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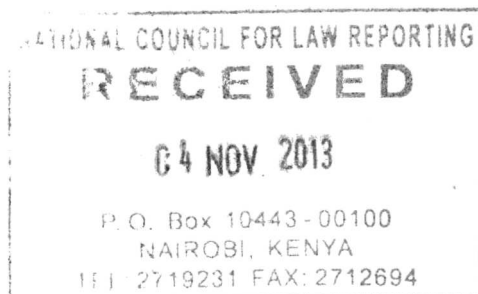
NATIONAL ASSEMBLY BILLS, 2013

NAIROBI, 11th October, 2013

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THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL, 2013

A Bill for

AN ACT of Parliament to provide for the protection and relief of victims of domestic violence; to provide for the protection of a spouse and any children or other dependent persons, and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Protection against Domestic Violence Act, 2013.

Short title.

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

Interpretation.

“alternative residence” means the premises or accommodation which an applicant is or has been compelled to seek or move into because of domestic violence;

“applicant” means—

- (a) a person who applies for a protection order under this Act; or
- (b) a person on whose behalf an application for a protection order under this Act is made;

“applicant’s representative” means any one of the following persons who may make an application for a protection order on behalf of an applicant—

- (a) a police officer;
- (b) a social welfare officer;
- (c) an employer of the applicant;
- (d) the guardian of a child or a guardian appointed by the court;
- (e) a relative, neighbour or fellow employee of the applicant;

- (f) a medical practitioner;
- (g) a counsellor;
- (h) a probation officer;
- (i) a non-governmental organization concerned with the welfare of victims of domestic violence;
- (j) a religious leader;
- (k) community elders; or
- (l) any other person or class of persons as may be specified by law.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to social services;

“children’s officer” has the meaning assigned to it in section 37 of the Children Act, 2001;

“co-respondent” means a person against whom a protection order made under section 19 applies;

“court” means a court having jurisdiction under section 27;

“domestic relationship” has the meaning assigned to it in section 4;

“domestic violence” has the meaning assigned to it in section 3;

“Director of Children’s Services” has the meaning assigned to in section 37 of the Children Act 2001;

“dwelling house” includes any mobile home or other means of shelter, placed or erected upon any land and intended for occupation on that land;

“economic abuse” includes—

- (a) the unreasonable deprivation of economic or financial resources to which an applicant is entitled or which the applicant requires, including

household necessities, medical expenses, school fees, rent, mortgage expenses or other similar expenses; and

- (b) the denial to the applicant of the right to seek employment or engage in any income-generating activity;

“emotional, verbal or psychological abuse” means a pattern of degrading or humiliating conduct towards the applicant, including but not limited to the following—

- (a) repeated insults, ridicule or name-calling; and
- (b) repeated threats to cause emotional pain.

“enforcement officer” means a police officer or an officer designated as such by the Cabinet Secretary for the purposes of this Act;

“harassment” means engaging in a pattern of conduct that induces in an applicant the fear of imminent harm, including—

- (a) watching or loitering outside or near the building or place where the applicant resides, works, carries on business, studies or happens to be;
- (b) repeated contact or attempts to contact the applicant by telephone, electronic means, post or otherwise, whether or not a conversation ensues; and
- (c) sending, delivering or causing the delivery of offensive or abusive documents or offensive objects to the applicant;

“interim protection order” means an order made by the court pending the full hearing of a matter and the making of a final order;

“intimidation” includes uttering or conveying a threat or causing an applicant to receive a threat which includes a fear of imminent harm to the applicant;

“medical practitioner” has the meaning assigned to it in the Medical Practitioners and Dentists Act;

“parent” in relation to a child, includes a step parent, guardian of the child or a person with whom the child normally or regularly resides;

“physical abuse” includes any act or threatened act of physical violence towards the applicant;

“probation officer” has the meaning assigned to it in section 2 of the Probation of Offenders Act;

“property”, in relation to a family member, means—

- (a) the property of the family member;
- (b) the property of any person situated in premises in which the family member lives or works; or
- (c) the property of any person that is being used by the family member;

“protected person”, in relation to a protection order, means—

- (a) the person for whose protection the order is made;
- (b) any child of that person;
- (c) any person for whose benefit the order applies under section 18;

“protection order” means the final order made by the court in a matter concerning domestic violence;

“respondent” means the person against whom an application for a protection order under this Act is made and includes a person against whom an order under this Act is made;

“sexual abuse” has the meaning assigned to it in the Sexual Offences Act, 2006;

“shared residence” means the premises at which the parties are, or have been, living as members of the same household;

“social welfare officer” means a person registered as a social welfare worker;

“stalking” includes pursuing or accosting a person;

“victim” means a victim of domestic violence; and

“virginity testing” is the practice and process or examination of a female’s genitals for tears of the hymen.

3. In this Act, “ violence” means—

Meaning of domestic violence.

(a) abuse that includes—

- (i) child marriage;
- (ii) female genital mutilation;
- (iii) forced marriage;
- (iv) forced wife inheritance;
- (v) interference from in-laws;
- (vii) sexual violence within marriage;
- (viii) virginity testing; and
- (ix) widow cleansing;

(b) damage to property;

(c) defilement;

(d) depriving the applicant of or hindering the applicant from access to or a reasonable share of the facilities associated with the applicant’s place of residence;

(e) economic abuse;

(f) emotional or psychological abuse;

(g) forcible entry into the applicant’s residence where the parties do not share the same residence;

(h) harassment;

(i) incest;

(j) intimidation

(k) physical abuse;

(l) sexual abuse;

- (m) stalking;
- (n) verbal abuse; or
- (o) any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person.

(2) “Domestic violence”, in relation to any person, means violence against that person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.

