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**PREVENTION OF DOMESTIC VIOLENCE AND PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE
[draft] BILL, 2003**

ARRANGEMENT OF SECTIONS

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[draft] BILL

To provide for protection and relief to victims of domestic violence and to provide for matters connected with or incidental to the foregoing.

[to be] ENACTED by the President and Parliament of Zimbabwe.

PART I

1. Short title

- (1) This act may be cited as the Prevention of Domestic Violence and Protection of Victims of Domestic Violence Act, 2003
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument. Provided that the President may fix different dates of commencement for different provisions of this Act.

2. Interpretation

In this Act –

“Complainant”, in relation to a respondent means-

- a) a current former or estranged spouse of the respondent; or
- b) a child of the respondent, whether born or in or out of wedlock, and includes an adopted child and a step child; or
- c) any person who is or has been living with the respondent or not; or
- d) any person who has or had an intimate relationship with respondent either as a girlfriend or boyfriend or partner in a sexual or intimate relationship who any or may not have lived with respondent.

Complainant's representative means any person who has made an application for a protection order on behalf of a complainant; and includes; an officer as a police officer, a social welfare worker, an employer, a church or organisation officer. It also includes a colleague, relative, close family member or neighbour;

“court” means a magistrate court;

“domestic violence” means the violence defined in section 3.

“Minister” means the Minister of Justice, Legal and Parliamentary affairs or any other Minister to whom the President may, from time to time, assign the administration of the Act;

“protection order” means , an order issued in terms of section 8;

“respondent” means a person who is alleged to be the perpetrator of an actual or threatened act of domestic violence.

3. Meaning of domestic violence and its scope

For the purpose of this act, domestic violence means unlawful act, omission or behaviour which results in the direct infliction of physical, sexual or mental injury to any complainant as defined in section two by a respondent and includes the following -

- a) physical abuse;
- b) sexual abuse;
- c) emotional, verbal and psychological abuse;
- d) economic abuse;
- e) intimidation;
- f) harassment;
- g) stalking;
- h) damage to property;

- i) entry into complainant's residence without consent where the parties do not share the same residence;
- j) depriving or hindering the complainant from access to the complainant's place of residence;
- k) depriving the complainant of a reasonable share of the use of the facilities associated with the complainant's place of residence;
- l) abuse derived from cultural or customary rite and practices that discriminate or degrade women such as virginity testing, female genital mutilation, pledging of women and girls for purposes of appeasement of spirits, abduction, child marriages, forced marriages, forced wife inheritance and other such practices;
- m) abuse perpetrated on the complainant by virtue of complainant's age, of complainant's physical or mental in capacity occurring between persons who have a relationship as defined in terms of subsection (1).

"economic abuse" includes –

- a) the unreasonable deprivation of economic or financial resources to which a complainant is entitled under the law or which the complainant requires out of necessity, including house hold necessities, medical expenses, school fees, mortgage bond, rent payments, or other like expenses;
- b) the unreasonable disposal of household effects or other property in which the complainant has an interest;
- c) denying the complainant the right to seek employment or engaging in any income generating activity;

"emotional, verbal and psychological abuse" means a pattern of degrading or humiliating conduct towards a complainant, including but not limited to the following –

- a) repeated insults, ridicule or name-calling
- b) repeated threats to cause emotional pain; or
- c) the repeated exhibition of obsessive possessiveness or jealousy which is such as to constitute a serious invasion of the complainants privacy, liberty, integrity or security;
- d) any act or behaviour constituting domestic violence within the meaning of this section where committed in the presence of minor members of the family, shall be considered as violence against the said minor members, likely to cause them mental injury.

