

PROTECTION AGAINST DOMESTIC VIOLENCE BILL, 2012

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PROTECTION AGAINST DOMESTIC VIOLENCE BILL, 2012

A Bill for

An Act of Parliament to make provision for the protection and relief of victims of domestic violence; to make provisions 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

Short title . 1. This Act may be cited as the Protection Against Domestic Violence Act, 2012.

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

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

“applicant” means—

- (a) a person who applies for a protection order under this Act on his or her own behalf; or
- (b) a person on whose behalf an application for a protection order is made pursuant to section 10, 12 or 13

“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) guardian of a child or guardian *ad litem*;

- (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 permitted by law.

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

“child” means an individual who has not attained the age of eighteen years;

“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 applies by virtue of a direction made pursuant to section 19;

“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 —

- (a) any flat ; or
- (b) any mobile home or other means of shelter ,placed or erected upon any 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 under the law or which the applicant requires out of necessity, including household necessities, medical expenses, school fees, rent, mortgage expenses or other like expenses; and
- (b) denying the applicant the right to seek employment or engage in any income-generating activity;

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

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

“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 or feelings of annoyance and aggravation, 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) repeatedly making or sending or causing another person to repeatedly make or send abusive phone calls or electronically transmitted messages to the applicant, whether or not conversation ensues;

(c) sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mails or offensive objects to the applicant;

“interference” means the act of meddling or being intrusive in another’s affairs ;

“interim protection order” means an order made by the court temporarily 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;

Cap.253

“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;

Cap.64

“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) property of the family member;
- (b) property of any person situated in premises in which the family member lives or works; and
- (c) 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’s family;
- (c) any person for whose benefit the order applies pursuant to a direction made 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;

“spouse” means a husband or wife and includes a former spouse or estranged spouse;

“stalking” includes pursuing or accosting a person; and

“victim” means a victim of domestic violence.

Meaning of domestic violence

- 3. (1)** In this Act, “ violence” means-
- (a) abuse derived from cultural, customary and religious practices including and not limited to the following;
 - (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) virgin testing;
 - (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;
 - (o) any other abusive behaviour towards 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) Without prejudice to the provisions of subsection (1) (d), 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 real risk of seeing or hearing that abuse occurring, but the person who suffers that abuse shall not be regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse or, as the case may be, as having put the child, or allowed the child to be put ,at risk of seeing or hearing the abuse.

(4) Without prejudice to the provisions of subsection (1) —

(a) a single act may amount to abuse for the purpose of that subsection; and

(b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation , may appear to be minor or trivial.

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

(6) Conduct constituting domestic violence in terms of this section does not by that reason alone cease to constitute an offence under any other law and any such conduct may notwithstanding this Act be dealt with in accordance with any other law.

Meaning of domestic relationship

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 —

- (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’, in relation to a person, means—
- (a) a spouse, estranged spouse or former spouse;
 - (b) a child whether born in or out of wedlock including an adopted child, a step child and a foster child;
 - (c) an adult son or daughter;
 - (d) a father or mother;
 - (e) a brother or sister; or
 - (f) any other relative of that person who, in the opinion of the court should, in the circumstances of that family be regarded as a member of the family;

(2) In subsection (1), a relative in relation to a person means-

- (a) a father, mother, grandfather, grandmother, stepmother, stepfather, father in law or mother in law of that person;
- (b) repeated threats to cause emotional pain;
- (c) repeated exhibition of obsessive possessiveness which is such as to constitute a serious invasion of the applicant’s privacy, liberty, or security;
- (d) an uncle, aunt, uncle-in-law or aunt-in-law of that person;
- (e) a nephew or niece of that person; or
- (f) a cousin of that person.

Object of this Act.

- 6.** (1) The object of this Act shall be to prevent violence in domestic relationships by—
- (a) recognizing that domestic violence, in all its forms, is unlawful behaviour; and

- (b) ensuring that, where domestic violence occurs, there is effective legal protection for its victims by —
- (i) empowering the courts to make certain orders to protect victims of domestic violence;
 - (ii) ensuring that access to justice is as speedy, inexpensive and simple in accordance with the law;
 - (iii) providing appropriate programmes, for persons who are victims of domestic violence;
 - (iv) providing programmes that have the primary objective of stopping or preventing domestic violence;
 - (v) providing effective sanctions and enforcement in the event that a protection order is breached; and
 - (vi) providing shelter for victims of domestic violence .