(3) Despite subsection (1)(f), a person psychologically abuses a child if that person—

- (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or
- (b) puts the child or allows the child to be put at risk of seeing or hearing the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship, but the person who suffers the abuse shall not be regarded as having caused or allowed the child to see or hear the abuse or as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(4) Despite subsection (1)—

- (a) a single act may amount to abuse; and
- (b) a number of acts that form part of a pattern of behaviour may amount to abuse, even when some or all of those acts, when considered in isolation, may appear to be minor or trivial.

(5) Behaviour may be psychological abuse for the purposes of subsection (1) even if it does not involve actual or threatened physical or sexual abuse.

(6) Conduct constituting domestic violence does not by that reason alone cease to constitute an offence under

any other law and any such conduct may, despite this Act, be dealt with in accordance with any other law.

4. (1) For the purposes of this Act, a person shall be deemed to be in a domestic relationship with another person if the person—

Meaning of domestic relationship.

- (a) is married to that other person;
- (b) has previously been married to that other person;
- (c) is living in the same household with that person;
- (d) has been in a marriage with the other person which has been dissolved or declared null;
- (e) is a family member of that other person;
- (f) is or has been engaged to get married to that person;
- (g) has a child with that other person; or
- (h) has a close personal relationship with the other person.

(2) For the purpose of subsection (1)(c), a person shall not be regarded as sharing a household with another person by reason only of the fact that—

- (a) the person has—
 - (i) a landlord-tenant relationship;
 - (ii) an employer-employee relationship; or
 - (iii) an employee-employer relationship, with that other person; and
- (b) they occupy a common dwelling house (whether or not other people also occupy that dwelling house).

(3) For the purposes of subsection (1)(h), a person shall not be regarded as having a close personal relationship with another person by reason only of the fact that the person has—

(a) an employer-employee relationship; or

(b) an employee-employer relationship with that other person.

(4) Without limiting the matters to which a court may have regard in determining, for the purpose of subsection (1) (h), whether a person has a close personal relationship with another person, the court shall have regard to—

(a) the nature and intensity of the relationship (not necessarily a sexual relationship), and in particular—

(i) the amount of time the persons spend together;

(ii) the place or places where that time is ordinarily spent;

(iii) the manner in which that time is ordinarily spent; and

(b) the duration of the relationship.

Meaning of family member.

5. (1) For purposes of this Act, 'family member', means—

(a) a spouse, estranged spouse or former spouse;

(b) a child including an adopted child, a step-child and a foster child;

(c) an adult son or daughter;

(d) a parent;

(e) a sibling; or

(f) any other relative of that person who, in the opinion of the court and in the circumstances of the case, should be regarded as a member of the family.

(2) For the purposes of this section, a relative means—

- (a) a father, mother, grandfather, grandmother, stepmother, stepfather, father-in-law or mother-in-law;
- (b) an uncle, aunt, uncle-in-law or aunt-in-law of that person;
- (c) a nephew or niece of that person; or
- (d) a cousin of that person.

PART II—PROTECTION ORDERS

6. (1) A person to whom a complaint of domestic violence is made or who investigates any such complaint shall—

Duties of police officers in relation to domestic violence.

- (a) advise the complainant of all relief measures available to the complainant, including access to shelter, medical assistance or they shall assist the complainant in any other suitable way; and
- (b) advise the complainant of the complainant's right to apply for relief under this Act and how the complainant may lodge a criminal complaint.

(2) Where the complainant so desires, the person to whom the complainant makes a statement may be a person of the same sex as the complainant.

(3) A police officer may without a warrant, arrest and prefer charges against any person who—

- (a) the police officer reasonably suspects to have assaulted or threatened to assault a family member;
- (b) the police officer reasonably suspects is breaching a protection order;
- (c) is committing a breach of the peace or the police officer reasonably suspects is likely to commit a breach of the peace.

(4) The provisions of this section shall not limit the power of a police officer to enter any premises under this Act or any other law.

(5) The Inspector-General of Police shall ensure the development of procedures regarding matters under this Act including—

- (a) training police officers to deal with family related matters or domestic violence;
- (b) facilitating the reporting process so that complainants may report to the police without fear or otherwise; and
- (c) ensuring that complaints are processed expeditiously and efficiently.

Complaints against
police officers.

7. (1) An applicant who is not satisfied with the services of a police officer to whom he or she has reported a case of domestic violence shall have the right to register a complaint—

No.35 of 2011

(a) in accordance with such procedure as may be prescribed under section 9;

No.11A of 2011

(b) under the Independent Police Oversight Authority Act; and

(c) under the National Police Service Act.

Protection
mechanisms.

8. (1) The Cabinet Secretary shall, in consultation with county executives, develop the necessary policy to facilitate the establishment by county executives of appropriate mechanisms to provide temporary emergency shelters or safe houses and any other relevant services for the protection of victims of domestic violence.

(2) In developing the policy referred to in subsection (1), the Cabinet Secretary shall work with other relevant government departments and non-State actors to ensure that the policy developed takes into account the different community and cultural contexts while respecting the values and principles of the Constitution.

(3) The policy referred to in subsection (1) shall, among others, address the following issues—

- (a) public education and awareness on issues relating to domestic violence;
- (b) the conduct of research and development of programmes for eliminating domestic violence and promoting reconciliation and non-violent means of resolving disputes within the family;
- (c) availability and accessibility of supportive professional services including counselling and psychosocial support services and legal aid;
- (d) a framework for developing standards to ensure that shelters established or recommended pursuant to this Act are run in accordance with the values and principles of the Constitution;
- (e) a framework for guiding the operations of shelters including criteria for admission, the length of stay, benefits and terms and conditions of such stay, among others;
- (f) in consultation with other government departments, determine and prescribe training requirements for government officers expected to play a role in the implementation this Act; and
- (g) work with other relevant agencies to provide technical and other support services to implement this Act.