"harassment" means engaging in a pattern of conduct that induces fear of harm, annoyance and aggravation to a complainant including –

- a) repeatedly watching or loitering outside of or near the building where the complainant resides, works, cries on business, studies or happens to be;
- b) repeatedly making abusive telephone calls or including another person to make abusive telephone calls to the complainant, whether or not conversation ensues;
- c) repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant;

"imminent harm" means harm that is feared to be imminent or about to happen taking into consideration issues like pas history of respondent's known behaviour

"intimidation" means uttering or conversing a threat of causing a complainant to receive a threat, which includes fear;

"physical abuse" means any act or threatened act of physical violence towards a complainant;

"sexual abuse" means any conduct that humiliates, degrades or otherwise violates the sexual integrity of the complainant

"stalking" means repeatedly following, pursuing, or accosting the complainant.

PART II

DUTIES OF POLICE AND POWERS OF ARREST IN RESPECT TO DOMESTIC VIOLENCE.

4 Duties of Police Office:

A police officer to whom a complaint of domestic violence is made or who investigates any such complaint shall:

- (a) Assist the complainant concerned including the giving of assistance or advice in obtaining shelter or medical treatment
- (b) Advise the complainant of the right to apply for relief under this Act and the right to lodge a criminal complaint.

Provided that, where a complainant so desires, the statement on the nature of domestic violence shall be taken by a police officer of the same sex as that of the complainant.

5 Arrest by Police Officer without warrant

- (1) A police officer may, without warrant arrest any person whom he or she reasonably suspects has committed or who is threatening to commit an act of domestic violence towards a complainant.
- (2) The police officer will take all reasonable measures to bring the person, suspected of having committed or threatening to commit an act of domestic violence before a magistrate within 48 hours.

PART III

APPLICATION FOR A PROTECTION ORDER

6 Application for a protection order

(1) An application for a protection order may be made to a court by-

- (a) The complainant;
- (b) Any person acting with the consent of the complainant;
- (c) Any person acting as the complainant's representative as defined in section 2;
- (d) Any person having care or custody of a complainant who is a minor;
- (e) Any person acting as a complainant's representative in his or her official capacity, with the leave of the court, without the consent of the complainant;

(2) In determining whether or not to grant leave in terms of paragraph (e) of subsection (1) of this section, the court shall have regard to all the circumstances including-

- (a) The reasons why the consent of the complaint has not been obtained.
- (b) Generally whether or not it is in the best interest of the complainant that the application be permitted despite the absence of the complainant's consent.

(3) Application for a protection order shall be lodged with the Clerk of the Court shall be supported by affidavits of persons who can depose to the manners which are relevant to the application.

(4) If the complainant is not represented by a legal practitioner, the clerk of the Court shall inform the complainant of-

- a) The relief available in terms of this Act;

- b) The effect of any order which may be granted and the means provided by law for its enforcement under this Act;
- c) The right to also lodge a criminal complaint against the respondent if a criminal offence has been committed by the respondent; and
- d) The right to claim compensation for any loss suffered or injury caused by any act of domestic violence

(5) The Clerk of Court shall as soon as possible and in any event not later than 48 hours, place the application before the Courts

(6) The application referred to in subsection (1) may be brought outside ordinary Court hours or on a day which is not an ordinary Court day, if the Court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately.

(7) The court shall as soon as possible consider an application made in terms of Section 6 and may for such purposes-

(a) Call for such evidence, whether oral or by affidavit as it considers necessary including medical evidence:

Provided that any such medical evidence shall be supported by a police report as a basis on which an examination on a victim of domestic violence was made:

(b) Examine any witness before the court

8 Issue of an interim order

(1) Where upon an application made in terms of section 6 the court is satisfied that prima facie-

- (a) The respondent has committed, is committing or threatening to commit an act of domestic violence and
- (b) It is necessary or desirable to issue an immediate order to protect the complainant from serious or substantial harm or discomfort or inconvenience, as a result of such domestic violence;

The court must issue an interim protection order against the respondent notwithstanding that he or she has not been given notice of the application or has not been before a court.

(2) An interim protection order may where appropriate contain any direction, prohibition or award, which may be contained in a protection order in terms of subsection (1) of section 9.

(3) An interim protection order must be served on the respondent in the prescribed manner and must contain a notice calling upon the respondent to show cause, on a date to be specified in the order, why a protection order should not be issued.