(2) Any court which, or any person who, exercises any power conferred by or under this Act shall be guided in the exercise of that power by the objects specified in subsection (1)

(3) Nothing in this act shall be construed as relieving the family members of their primary responsibilities towards members of family in accordance with article 45(1) of the Constitution.

PART II: PROTECTION ORDERS.

Duties of police officers
in relation to domestic
violence

7. (1) A police officer to whom a complaint of domestic violence is made in or who investigates any such complaint shall as directed by the court under section [23 (2) (b)]-
- (a) obtain for the victim or advise the applicant to obtain shelter, medical treatment or shall assist the applicant in any suitable way;
 - (b) advise the applicant of the right to apply for relief under this Act and the right to lodge a criminal complaint.

(2) Where an applicant so desires, the statement of the nature of the domestic violence suffered by the applicant shall be taken by a police officer of the same sex as the applicant.

(3) 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-

- (a) in accordance with such procedure as may be prescribed **under section 9**;
- (b) under the Independent Police Oversight Authority Act; and
- (c) under the National Police Service Act..

(4) A police officer may, in accordance with sections 24 and 58 of the National Police Service Act, arrest without warrant and prefer charges against any person who-

- (a) the officer suspects on reasonable grounds to have assaulted or threatened to assault a family member;
- (b) the officer suspects on reasonable grounds is on the premises in breach of a protection order;
- (c) the officer has the express or implied consent of an occupier of the premises to do so; or
- (d) is committing a breach of the peace or the officer suspects on reasonable grounds that he or she is likely to commit a breach of the peace

(5) The provisions of this section shall not limit any other power that a police officer may have to enter premises under this or any other Act

(6) In carrying out his or her mandate, the Inspector General shall, pursuant to sections 8 and 10 of the National Police Act, ensure the development of standard operation procedure with regard to cases made under this act. This includes but is not limited to-

- (a) training for all police officers in dealing with family related matters or

domestic violence;

- (b) facilitating the reporting process in order for victims or applicants to come forward in a safe and confidential manner; and
- (c) ensuring that the matters are processed in an expedient and efficient manner, as the case may be.

Protection mechanisms

8. (1) The Cabinet Secretary, in consultation with county executives shall 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 under 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. The policy shall address the following issues among others:

- 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 of this Act.
officers;
- g) work with other relevant agencies to provide technical and other support services to implementers of this Act.

(3) 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 are:

- i) sensitive to the local and cultural contexts of the communities where they are established; and
- ii) they 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.

(4) 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.

(d) shall facilitate access to professional services as necessary including counselling and psychosocial support and legal services;

Information on offences involving domestic violence.

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 reporter commits an offence.

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

Application for
protection order

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.

(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 10 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 13(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 protection order through-

- (a) parent or guardian;
- (b) a children officer;
- (c) the Director of Children 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 child's parent or guardian, no orders shall be issued by the court unless the child's parent or guardian 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 or who has attained the age of 18 years; and wishes to apply for a protection order 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.

Application by person lacking capacity.

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

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

Application on behalf
of certain persons.

13. (1) The provisions of this section shall apply where—

- (a) a person is eligible to apply for a protection order;
- (b) that person is unable, whether by reason of physical or mental, intellectual or sensory impairment or fear of harm or other sufficient cause, to make the application personally; and
- (c) it is desirable that the protection order be sought on an application without notice.

(2) Where this section applies, the court may on an application without notice made by the head of unit at the lowest point of decentralization, a police officer, an applicant's representative or an adult person who is not under any incapacity appoint the head of unit at the lowest point of decentralization, police officer, applicant's representative or adult person to be a representative of another person for the purposes of making and prosecuting on behalf of that person an application for a protection order.