(4) In designing the mechanisms referred to in subsection (1), the County Executives shall work with relevant community structures to ensure that the temporary relief mechanisms provided—

- (a) are sensitive to the local and cultural contexts of the communities where they are established; and
- (b) adequately provide the protection required by victims of domestic violence without exposing the

victims to further or other forms of violation and without compromising the values and principles of the Constitution.

(5) The mechanisms provided for under subsection (1)—

- (a) shall progressively be decentralized to the lowest levels in the communities to facilitate access to protective mechanism by all victims of domestic violence regardless of their location in the country;
- (b) may be provided in any form including, designated premises, temporary locations, adapted community facilities and mobile facilities;
- (c) shall respect human rights principles, including accessibility vulnerable groups, particularly persons with disability; and
- (d) shall facilitate access to professional services as necessary including counselling and psychosocial support and legal services.

9. (1) Any person who has reason to believe that an offence involving domestic violence is being or has been committed may give such information to the police officers, religious leaders or any other person in authority.

(2) Any person who by virtue of such reporting attacks, intimidates or does any harmful act to the person providing information commits an offence.

(3) No action or proceeding, including disciplinary action, may be instituted or maintained against a person in respect of the disclosure of information made by the person to a person named under subsection (1).

(4) Subsection (3) does not apply to any person who provides false information maliciously intended to injure another person.

(5) In any proceeding under this Act, no witness shall be required to identify, or provide information that might

lead to the identification of, a person who assisted or disclosed information about domestic violence.

(6) In any proceedings under this Act, the court may order that information that identifies, or might lead to the identification of a person who assisted or disclosed the information concerning any violence is removed or concealed from any documents to be produced or inspected in connection with the proceedings.

(7) Subsections (5) and (6) shall not apply to the extent determined by the court to be necessary to ensure that justice is done.

10. (1) A person who is or has been in a domestic relationship with another person may apply to the court for a protection order in respect of that other person.

Application for protection order.

(2) Where the person who is eligible to apply for a protection order is a child, the application shall be made by a representative in accordance with section 11(2).

(3) Where the person who is eligible to apply for a protection order is a person to whom section 12 applies, the application shall be made by an applicant's representative in accordance with that section.

(4) An applicant's representative may, with the leave of the court, with or without the consent of the applicant, make an application for a protection order or any other order the court considers fit to award.

(5) An applicant's representative who makes an application under subsection (4) shall seek the leave of the court together with such other orders as the court deems fit to award in the circumstances.

(6) Where the person who is eligible to apply for a protection order is not a child but is unable, in the circumstances specified in section 12(1) (b), to make the application personally, an application may be made on that person's behalf by a representative appointed in accordance with section 13.

Application by
children.

11. (1) Subject to subsection (2), a child may make an application for a protection order under this Act.

(2) A child may make the application for a protection order through—

- (a) parent or guardian;
- (b) a children officer;
- (c) the Director of Children's Services;
- (d) a police officer;
- (e) a probation officer;
- (f) a conciliator;
- (g) any other person with the leave of the court;
- (h) social welfare officer;
- (i) a person acting on behalf of—
 - (i) a church or any other religious institution;
 - (ii) a non-governmental organization concerned with the welfare of victims of domestic violence; or
- (j) a relative or neighbour.

(3) Where an application has been made under subsection (2) by a person, other than a parent or guardian of a child, no orders shall be issued by the court unless the parent or guardian of the child has been served or the court is satisfied that reasonable efforts to serve such parent or guardian have failed.

(4) Nothing in subsection (2) prevents a child on whose behalf an application for a protection order is made by a representative from being heard in the proceedings, and where the child expresses views on the need for and outcome of the proceedings, the court shall take account of those views to the extent that it thinks fit, having regard to the age and maturity of the child.

(5) Subject to sections 12 and 13, a minor who has attained the age of eighteen years may, with the leave of the court, make the application on his her own behalf, without a next friend or guardian *ad litem*, and orders may

be made on the application, and enforced, as if the minor were of full age.

12. (1) The provisions of this section shall apply to any other person (not being a child) who—

Application by person lacking capacity.

- (a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or
- (b) has the capacity to understand the nature, and foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters.

(2) Where a person to whom this section applies is eligible to apply for a protection order, an application may be made on that person's behalf by—

- (a) a police officer;
- (b) the head of the unit at the lowest point of decentralization;
- (c) an applicant's representative; or
- (d) any other person with the leave of the court.

13. (1) This section applies to a person entitled to a protection order who is incapable of applying for a protection order and for whom it is necessary to make a protection order.

Application on behalf of certain persons.

(2) Any person may apply to the court to be appointed as a representative of the person referred to in subsection (1) for the purposes of applying for a protection order.

(3) The court may appoint a representative for the person referred to in subsection (1) if it is satisfied that—

- (a) the representative has reasonably ascertained the wishes of the victim;

- (b) the victim consents to being represented;
- (c) the appointment of the representative is in the best interest of the victim;
- (d) the representative accepts his appointment in writing; and
- (e) there is no conflict of interest between the victim and the representative.

Application without notice for protection order.

14. (1) An interim protection order may be made on an application without notice and outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that delay would be caused by proceedings on notice or might entail—

- (a) a risk of harm; or
- (b) undue hardship to the applicant or child of the applicant's family.

(2) Without limiting the matters to which the court may have regard when determining whether to grant a protection order on an application without notice, the court shall have regard to—

- (a) the perception of the applicant or a child of the applicant's family, of the nature and seriousness of the respondent's behaviour; and
- (b) the effects of that behaviour on the applicant or a child of the applicant's family.

(3) An interim order may, where appropriate, contain any direction, prohibition or award which may be contained in a protection order issued under section 21.

(4) Whenever a court issues an interim protection order, the court shall issue a summons to appear in respect of the respondent which shall be attached to the order, and; if the respondent fails to appear, the court shall, subject to section 23(3), issue a warrant for the arrest of the respondent.