(4) Whenever the court issues an interim protection order, the presiding magistrate shall issue a warrant for the arrest of the respondent which shall be attached to the order and which shall be suspended on condition that the respondent complies with the order.

(5) Where upon an application made in terms of section 6 the court is satisfied that prima facie the respondent has committed, is committing or threatening to commit an act of domestic violence but that the circumstances do not justify and require the issue of an interim protection order it may issue a notice calling upon the respondent to show cause why a protection order should not be made.

(6) An interim protection order, the warrant of arrest issued in terms of subsection (4) and a notice issued in terms of subsection (5) shall be served upon the respondent as soon as possible by any police officer;

Provided that, where the complainant so requires service may be effected at the complainant's expense, by the messenger of the court.

(7) The clerk of court shall supply the complainant or the complainant's representative with a certified copy any interim protection order, warrant of arrest or notice issued in terms of subsection (5) or forward the same to the police station nominated by the complainant or the complainant's representative.

(8) An interim order shall remain in force until it is replaced by a protection order or it is otherwise varied or revoked by a competent court.

(9) An application for a protection order shall not in any way bar criminal proceedings against a person perpetrating domestic violence.

(10) In the event that the complainant seeks to withdraw an application made under this Act, or becomes hostile to the State, the State shall proceed with the matter, producing any evidence it may have in its possession including photographs, statements of the complainant or any such evidence that may have been collected by the state at the time of applying for a protection order.

(11) Where appropriate, the court may, in addition to other remedies provided for under this Act order that the complainant and the respondent and any other affected member of the family be subjected to counselling,

9 Issue of protection order

(1) On the return day specified in an interim protection order or in a notice issued in terms of subsection (5) of section 8, the court may issue a protection order if satisfied on a balance of probabilities that an act of domestic violence has been committed is being committed or is threatened by the respondent.

(2) A protection, order may be issued in the absence of the respondent if the court is satisfied that the respondent has been served with or has otherwise had notice of the application for such an order.

(3) Whenever the court issues a protection order the presiding magistrate shall issue a warrant for the arrest of the respondent which shall be attached to the order and which shall be suspended on condition that he or she complies with the order for a period of 24 months.

(4) For the purpose of determining whether or not to issue a protection order the court may-

- a) call for such evidence whether oral or by affidavit as it considers necessary which shall form part of the record of proceedings;
- b) consider any evidence previously received in received in terms of section 7 subsection (1) and
- c) examine any witness before the court

(5) A protection order shall be served upon the responded as soon as possible and in any event not later than 48 hours by a police officer.

Provided that where the complainant so requires service may be effected at the complainant's expense, by the messenger of court.

(6) The clerk of court shall supply a certified copy of any protection order issued in terms of subsection (1)to-

The complainant or the complainant's representative and-

The police station nominated by the complainant or the complainant' representative.

10 Contents of the protection order

(1) A protection order may where appropriate-

- (a) prohibit the responded for committing or enlisting the help of another person to commit a crime of domestic violence;

- (b) Direct the respondent to stay away from any premises or place where the complainant resides or any part of such premises or place where the complainant resides or any part of such place or premises provided that that prohibition will be in the best interest of the complainant;
- (c) Prohibit the respondent from entering or approaching any place or premises where the respondent works frequents, attends or any part of such premises or place;
- (d) Direct the respondent to pay emergency monetary relief in respect of the complainant's needs or that of any child or dependent of the respondent including household necessities, medical expenses, school fees or mortgage bond or rent payment;
- (e) Award the temporary custody of any child or dependent of the respondent to any person or institution and regulate rights of access by the respondent to such child or dependent;
- (f) Direct the respondent to afford the complainant or any child or dependent of the respondent access to their place of residence and use the facilities associated therewith;
- (g) Generally direct the respondent to do or omit to do any act or thing which the court considers necessary or desirable for the well being of the complainant or any child or dependent of the complainant;

(2) Subject to subsection (3) a protection order shall remain in force for a period of five years or until revoked or banned by the court in terms of this Act.