(3) Where an application for the appointment of a representative is made pursuant to subsection (2), the court shall make the appointment sought if satisfied that—

- (a) reasonable steps have been taken to ascertain the wishes of the

- person to whom the application relates in relation to the matter; or
- (b) where it has been possible to ascertain the wishes of that person-
 - (i) the person does not object to the appointment; or
 - (ii) the person's objection is not freely made; and
 - (c) it is in the best interests of the person to whom the application relates to make the appointment; and
 - (d) the proposed appointee —
 - (i) consents in writing to the appointment; and
 - (ii) is not under incapacity; and
 - (e) there is unlikely to be any conflict between the interests of the proposed appointee and the interests of the person in respect of whom the application is made.
- (4) The fact that an application for a protection order is made ,on a person's behalf, by a representative appointed pursuant to this section shall not prevent the person on whose behalf the application is made from being heard in the proceedings.
- (5) Without limiting the provisions of subsection (3) (b), where —
- (a) a representative appointed pursuant to this section applies, on another person's behalf, for a protection order; and
 - (b) at any time before the application is determined ,the other person objects to the continuation of the proceedings,
- no further steps shall be taken in the proceedings unless the court is satisfied that the objection is not freely made.

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 in terms of 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 in terms of 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, it may issue a notice calling upon 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.

Power to make protection order.

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

- (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, the court shall nevertheless consider 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
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) Notwithstanding 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 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) Subsection (2) and (5) of section 14 shall apply, with the necessary modifications, in respect of an application for a direction pursuant to subsection (2).

Protection from co-respondents.

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 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.

(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) Subsections (2) to (5) of section 14 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 —
 - (i) as is reasonably necessary in any emergency;

- (ii) as is permitted under any order or written agreement relating to custody of, or access to, any minor; or
- (iii) as is 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, the court may under this section —

- (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 or restricted, or prohibited or restrained, by virtue of an order under paragraph (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 him or her 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 19, a protection order applies against a co-respondent, the provisions of this section shall apply, with all necessary modifications, in respect of the co-respondent.

Further provisions relating to prohibitions of contact.

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 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 apply with all necessary modifications, 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.

Enforcement of
protection order.

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.

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

- (a) the respondent concerned has committed, is committing or is threatening to commit a breach terms or conditions; and
- (b) there are reasonable ground 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 applicant from serious substantial harm, discomfort or inconvenience whether physical, emotional or economic,

he or she shall arrest the respondent.

(3) A respondent arrested in terms of 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.

Duration
of protection order.

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.

Breach of protection
order.

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

Applications.

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 in terms of 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 also 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 call upon the respondent by notice in writing within fourteen days or such other period as the said notice may prescribe to 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, or varied, or set aside by the court on an application made thereto by any party dissatisfied with such order.

(7) Where an application made in terms of 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 issue immediately 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 in terms of section 21 .

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

(9) On the return day specified in an interim order or in a notice issued in terms of 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 absence of the respondent if the court is satisfied that the respondent has been served with or has otherwise had notice of 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; and
- (b) consider any evidence previously received in terms of subsection 5;
- (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 undergo counselling by a counsellor.

(13) Subject to section 43 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.

Applications by other parties.

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 in terms of section 15 (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 effected, 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 arrest of the respondent.

Procedure in the absence of the respondent.

29. If—

- (a) a summons has been served on the respondent or the respondent is bailed to appear at the hearing of the application for a protection order; and
- (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 11(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 provisions of section 10 (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 11(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 involved parties of any revocation, variation or extension granted under this section.

orders.

- (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 was a party to the proceedings;
 - (ii) if the victim was not 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 for Children’s Services; and
 - (vii) an applicant’s representative.

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

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

Bail on appearance to summons or on arrest

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.

Persons who may be present during proceedings

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

- (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 whether by way of hearing in the first instance or by way of appeal, or otherwise, the court may receive any evidence it thinks fit, for the fair determination of the case.

Appeal by Respondents

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
- (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 liable—

(a) in the case of an individual, to a fine not exceeding fifty thousand shillings or liable to 3 years imprisonment, or 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 V — 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 in terms of this Act, knowing such statement to be false or not believing it to be true commits an offence and is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a period 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 in terms of this Act.

Suspension of pre-existing orders under other written laws

44. Where an order is issued in terms of 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.