(5) Where an application is made under this section and the court is satisfied *prima facie* that the respondent

has committed, is committing or threatening to commit an act of domestic violence but that the circumstances do not justify or require the issue of an interim protection order, the court may issue a notice requiring the respondent to show cause why a protection order should not be made:

Provided that an interim protection order shall remain in force until it is replaced by a protection order or varied or revoked by a competent court.

(6) Section 25 applies to any person who fails to comply with the terms and condition of an interim protection order.

15. (1) The court may make a protection order if it is satisfied that—

Power to make protection order.

- (a) the respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family or both; and
- (b) the making of an order is necessary for the protection of the applicant or a child of the applicant's family or both.

(2) For the purpose of subsection (1)(a), a respondent who encourages another person to engage in behaviour that, if engaged in by the respondent, would amount to domestic violence against the applicant or a child of the applicant's family or both, shall be regarded as having engaged in that behaviour personally.

(3) Without limiting section 3(4)(b), the matters that the court may consider in determining, for the purpose of subsection (1) (b), whether the making of an order is necessary for the protection of the applicant or a child of the applicant's family, or both where some or all of the behaviour in respect of which the application is made appears to be minor or trivial when viewed in isolation, or appears unlikely to recur, are whether the behaviour forms part of pattern of behaviour in respect of which the applicant or a child of the applicant family or both need protection.

(4) For the avoidance of doubt, an order may be made under subsection (1) where the need for protection arises from risk of domestic violence of a different type from the behaviour found to have occurred for the purpose of paragraph (a) of that subsection.

(5) Without limiting the matters that the court may consider when determining whether to make a protection order, the court shall have regard to—

- (a) the perception of the applicant, or a child of the applicant's family or both, of the nature and seriousness of the behaviour in respect of which the application is made; and
- (b) the effect of that behaviour on the applicant, or a child of the applicant's family, or both.

Counselling.

16. (1) The Court may, taking into account the circumstances of each case, direct the parties to participate in counselling and conciliation programmes including those provided by religious institutions and any suitable cultural programmes subject to their satisfaction that these programmes will not in any way undermine the objects of this Act or the values and principles of the Constitution.

(2) The counselling provided shall be aimed at ensuring respect for the law prohibiting domestic violence, the promotion of a protective environment for all within the family and the promotion of harmonious domestic relations between and among the parties.

Existence of other proceeding not to preclude granting of protection order.

17. (1) A court shall not decline to make a protection order merely because of the existence of other proceedings (including, but not limited to, proceedings relating to custody of, or access to, a minor) between or relating to the parties, whether or not those proceedings also relate to any other person.

(2) Despite the provisions of subsection (1), an application for a protection order shall not be a bar to criminal proceedings against a respondent.

Protection of dependants.

18. (1) Where the court makes a protection order, the order shall apply for the benefit of any child of the applicant's family.

(2) Subject to subsection (3), where the court makes a protection order, it may direct that the order also apply for the benefit of a particular person with whom the applicant has a domestic relationship.

(3) No direction may be made pursuant to subsection (2) in respect of a person unless the court is satisfied that—

- (a) the respondent is engaging, or has engaged, in behaviour that, if the respondent and the person were or, as the case may be, had been in a domestic relationship, would amount to domestic violence against the person;
- (b) the respondent's behaviour towards the person is due, in whole or in part, to the applicant's domestic relationship with the person;
- (c) the making of a direction under this section is necessary for the protection of the person; and
- (d) where practicable, the person consents to the direction being made.

(4) Section 14 (2) and (5) shall apply, with the necessary modifications, in respect of an application for a direction pursuant to subsection (2).

19. (1) Subject to subsection (2), where the court makes a protection order against the respondent, the court may also direct that the order apply against a person who is inciting or encouraging, or has incited or encouraged, the respondent to engage in behaviour against a protected person, where that behaviour, if engaged in by respondent, would amount to domestic violence.

Protection from co-respondents.

(2) A direction may be made pursuant to subsection (1) whether the behaviour against a protected person was engaged in before or after the person became a protected person.

(3) Section 14(2) to (5) shall apply, with the necessary modification, in respect of an application for a direction pursuant to subsection (1).

Mutual orders.

20. Nothing in this Act shall be construed as preventing the court, in the course of determining an application, from granting a protection order, in favour of the respondent even though no application has been made by the respondent.

Contents of
protection order.

21. (1) A protection order may direct that a respondent shall not do any one or more of the following—

- (a) physically or sexually abuse or threaten to abuse the protected person;
- (b) damage, or threaten to damage, any property of the protected person;
- (c) engage, or threaten to engage, in behaviour including intimidation or harassment, which amounts to psychological abuse of the protected person;
- (d) encourage any person to engage in behaviour against the protected person where the behaviour, if engaged in by the respondent would be prohibited by the order;
- (e) engage, or threaten to engage, in behaviour including intimidation, harassment or stalking which amounts to emotional, verbal or psychological abuse of the protected person;
- (f) engage, or threaten to engage, in economic abuse of the protected person; or
- (g) engage, or threaten to engage, in cultural or customary rites or practices that abuse the protected person.

(2) Without limiting the provisions of subsection (1) but subject to section 22, it shall be a condition of every protection order that at any time other than when the protected person and the respondent are, with the express consent of the protected person, living in the same dwelling house, the respondent shall not do any one or more of the following—

- (a) watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution, or other place that the protected person visits often;
- (b) follow the protected person about or stop or accost the protected person in any place;
- (c) without the protected person's express consent, enter or remain on any land or building occupied by the protected person;
- (d) where the protected person is present on any land or building, enter or remain on that land or building, in circumstances that constitute a trespass;
- (e) make any other contact with the protected person (whether by telephone correspondence, or otherwise), except such contact that is—
 - (i) reasonably necessary in any emergency;
 - (ii) permitted under any order or written agreement relating to custody of, or access to, any minor; or
 - (iii) permitted under any special condition of the protection order.

