe may need it too!

## SECTION 7: ABOUT MOSAIC

### **Who or what is Mosaic?**

Mosaic is an organisation that helps abused people and their families, especially women and youth who are caught up in domestic violence situations. Mosaic has a vision of a society free of violence and abuse.

Mosaic is an NGO, a 'non-government organisation', and a Section 21 company. This means that it is not part of the government and it is also not a business to make money. Mosaic has to raise all of its money from donations and grants especially as all of its services to abused people are given free of charge. Mosaic's services are free because virtually all of its clients are women and youth who cannot afford to pay for services.

A mosaic is a beautiful picture or design made from pieces of tiles, paper and glass like a church window that is made into a beautiful mosaic designed with pieces of coloured glass. The name 'Mosaic' was chosen because Mosaic helps people put the pieces of their broken lives together so that they can design more beautiful futures for themselves.

Mosaic educates the public about abuse, counsels abused people and their families, and conducts support groups, workshops and training courses on abuse/assertiveness/conflict resolution, counselling skills and the Protection Order procedure. Mosaic reaches more than 100,000 people each year through these services.

Mosaic works in different venues in more than thirty communities in and around Cape Town, Paarl, Strand and Stellenbosch. In 2002 Mosaic moved into its first donor-funded community centre/offices in Wynberg, Cape Town. Various outreach centres have since been established in communities where Mosaic works

### **How can I get hold of Mosaic?**

If you want to learn more about Mosaic, or if you need our help, contact us:

Telephone: 021 761 7585 (between 8:30 am and 4:00 pm, Monday to Friday);  
(Community Outreach Centres: Mon - Thurs, 8.30am - 4:00pm)  
(Courts: Mon to Fri, 8.30 am - 3.30pm)

Fax: 021 761 7584 OR 086 6518662

Address: 66 Ottery Road, c/r Mortlake Road, Wynberg, 7800;

Postal address: PO Box 18460 Wynberg, 7824; or

E-mail: [admin@mosaic.org.za](mailto:admin@mosaic.org.za)

If you would like extra copies of this booklet, please send a request together with a self-addressed A5 stamped envelope and we will send you free copies by return of post or call in at Mosaic's Wynberg office or any of the outreach centres and courts listed on the next page.

## **What courts does Mosaic work in?**

Atlantis	Mon-Fri	8.30-3.30	021 572 1003
Bellville	Mon-Fri	8.30-3.30	021 950 7700/7712
Bishop Lavis	Mon-Fri	8.30-3.30	021 934 1021
Blue Downs	Mon, Wed & Fri	8.30-3.30	021 909 9000
Cape Town	Mon-Fri	8.30-3.30	021 461 1204
Khayelitsha	Mon-Fri	8.30-3.30	021 360 1455
Kuilsriver	Mon & Thurs	8.30-3.30	021 903 1166
Mitchells Plain	Mon-Fri	8.30-3.30	021 370 4296
Muizenberg	Mon & Tues	8.30-3.30	021 788 9742/40
Paarl	Mon-Fri	8.30-3.30	021 872 3127
Philippi	Mon-Fri	8.30-3.30	021 372 0901
Simon's Town	Wed & Thurs	8.30-3.30	021 786 1561
Stellenbosch	Mon-Fri	8.30-3.30	021 887 0114
Strand	Tues & Thurs	8.30-3.30	021 854 7217
Wellington	Mon-Fri	8.30-3.30	021 873 6768
Wynberg	Mon-Fri	8.30-3.30	021 799 1800/1902

Counselling is available at Mosaic's Wynberg Centre and at various outreach centres.

## **Mosaic's Outreach Centres**

- ▶ Dunoon Clinic, Dunoon
- ▶ Philippi Court, Philippi
- ▶ Khayelitsha Day Hospital, Site B, Khayelitsha (Simele Rape Crisis Centre)
- ▶ Mitchells Plain Magistrate's Court
- ▶ Delft South Library Premises
- ▶ Masiphumle Residence for the Aged, Mfuleni
- ▶ Sisonke Educare, Bloekombos
- ▶ Nyanga Job Centre Premises, Nyanga
- ▶ Khayelitsha Magistrate's Court
- ▶ Harare, Khayelitsha (Opposite Score Supermarket in Harare)
- ▶ Esangweni High School, Harare, Khayelitsha

## SECTION 7: MY RECORD OF INFORMATION

You may want to keep all your information on this page. Fill it in as you go so that it is always complete. You may want to keep a copy in a safe place.

**My application number is:** \_\_\_\_\_

**The date I applied is:** \_\_\_\_\_

**The return date of my hearing is on: Day** \_\_\_\_\_

**Date** \_\_\_\_\_

**Time** \_\_\_\_\_

The court I go to is \_\_\_\_\_

The address of the court is \_\_\_\_\_

The clerk's name is \_\_\_\_\_

The clerk's telephone number is \_\_\_\_\_

I can apply on these days \_\_\_\_\_

The court is open at these times \_\_\_\_\_

The sheriff's address is \_\_\_\_\_

The police station I must go to is \_\_\_\_\_

The address of the police station is \_\_\_\_\_

The name(s) of the police who served me is/are \_\_\_\_\_

The Independent Complaints Directorate's (ICD) contact numbers are:

Bloemfontein	(051) 406 6800
Cape Town	(021) 480 2000
Durban	(031) 310 1300
Kimberley	(053) 807 5100
King William's Town	(043) 604 3500
Mafikeng	(018) 397 2500
Marshall Town	(011) 220 1500
Nelspruit	(013) 754 1000
Polokwane	(015) 291 9800
Pretoria	(012) 392 0400

The Return of Service report should be back on (this day): \_\_\_\_\_

When I go back to court, I must go to: \_\_\_\_\_

Things I must bring to court with me are (see page 15) \_\_\_\_\_

My hearing has been postponed until: **Day** \_\_\_\_\_

**Date** \_\_\_\_\_

**Time** \_\_\_\_\_

## SECTION 8: WORDS AND THEIR MEANINGS

**Abuse:** It is abuse if you, your children or your property are repeatedly threatened, harmed or damaged in any way.

**Abuser:** This book refers to the person who is being accused of abusing as an 'abuser'. This is just to make the Booklet easier to read.