(3) Any direction to pay emergency monetary relief and any award of temporary custody of person which is contained in a protection order shall remain in force for such period not exceeding six months as the court may specify unless prior to the expiry of that period the award is revoked or extended by the court in terms of this Act or an order or award is in respect of the same matter by any other competent court.

(4) A complainant, a complainant's representative or a police officer may apply to the clerk of court for a further certified copy of an interim protection order, with the relevant warrant of arrest which is attached thereto, if the copy which was previously issued-

- (a) Fix a date for the hearing of the application;
- (b) Place the application before the court as soon as possible, and in any event not later than 48 hours; and
- (c) Give notice of the date of hearing to other interested parties concerned.

(5) On the date fixed for the hearing of the matter, the court shall consider the application and may for such purposes-

- (a) Call for such evidence whether oral or by affidavit as it considers necessary;
- (b) Examine any witness before the court.

(6) If the court is satisfied that good cause has been shown it may revoke or vary any interim protection order or protection order or, subject to subsection (3) of section 9, may extend any such order.

(7) The clerk of court shall give notice to interested parties concerned of any revocation, variation or extension granted in terms of this section.

11 Application for revocation, variation or extension of order

12 Issue of further copies of orders and warrants of arrest

A complainant, a complainant's representative or a police officer may apply to the clerk of court for a further certified copy of an interim protection order or protection order, with relevant warrant of arrest which is arrested thereto, if the copy which was previously issued-

- a) has been lost or destroyed; or
- b) has been utilised for effecting the arrest of the respondent.

PART IV

ENFORCEMENT OF PROTECTION ORDERS

13 Enforcement of protection orders.

If the respondent breaches any term or condition of an interim protection order, the complainant or the complainant's representative shall or has the right to apply to any member of the police for enforcement of the warrant for arrest which is attached to the order.

An application in terms of subsection (1) shall be accompanied by one or more affidavits given by a person or persons who can depose the facts alleged.

If a member of the police to whom an application in terms of subsection (1) is satisfied that-

- (a) The respondent concerned has been with or has had notice of the order;
- (b) There are reasonable grounds to believe that-
 - i. The respondent concerned has committed, is committing or is threatening to commit a breach of the order concerned, and
 - ii. It is necessary or desirable to do so to protect the complainant from serious or substantial harm, discomfort or inconvenience whether physical, emotional or economic;

He may arrest the respondent in terms of the warrant concerned.

A respondent arrested in terms of subsection (3) shall be remanded in custody and be brought before a court as soon as possible and in any event not later than 48 hours on a charge of contravening either section eight or nine of this act.

Where a member of the police to whom an application in terms of subsection (1) is made is satisfied that-

- (a) The respondent concerned has been served with or had notice of the order concerned;
- (b) There are reasonable grounds to believe that the respondent has committed, is committing or is threatening to commit a breach of the order concerned; and
- (c) It is not necessary or desirable to arrest the respondent in terms of any warrant of arrest attached to the order;

He or she may serve a summons on or warn the respondent to appear before the magistrate's court on a charge of contravening either section eight or nine of this Act.

PART V

DOMESTIC VIOLENCE COUNSELLORS, DOMESTIC VIOLENCE COMMITTEE AND THE DOMESTIC VIOLENCE FUND.

14 Domestic Violence Counsellors

(1) The minister shall in consultation with the minister responsible for social welfare appoint a panel of welfare officers for the purposes of carrying out the duty of Domestic Violence Committee for the better implementation of the provisions of this act.