(3) Without prejudice to the provisions of this section, the court may in an order under this section—

- (a) subject to subsection (6), grant to any protected person the right of exclusive occupation of the shared residence or a specified part thereof by excluding the respondent from the shared residence or the specified part thereof, regardless of whether the shared residence is solely owned or leased by the respondent or jointly owned or leased by the parties;
- (b) require the respondent to permit any protected person to enter the shared residence, or to enter the residence of the respondent accompanied by

any enforcement officer for the purpose of collecting the personal belongings of the protected person or persons;

- (c) require the respondent to permit any protected person to have the continued use of necessities which had previously been ordinarily used by the protected person or persons; or
- (d) give such other directions as may be necessary and incidental for the proper carrying into effect of any order made under paragraph (a), (b) or (c).

(4) Before making an order which restricts the respondent's access to any premises, the court shall take into account—

- (a) the need to ensure that the protected person is protected from violence;
- (b) the welfare of any child affected by the order; and
- (c) the accommodation needs of all persons affected by the order.

(5) Without prejudice to the provisions of this section, where an exclusion order has been made under this section, the court may—

- (a) direct the respondent to pay all expenses or emergency monetary relief in respect to the applicants needs and those of any child or dependant of the respondent;
- (b) award temporary custody of any child or dependant of the respondent to any person or institution and regulate access by the respondent to such child or dependant;
- (c) direct the respondent to afford the applicant or dependant access to their place of residence and use of the facilities associated therewith; and

- (d) 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 applicant or a dependant of the applicant.

(6) Except so far as the exercise by the respondent of a right to occupy the shared residence, or to enter the alternative residence, may be suspended, restricted, prohibited or restrained, by virtue of an order under subsection (3) (a) or (b), a protection order shall not affect any title or interest that the respondent or any other person might have in the said premises.

(7) The court shall not make an order excluding the respondent from the whole of a shared residence that is solely or jointly owned or leased by the respondent unless it is satisfied that there is no other way to secure the personal safety of any protected person for the time being, and such order, where made, shall, in the case where the shared residence is jointly owned or leased by the parties, be—

- (a) revoked if a suitable alternative residence is found for the protected person or persons; or
- (b) revoked or modified upon the court being otherwise satisfied that it is no longer necessary for securing the personal safety of the protected person or persons.

(8) In subsection (7) (b), “modified” means modifying an order excluding the respondent from the whole of the shared residence into an order excluding him from such part of the shared residence as is specified in the order.

(9) Where, pursuant to a direction made under section 20, a protection order applies against a co-respondent, the provisions of this section shall, with necessary modifications, apply in respect of the co-respondent.

22. (1) The contents of a protection order specified in section 21 (2) in this section referred to as “the non-contact condition” shall have effect except where the

Further provisions relating to prohibitions of contact.

protected person and the respondent are with the express, voluntary consent of the protected person living in the same dwelling house, taking into account the vulnerability relating to the protected person .

(2) The non-contact condition shall automatically be suspended for any period during which the protected person and the respondent, with the express, free and voluntary consent of the protected person, live in the same dwelling house.

(3) Where the non-contact condition is suspended in accordance with subsection (2), and the protected person subsequently withdraws his or her consent to the respondent living in the same dwelling house then (unless the protection order has been sooner discharged) the non-contact conditions shall automatically revive.

(4) The non-contact condition may —

- (a) become suspended in accordance with subsection (2) on one or more occasions; or
- (b) revive in accordance with subsection (3) on one or more occasions.

(5) Where, pursuant to a direction made under section 19, a protection order applies against a co-respondent, the provisions of this section shall with necessary modifications, apply in respect of the co-respondent.

(6) References in this section to the consent of a protected person, or to the withdrawal of a protected person's consent, include, as the case requires, the —

- (a) free and voluntary consent of a person (other than the respondent or, as the case may be, the co-respondent) who is specified, in a special condition of the protection order, on the protected person's behalf, in relation to the matter; and
- (b) withdrawal of consent by such a person in respect of an application for a direction pursuant to subsection (2).

(7) In this section, where the protected person is a child, the court may, if satisfied that it is in the best interests of the child so to do, declare any purported consent to be null and void.

23. (1) Without derogating from the powers of the police under the National Police Service Act, a police officer may arrest the respondent without warrant, on the request of the applicant or applicant's representative, at any time within five years after the day of issue of a protection order, or such extended period as the court may order, if the respondent breaches any term or condition of the order.

Enforcement of protection order.

(2) If the police officer to whom a request is made under subsection (1) is satisfied that—

(a) the respondent concerned has committed, is breaching or is threatening to breach the terms or conditions of the protection order; and

(b) there are reasonable grounds to believe that—

(i) the respondent concerned has breached, is breaching or is threatening to breach the protection order; and

(ii) it is necessary or desirable to do so to protect the applicant from serious substantial harm, discomfort or inconvenience whether physical, emotional or economic,

the police officer shall arrest the respondent.

(3) A respondent arrested under subsection (2) shall be held in custody and brought before a court as soon as possible and in any event, not later than twenty four hours after the arrest on a charge of contravening section 25.

24. A protection order shall remain in force for such period as may be specified by the court and may be reviewed, from time to time, depending on the circumstances.

Duration of protection order.

25. (1) A respondent who has been served with a copy of a protection order, has received an explanation of the order in accordance with section 31 and who contravenes

Breach of protection order.

the order in any respect, commits an offence and is liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a period not exceeding twelve months, or to both.

(2) An offence under this section shall be subject to summary trial under the Criminal Procedure Code.

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Arrest for breach of protection order.