**Accused:** A person who is accused in a criminal case of having committed a crime. It is the same name that refers to a respondent for a Protection Order.

**Affidavit:** A statement made in writing that is used in court. This is sometimes referred to as a 'statement' or 'a sworn statement'.

**Amendment:** Old word for a Variation to a Protection Order.

**Answering Affidavit:** This is an Affidavit that you write in answer to all of the things that your abuser has accused you of doing when he has had Setting Aside papers served on you.

**Applicant:** The person who is applying for a Protection Order. This is the same as the Complainant.

**Application number:** The number given to an applicant that goes onto the person's file and on all the papers related to that case.

**Blood relation:** A person directly related to the applicant. This means a mother, father, sister, brother, child, grandfather or grandmother.

**Breach (an Order):** This is when the person breaks the terms/conditions (one, some or all) of the Protection Order. Breaching a Protection Order is a criminal offence and the person can be sent to jail if he/she is found guilty.

**Charged with (an offence):** Means that the person is accused of having done something wrong for which they could be sent to jail.

**Child:** According to the Domestic Violence Act a minor child is under age of 18. This can be the natural, adopted or foster child of the applicant.

**Clerk:** In this booklet we have used 'clerk' to refer to a Clerk of the Domestic Violence Court.

**Complainant:** This applies to criminal proceedings and refers to the person who is complaining about the charges laid against them. However, this is also how the Applicant is referred to in the Application Form for a Protection Order.

**Confirmatory Affidavit:** This is written in response to a Setting Aside that your abuser serves on you. It gets attached to your Answering Affidavit. It is written by people who have witnessed you being abused and they can confirm (prove) that what you say in your Answering Affidavit is true.

**Docket:** This is a file opened by the police when a criminal charge is laid. It can contain information about a criminal offence including your statement and any other evidence you provide to the police.

**Interim:** This means the time between when a person is granted an Interim Protection Order and when they appear in court for the Protection Order to be made final. There are Interim Protection Orders and Interim Warrants of Arrest.

**J88 form:** A form filled in by a doctor at a Provincial Hospital or by a district surgeon showing the physical injuries caused by the abuse.

**Notice to Appear in Court:** This is a command by a magistrate for the defendant or respondent to go to court. It is ordered when the magistrate wants to question the abuser

before deciding if the applicant qualifies for a Protection Order. It is also standard for a fair hearing, not only when a magistrate wants to call the respondent.

**Order(s):** Legal documents that tell a person what they must or must not do. This booklet looks at Protection and Peace Orders.

**Peace Order:** An Order that protects against violence/abuse where the applicant does not qualify for a Protection Order.

**Protection Order:** An instrument of the New Domestic Violence Act of 1998. It is an Order that protects against domestic violence or abuse.

**Respondent:** The person who is responding to the accusation that he or she has committed abuse. It is another term used for an accused.

**Return of Service:** A form filled out by the police or the sheriff that has to be returned to the court to show that they have served the respondent with an Interim Protection Order and Final Protection Order.

**Serve (papers):** To serve papers on someone means to officially give them the court papers. The Order can be given to anyone at that address who is an adult.

**Setting Aside of the Protection Order:** A form that is filled out by either the complainant or the abuser depending on who wishes to have the final order set aside. It is applied for if either of the parties does not agree with the conditions of the Protection Order.

**Skeleton docket:** This is a police file that is opened containing details of a criminal offence. A charge does not have to be laid for this file to be opened. This is only opened until charges have been laid and then it becomes an official police docket that requires police investigation of the criminal matter.

**(Sworn) Statement:** Another name for an Affidavit.

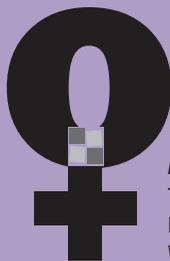
**Supplementary Statement:** The Supplementary Statement is an Affidavit that can be written or verbal. It is information that you add to your original Affidavit to ask the magistrate to grant you more Orders because things may have changed between the time that you wrote your original Affidavit and the time that you and your abuser appear in court on your return date.

**Variation to the Protection Order:** This is a form containing an Affidavit that is written after the Protection Order has been granted, when the abuser starts to abuse the applicant in new and different ways not contained in the original Protection Order's Affidavit. The applicant can also apply for a variation if she is not happy with the Orders granted in the final Protection Order, for example when the Order is granted in her absence. It can also refer to the magistrate's Variation to the Protection Order when he changes the terms of the Order at the court hearing on the return date.

**Warrant of Arrest:** An instrument of the New Domestic Violence Act of 1998 that is given with the Interim and Final Protection Orders. The police require a Warrant of Arrest in order to arrest the abuser.

**Withdrawal of the Protection Order:** A form containing an Affidavit that is filled in if a person wants to withdraw their application for a Protection Order.

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HEALING CENTRE FOR  
WOMEN

