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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT

SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

REPORT ON PROTECTION AGAINST DOMESTIC VIOLENCE
BILL, 2013

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

JULY, 2014

1.0 PREFACE

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the Protection Against Domestic Violence Bill, 2013.

1.1 COMMITTEE MEMBERSHIP

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. The Hon. Samuel Chepkong'a, M.P. –Chairperson
2. The Hon. Priscilla Nyokabi, M.P. –Vice Chairperson
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chege, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. Kangongo Bowen, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.
17. The Hon. Johanna Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.
23. The Hon. Ben Momanyi Orari, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop)Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The. Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of standing order 216 (5) which outline functions of the Committee as being:

a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;

b) To study the Programme and policy objectives of ministries and departments and the effectiveness of their implementation;

c) To study and review all the legislation referred to it;

d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;

e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;

f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and

g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of Law and Justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics, Integrity and anti-corruption and
- g) Human rights.

1.3 COMMITTEE MEETINGS

The Committee held sittings during which Protection Against Domestic Violence Bill, 2013 was considered in accordance with the standing orders of the National Assembly. The Committee also received comments from Office of the Attorney General and Department of Justice.

The Protection Against Domestic Violence Bill, 2013 was read a first time on 30th October, 2013 and stood committed to the Committee. The Committee needed sufficient time to consult stakeholders and thus did not proceed and report as expected. This Report contains amendments proposed by the Committee for consideration and approval by the House.

Finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to introduce this report to the House, for consideration and passage.

PROTECTION AGAINST DOMESTIC VIOLENCE BILL, 2013

The Committee scrutinized the Protection Against Domestic Violence Bill, 2013 and has proposed amendments as follows:

CLAUSE 3

THAT clause 3 (2) of the Bill be amended by deleting the words “that person is, or has been, in a” and substituting therefore with the words “you are in.”

CLAUSE 4

THAT, clause 4 be amended-

- (a) by deleting sub-clause (1) part (b).
- (b) by deleting sub-clause (1) part (c).
- (c) by deleting sub-clause (1) part (e).
- (d) by deleting sub-clause (1) part (f).
- (e) by deleting sub-clause (1) part (g).
- (f) by deleting sub-clause (1) part (h).
- (g) by deleting sub-clause (3).
- (h) by deleting sub-clause (4).

CLAUSE 5

THAT, clause 5 be amended-

- (a) in sub-clause 1, part (a) by deleting the words “estranged spouse or former spouse.”
- (b) in sub-clause 1, part (f) by deleting the words “in the opinion of the court and.”
- (c) by deleting sub-clause 5.

CLAUSE 7

THAT, clause 7 be deleted.

CLAUSE 8

THAT, clause 8 be deleted.

CLAUSE 9

THAT, clause 9 be amended-

- (a) in sub-clause 1, by deleting the words “has reason to believe” and substituting therefore with the words “reasonably suspects.”
- (b) in sub-clause 1, by deleting the word “involving” and substituting therefore with the word “of.”
- (c) in sub-clause 1, by deleting the words “religious leaders.”
- (d) in sub-clause 2, by deleting the words “by virtue of such reporting attacks, intimidates or does any harmful act to the” and substituting therefor with the words “attacks, intimidates or harms a person who reports domestic violence.”
- (e) in sub-clause 6, by inserting “to be concealed” immediately after the word “order”.
- (f) in sub-clause 6, by inserting the words “and documents” immediately after the word “information”.
- (g) by deleting sub-clause (7).

CLAUSE 10

THAT, clause 10 be amended-

- (a) in sub-clause 1, by deleting the words “or has been.”
- (b) in sub-clause 1, by deleting the word “the.”
- (h) in sub-clause 2, by deleting the word “shall” and substituting therefor with the word “may.”
- (i) in sub-clause 3, by deleting the word “shall” and substituting therefor with the word “may.”

CLAUSE 11

THAT, clause 11 be amended-

(a) in sub-clause (2) , by deleting part (b), (c), (d), (e), (f), (h) and (i), sub-part (i).