26. (1) A police officer may, without warrant, if he or she believes on reasonable ground that any person has committed an offence under section 25, arrest and detain the person.

(2) Without limiting the provisions of subsection (1), in exercising the powers conferred by that subsection, a police officer shall take into account—

- (a) the risk to the safety of the protected person or property;
- (b) the seriousness of the act that constitutes a breach; and
- (c) the time that has lapsed since the alleged breach was committed.

PART III—MODE OF APPLICATION

Application by victims of domestic violence.

27. (1) Jurisdiction for any proceedings under this Act shall be vested in the Resident Magistrates' Courts of the first class.

(2) An application for a protection order shall be lodged with the court and, where directed by the court shall—

- (a) be supported by the affidavit of any person who can depone to matters which are relevant to the application; and
- (b) require the police, a social worker, probation officer, medical practitioner, children officer or other appropriate person or authority to investigate the acts or omissions of the domestic violence and forward findings directly to court as soon as possible.

(3) If the applicant is not represented by an advocate, the court shall inform the applicant of the—

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

(4) Upon receipt of an application for a protection order, the court shall issue an *ex parte* interim protection order in the first instance and shall summon the respondent by notice in writing to, within fourteen days or such other period as the said notice may prescribe, appear before the court for inter-parties hearing.

(5) In any case where the court grants *ex parte* orders, the applicant shall within five days from the date of the order, serve the order and the application on the party sought to be restrained unless the court otherwise directs.

(6) Any order for protection may be discharged, varied, or set aside by the court on an application made thereto by any party dissatisfied with such order.

(7) Where an application is made under section 14, and the court is satisfied that, *prima facie*—

- (a) the respondent has committed, is committing or is threatening to commit an act of domestic violence; and
- (b) it is necessary or desirable to immediately issue an order to protect the applicant from serious or substantial harm or discomfort or inconvenience, whether physical, emotional or economic, which results or may result from such actual or

threatened domestic violence, the court shall issue an interim protection order and where appropriate, such order may contain any direction, prohibition or award which may be contained in a protection order issued under section 21.

(8) An interim protection order shall be served on the respondent in a prescribed manner under section 28.

(9) On the day specified in an interim order or in a notice issued under section 14 (5), 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 to be committed by the respondent.

(10) 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 an application for such an order.

(11) 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 under of subsection (7); and
- (c) examine any witness before the court.

(12) Where appropriate the court may, in addition to any other remedies provided for under this Act, order that the applicant or the respondent or any other affected member of the family of the applicant or respondent should undergo counselling, by a counsellor.

(13) Subject to section 44, where a protection order has been issued, that protection order prevails over other pre-existing orders that are in conflict with the terms of the protection order.

28. (1) Where the application for a protection order is made by a person other than the actual victim of domestic

violence, the person making the application shall, as soon as reasonably practicable after the making of the application, cause a copy thereof to be served on the victim personally or, where the victim is a child or physically, mentally, intellectually or sensory challenged person, on the parent or guardian of the child or such challenged person.

(2) Any court that issues an interim protection order or a protection order shall supply the applicant or the applicant's representative with a certified copy of the order together with the notice issued under section 14 (5) and serve such order on the respondent—

- (a) by forwarding the same to a police station nominated by the applicant or applicant's representative to serve the respondent;
- (b) through the applicant or the applicant's representative; or
- (c) leaving a certified copy thereof for the respondent at his or her last known or most usual place of residence or business with a person who apparently resides or works there and who is apparently an adult.

(3) If it appears to the court, by evidence on oath or by affidavit, that service cannot be promptly affected, the court may make an order for substituted service.

(4) An applicant, applicant's representative or police officer may apply to the court for a further certified copy of an interim order, protection order together with relevant notice of issue attached thereto, if the copy which was previously issued has been lost or destroyed or has been utilized for effecting the arrest of the respondent.

29. If—

- (a) a summons has been served on the respondent or the respondent who is on bail is to appear at the hearing of the application for a protection order; and

Procedure in the
absence of the
respondent.

- (b) the respondent fails to appear in person at the time fixed for the hearing of the application, the court may—
 - (i) proceed to hear and determine the matter in the respondent's absence; or
 - (ii) if satisfied that it is appropriate to do so, adjourn the matter and issue a warrant to the police to arrest the respondent and bring him or her before the court.

Procedure in third party applications.

30. (1) In any case where an application for a protection order is made by a person, other than the actual victim of domestic violence, the court shall not commence or continue the hearing of the application if the victim, or if the victim is a child or a physically, mentally, intellectually or sensory challenged person, the person referred to under section 12(2), objects to the application being heard and determined.

(2) Subsection (1) shall not apply if the applicant under section 32 is the respondent.

Explanation of order.

31. (1) Where the court proposes to make a protection order and the respondent is before the court, the court shall, before making the order, explain to the respondent—

- (a) the purpose, term and effect of the proposed order;
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

(2) No order under subsection (1) shall be invalid for the reason only that the court did not explain any particular matter contained in the order to the respondent.

Application for variation, revocation or extension of protection order.

32. (1) A court may order the revocation, variation or extension of a protection order on an application under this section.

(2) Where a protection order is in force—

- (a) a party to the proceedings in which the order was made ;
- (b) if the victim was not a party to the proceedings, the victim;
- (c) if the victim is a child and the application was through a person referred to in section 11 (2), that person; or
- (d) an applicant's representative may, with the leave of the court, apply for a revocation, variation or extension of the protection order without the consent of the applicant and the court in determining whether or not to grant leave, shall have regard to the provisions of section 11 (4).

(3) An applicant's representative shall not under any circumstances make an application for a revocation, variation or extension of a protection order that may prejudice the applicant.