It shall be lawful for the minister to request Non-Governmental Institutions to carry out the role of domestic violence counsellors:

Parties may seek counselling at their own initiative

A domestic violence counsellor shall have the following functions: -

- (a) To advise counsel and mediate for the solution of any problems in any personal relationships that are likely to lead or to have led to the use of violence;
- (b) To carry out upon the instruction of the court, investigations in relation to the financial status of the victim and the respondent in cases where a protection order is contemplated or issued;
- (c) To carry out investigations and make arrangements for the accommodation of the complainant or the victims of domestic violence in case a protection issue is issued;
- (d) To make immediate arrangements for the medical or other examination of a child where there is reasonable suspicion that he or she is a victim of domestic violence and;
- (e) To perform any other function which the minister may assign to him or her.

A Domestic Violence Counsellor, in carrying out his or her duties may seek the assistance of any Government officer or of the police or any other appropriate person.

The court may, in addition to the other remedies provided for in this act, recommend that persons involved in the domestic violence incidents are provided with counselling by a domestic violence counsellor appointed in terms of this section.

15 Domestic Violence Committee

(1) The Minister shall establish Domestic Violence. Committee, which shall consist of representatives from-

- (a) The Ministry of Justice; Legal and parliamentary Affairs;
- (b) The Ministry of Youth Development; Gender and Employment Creation;
- (c) The Ministry of Health and Child Welfare;
- (d) The Department of Social Welfare of the Ministry of Public Service, labour and Social Welfare
- (e) The Zimbabwe Republic Police;
- (f) The Non-Governmental Institutions specialising in issues related to domestic violence.

(2) The chairperson and deputy chairperson of the Committee shall be appointed by the Minister in consultation with the Minister responsible for social welfare:

Provided that both the chairperson and the deputy shall be persons with knowledge and experience in psychology.

(3) All other persons shall be appointed in their personal capacity and shall not exceed eleven. Their respective ministries shall nominate appointees from the public sector, while those from the private sector shall be selected from associations involved in matters of domestic violence:

Provided that such representatives shall be those specialising in children's rights, women's rights and men's rights.

(4) The Minister shall prescribe the terms and conditions of all members of the committee. The Domestic Violence Committee shall have the following functions:-

- (a) to keep under constant monitoring, the problem of domestic violence in Zimbabwe.
- (b) To take all steps to disseminate information and increase the awareness of the public in issues of domestic violence;
- (c) To promote research into the problem of domestic violence;
- (d) To promote the operation of services necessary to deal with all aspects of domestic violence;
- (e) To monitor the effectiveness of services and the application and enforcement of the relevant legislation;
- (f) To promote the establishment of safe houses, to shelter victims of domestic violence, including children and dependants, pending the determinations of the court;
- (g) To initiate support systems for complainants where the respondent who was the source of support for the complainant and her or his dependants has been imprisoned;

(5) The committee shall submit reports to the Minister, annually, detailing the state of domestic violence, and any other relevant information, involving necessary recommendations.

PART V

GENERAL

16 Offences

Any person who fails to comply with the terms and conditions of an interim protection order or a protection order shall be guilty of an offence and liable to a fine not exceeding level three or imprisonment for a period not exceeding five years or both such fine and such imprisonment.

It shall be considered an aggravating factor for any person to continuously breach a valid protection order whether or not such person has been prosecuted under the protection order.

Any person who makes any false statement in any application or affidavit made in terms of this act, knowing such statement to be false or not believing it to be true shall be guilty of an offence and liable to a fine not exceeding level two or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Any person who uses violence within the meaning of section three commits an offence punishable with imprisonment of five years or a fine not exceeding level three.

Provided that where such act of domestic violence constitutes a criminal offence, the respondent shall be dealt with under the relevant law providing for such criminal offence.

17 Regulations

- (1) The minister shall make regulations providing for all matters, which in his opinion are necessary or convenient to be prescribed for carrying out or giving effect to this act.
- (2) Regulations made in terms of subsection (1) may provide for-
 - (a) The form of applications in terms of this act.
 - (b) The form of warrants and orders issued in terms of this act.
 - (c) The method of service of documents made in terms of this act
 - (d) The setting up of a domestic violence committee
 - (e) The operations of domestic violence counsellors and
 - (f) The operations of clerks of court in matters of domestic violence.

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