CLAUSE 14

THAT, clause 14 (4) be amended by deleting the words “and, if the respondent fails to appear, the court shall, subject to section 23 (3), issue a warrant for the arrest of the respondent.”

CLAUSE 15

THAT, clause 11 be amended by deleting the word “encourages” and substituting therefore the words “aids or abets.”

CLAUSE 16

THAT, clause 16 be amended by deleting the words “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” and substituting therefore with the words “and any other programme that is acceptable to the court.”

CLAUSE 18

THAT, clause 18 be deleted.

CLAUSE 19

THAT, clause 19 is amended-

(a) by deleting the words “inciting or encouraging, or has incited or encouraged, the respondent to engage in behaviour against a protected person where that behaviour, if engage in engaged in by respondent,

would amount to domestic violence” and substituting therefore the words
“aids and abet the respondent.”

(b) by deleting sub-clause (2).

(c) by deleting sub-clause (3).

(d) by renumbering the existing sub-clause (1) as clause 9.

CLAUSE 20

THAT, clause 20 be deleted.

CLAUSE 21

THAT, clause 21 is amended-

(a) in sub-clause (2) part (b) be amended by deleting the word “follow” and substituting therefor the word “stalk”.

(b) in sub-clause (7) part (a) be amended by deleting the word “modified” substituting therefor the word “varied”

(c) by deleting sub-clause (8).

(d) by deleting sub-clause (9).

CLAUSE 22

THAT, clause 22 is amended-

(a) by deleting sub-clause (5).

CLAUSE 23

THAT, clause 23 be deleted.

CLAUSE 24

THAT, clause 24 is amended-

(a) in sub-clause (1) by deleting the words “has received an explanation of the order in accordance with section 31.”

(b) by deleting sub-clause (2).

CLAUSE 27

THAT, clause 2 is amended-

(a) in sub-clause (1) by deleting the words “of the first class.”

(b) in sub-clause (2) part (b) by deleting the words “as soon as possible” and substituting therefore the words “may be directed by the court”

(c) by deleting sub-clause (4).

(d) by deleting sub-clause (5).

(e) by deleting sub-clause (6).

(f) by deleting sub-clause (7).

(g) by deleting sub-clause (8).

(h) by deleting sub-clause (9).

(i) by deleting sub-clause (10).

(j) by deleting sub-clause (11).

(k) by deleting sub-clause (12).

(l) by deleting sub-clause (13).

CLAUSE 28

THAT, clause 28 is amended-

(a) by deleting sub-clause (2).

(b) by deleting sub-clause (3).

(c) by deleting sub-clause (4).

CLAUSE 29

THAT, clause 29 be deleted.

CLAUSE 32

THAT, clause 32 be deleted.

CLAUSE 33

THAT, clause 33 be deleted.

CLAUSE 34

THAT, clause 34 be deleted.

CLAUSE 35

THAT, clause 35 be deleted.

CLAUSE 36

THAT, clause 36 be deleted.

CLAUSE 37

THAT, clause 37 is amended-

- (a) by deleting sub-clause (4).
- (b) by deleting sub-clause (5).
- (c) by deleting sub-clause (6).
- (d) by deleting sub-clause (6).

CLAUSE 38

THAT, clause 38 be deleted.

CLAUSE 39

THAT, clause 39 be deleted.

CLAUSE 40

THAT, clause 40 be amended-

- (a) by inserting the following new sub-clause immediately after sub-clause (3)-

“(4) Any application under this section shall be made thirty (30) days after the final determination of these proceedings.”

CLAUSE 42

THAT, clause 42 be deleted.

CLAUSE 43

THAT, clause 43 is amended-

(a) by deleting sub-clause (1).

(b) in sub-clause (2) by deleting the word "have."

CLAUSE 44

THAT, clause 44 be deleted.

CLAUSE 45

THAT, clause 45 be deleted.

SIGNED.....

Hon. Samuel Chepkong'a, MP

(Chairperson)

Committee on Justice and Legal Affairs

DATE.....