(4) In any case where the person making the application is not a police officer, the head of unit at the lowest point of decentralization the victim, a children's officer, applicant's representative, or the respondent, the application may only be made with the written consent of the victim, or if the victim is a child, illiterate, or suffering from any disability and the application is made through a person referred to under section 12(2), that person.

(5) The person making the application shall cause a copy of the application to be served personally —

- (a) on each other party to the proceeding under which the original order was made;
- (b) if the victim was not a party to those proceedings and is not the person making the application, on the victim; and
- (c) if the victim is a child and the application was made through a person referred to under section 11(2), on that person.

(6) If it appears to the court that it is not reasonably practicable to serve a copy of the application personally it may —

- (a) order that a copy of the application be served by any other means which it thinks appropriate; or
- (b) make an order for substituted service.

(7) On the date fixed for hearing of the matter, the court shall consider the application and may for that purpose —

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

(8) If the court is satisfied that good cause has been shown, it may revoke or vary any order or extend any such order by a period it deems fit.

(9) The registrar of the court shall give notice to relevant parties of any revocation, variation or extension granted under this section.

vice of protection
ers.

33. (1) Where a protection order is made or varied by the court, the court shall —

- (a) arrange for the order to be drawn up;
- (b) cause a copy of the order to be served personally on the respondent ;and
- (c) cause a copy of the order to be forwarded to—
 - (i) each person who is a party to the proceedings;
 - (ii) if the victim is a party to the proceeding, the victim;
 - (iii) if the victim is a child and the application was made through a person referred to under section 11(2), that person;

- (iv) the officer in charge of the police station closest to the place of residence of the victim;
- (v) the chief of the area where the victim ordinarily resides;
- (vi) the Director of Children's Services; and
- (vii) the applicant's representative.

(2) If it appears to the court that it is not reasonably practicable to serve a copy of an order personally, the court may—

- (a) order that a copy of the order be served by any other means which the court thinks appropriate; or
- (b) make an order for substituted service.

34. In an application for a protection order, an accused person shall appear as if he or she was charged of a criminal offence and the provisions of sections 123 to 133 (inclusive) of the Criminal Procedure Code relating to granting of bail shall apply.

Bail on appearance to summons or on arrest.

35. (1) No person shall be present during the hearing of any proceeding under this Act except—

Persons who may present during proceedings.

- (a) an officer of the court;
- (b) parties to the proceedings and their advocates, if any;
- (c) a representative, if any;
- (d) witnesses; and
- (e) any other person whom the court permits to be present.

(2) A witness shall leave the courtroom if so directed by the court.

(3) Nothing in this section shall limit any other power of the court to hear proceedings in private or to exclude any person from the court.

Evidence.

36. In any proceedings under this Act, and during hearing in the first instance or during hearing of an appeal, or otherwise, the court may receive any evidence it thinks fit, for the fair determination of the case.

Appeal by
respondent.

37. (1) The respondent may appeal to the High Court against the making of a protection order or any term thereof within thirty days of the date of the order.

(2) An appeal under subsection (1) shall not stay the operation of the order unless the respondent moves the court for an order of stay.

(3) The court which made the order may, on the application of the respondent and taking into account the circumstances of the case, stay the operation of the order or any term thereof pending the decision of the appeal.

(4) The appellant shall give notice of appeal to the protected person where such person was not a party to the proceedings for the order appealed against.

(5) An appeal under this section shall be made in the prescribed manner.

(6) An appellant seeking a stay of operation of a protection order or any term of the order shall give notice to the applicant and any person required to be notified under subsection (4).

(7) In staying the operation of a protection order or any term thereof, the court may impose bail conditions on the appellant as though the appellant were an accused person being released from custody on bail.

Appeal by applicant.

38. (1) If the court—

(a) decides not to grant a protection order ; or

(b) makes an order and the applicant is aggrieved by the terms thereof, the applicant may appeal to the High Court within thirty days of the ruling.

(2) An appeal under subsection (1) shall be lodged by serving notice of the intention thereof on—

- (a) the respondent;
- (b) the court;
- (c) in any case where the victim is not the person making the application, the victim;
- (d) in any case where the victim, is a child and the application was made with the consent of a parent under section 11(2) (d), that parent; and include representative of an incapacitated person; or
- (e) the High Court.

(3) A notice under subsection (2) shall be in writing and shall specify the grounds of the appeal.

(4) The High Court shall proceed to hear the case upon appeal and may confirm, reverse or vary the decision or order of the court and make any other order that the court could have made and exercise any other powers which the court might have exercised.

(5) In any case where an application for an order is made by a person other than the victim or a police officer, the High Court shall not commence or continue the hearing of the appeal if—

- (a) the victim objects to the appeal; or
- (b) if the victim is a child, and the application was made through a person referred to under section 11(2), that person.

(6) An appeal under this section shall be made in the prescribed manner.

(7) Without prejudice to the provisions of section 37 and 38, the High Court shall on application issue an interim protection order pending determination of the appeal.

Appeals to the Court
of Appeal.

39. A party to proceedings under this Act who is aggrieved by a decision of the High Court on appeal under section 37 and 38 may appeal to the Court of Appeal within thirty days of the ruling.

Restriction on
reports of
proceedings.

40. (1) In proceeding under this Act, no person shall publish or cause to be published—

- (a) in any newspaper or broadcast proceedings containing the locality or any particulars calculated to lead to identification of the particular venue of the court or the name, address or any particulars calculated to lead to the identification on the victim or any other person in the proceedings either as a party to the proceedings or as a witness in the proceedings; or
- (b) in a newspaper or by television or by any other means, any picture of the victim or other person concerned in the proceedings.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is on conviction liable—

- (a) in the case of an individual, to a fine not exceeding fifty thousand shillings or to imprisonment for a term of three years, or to both; and
- (b) in the case of a body corporate, to a fine not exceeding five hundred thousand shillings.

(3) The provisions of this section shall not apply to the publication of any report in any publication that—

- (a) is of a *bona fide* professional or technical nature; and
- (b) is intended for the circulation among members of the legal or medical professions.

PART IV—MISCELLANEOUS PROVISIONS

Compensation.

41. (1) Where a victim of domestic violence suffers personal injuries or damage to property or financial loss as

a result of the domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or damage or loss as it deems just and reasonable.

(2) The court hearing a claim for such compensation may take into account —

- (a) the pain and suffering of the victim, and the nature and extent of the physical or mental injury suffered;
- (b) the cost of medical treatment for such injuries;
- (c) any loss of earnings arising therefrom;
- (d) the amount or value of the property taken or destroyed or damaged;
- (e) necessary and reasonable expenses incurred by or on behalf of the victim when the victim is compelled to separate or be separated from the respondent due to the domestic violence, such as—
 - (i) lodging expenses to be contributed to a safe place or shelter;
 - (ii) transport and moving expenses;
 - (iii) the expenses required in setting up a separate household which, subject to subsection (3), may include amounts representing such housing loan payments or rental payments or part thereof, in respect of the shared residence, or alternative residence, as the case may be, for such period as the court considers just and reasonably necessary;
- (f) the financial position of the victim as well as that of the respondent;
- (g) the relationship that exists between the parties and the reasonableness of requiring the respondent to make or contribute towards such payments;

- (h) the possibility of other proceedings being taken between the parties and the matter being more appropriately dealt with under the relevant laws relating to the financial provision of spouses or former spouses and other dependants.

Power of court under other laws not limited.

42. Nothing in this Act shall limit or affect the power of the court to make an order under any law relating to marriages or matrimonial causes.

General provisions as to offences.

43. (1) Any person who makes any false statement in any application or affidavit made under this Act, knowing such statement to be false or not believing it to be true commits an offence and is on conviction liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

(2) Where any offence, other than one referred to in this Act, is committed by a respondent upon an applicant during or in furtherance of the commission of any act of domestic violence, the court convicting the respondent thereof shall regard to such circumstances as aggravating the offence committed, when assessing the sentence to be imposed.

(3) For the avoidance of doubt, a prosecution under this Act or any other law shall not prevent the applicant from seeking protection or redress under this Act.

Suspension of pre-existing orders under other written laws.

44. Where an order is issued under this Act, and while such order remains in force, all other inconsistent subsisting orders and proceedings, other than criminal proceedings commenced under any written law, shall be suspended, so far as practicable, in accordance with the provisions of this Act.

Transitional provisions in respect of married minors.

45. A minor who entered into marriage before the coming into force of the Constitution and this Act may apply for a protection order on his or her own behalf and orders may be made on the application, and enforced as if the minor was of full age at the time of his or her marriage.

Provision on delegated powers.

46. (1) The Rules Committee established under section 81 of the Civil Procedure Act shall make rules to regulate any matter of practice or procedure under this Act.

(2) Without prejudice to the generality of subsection (1), such rules may prescribe—

- (a) the procedure to be followed and the forms to be used under this Act;
- (b) the time within which documents are to be filed and served under this Act; and
- (c) the contents of orders to be issued under this Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill, which has been submitted to the Committee by the Attorney-General, seeks to recognize that domestic violence in all its forms is unacceptable behaviour, to provide for the intervention of the courts to reduce and prevent violence in domestic relationships and to ensure that where domestic violence occurs, there is effective legal protection and relief for its victims.

The Bill makes provision for the protection and relief of victims of domestic violence and the protection of a spouse, child and any dependents. The Bill defines the terms domestic violence, domestic relationship and family member.

Part II of the Bill sets out the duties of police officers in relation to domestic violence. It provides for application for protection orders by a person who is or has been in a domestic relationship with the respondent. It also provides that any person who is or has been in a domestic relationship with another person may apply to court for a protection order in respect of that other person. The Part also provides for application for a protection order by a child or a person who is unable by reason of physical or mental intellect through a parent or guardian, a childrens officer, the Director of Children Services or a police officer.

The Part empowers the court to issue protection orders if it is satisfied that the respondent has used domestic violence against the applicant or a child of the applicant's family, or both and that the order is necessary for the protection of such applicant or child.

The Part further sets out the standard contents of a protection order which order bars the respondent from engaging in any conduct constituting domestic violence, including physically or sexually abusing a protected person, damaging or threatening to damage any property, intimidating the protected person or engaging in economic abuse or cultural or customary rites or practices that abuse the protected person. The respondent may, in exceptional circumstances and as a temporary measure, be excluded from the shared residence or a specified part thereof, if the court is satisfied that there is no other way of securing the personal safety of any protected person for the time being.

Part III of the Bill contains the procedure for applying for a protection order. The Part incorporates the procedure provided under Order XXXVI of the Civil Procedure Rules to be applicable for protection orders, with necessary modifications. The Part also provides that no person other than the parties, their advocates and witnesses and offices of the court is to be present during the proceedings under the Act, without the permission of the court. The Part further specifies that a court may revoke, vary or extend a protection order. A respondent may also appeal to the High Court against a protection order.

The Part imposes restrictions on the reporting of proceedings under the Act to protect the identities of the parties to the proceedings. A person is prohibited from publishing or causing to be published any particulars that may lead to the identification of the victim in any newspaper or broadcast proceedings.

Part V of the Bill contains miscellaneous provisions. The court is empowered to award such compensation as it may deem just and reasonable to a victim of domestic violence. The Part also creates offences in cases where a person makes a false statement in any application or affidavit made under the Act.

The Bill does not concern county government.

The enactment of this Bill will occasion additional expenditure which shall be provided for in the annual estimates.

Dated the 20th June, 2013.

SAMUEL CHEPKONGA,
Chairperson,
Committee on Justice and Legal Affairs.