



Republic of Namibia

MINISTERIAL MOTIVATION

ON THE

COMBATING OF DOMESTIC VIOLENCE AMENDMENT BILL

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

MS. YVONNE DAUSAB, MP

18 February 2021

– To be checked against delivery –



Honourable Speaker,
Honourable Members,
Members of the public,

1. It is a common fact that the level of violence and discrimination against women and children in particular during the past 3 (three) years has become an alarming concern to all. This fact is exemplified by the recent demonstrations across Namibia asking the Government to tackle gender-based and sexual violence and the convening of the 2nd National Conference on Gender-Based Violence in Namibia. The disproportionate impact of sexual and gender-based violence, pandemics and other humanitarian crises impacts the full enjoyment of human rights and forces especially women and children into servile roles. Combating violence against women and children in particular is therefore neither optional nor an act of charity. It is the right thing to do, and the envisaged amendments are intended to mitigate its impact on our social justice paradigm.
2. The Constitution of the Republic of Namibia guarantees not only the equality of all persons, irrespective of sex, before the law, but it also provides for the freedom from discrimination. As a State Party to the UN Convention on the Elimination of all Forms of Discrimination Against Women, the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the SADC Protocol on Gender and Development, Namibia has made a significant commitment to end violence against women and children. This means that it is our collective responsibility therefore as policy makers to root out this evil that aims to dehumanise and to degrade those it affects.
3. In the same way, I wish to emphasise the importance of fully engaging men and boys as agents and beneficiaries of change to combat domestic violence should not be underestimated. Stereotypes and harmful social and cultural norms should be unearthed in the fight against domestic violence as these contribute significantly to the staggering number of cases of a domestic violence nature. Domestic violence, because it has a family or societal profile, makes it a horrible crime, one, we should

all be appalled at witnessing. While law is not everything, it provides an important framework and sufficient scope for protection.

Honourable Speaker,
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Members of the public,

4. This afternoon I rise therefore to table the Combating of Domestic Violence Amendment Bill in an effort to reassure Namibians that Government is taking conscientious effort to address issues of gender-based violence across the country.
5. The purpose of the Bill as captured in the long title is to amend the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) in the following ways:
6. The Bill inserts the definition of a “primary caretaker” and thereby extends the scope of a “domestic relationship” that is defined under section 3 of the Combating of Domestic Violence Act, 2003. A “primary caretaker” is defined in the Bill as “a person other than the parent or care-giver, as defined in section 1 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015) of a child, whether or not related to the child, who takes primary responsibility for the daily care of the child with the express or implied permission of a parent or other person with custody or guardianship of the child or a person who cares for a child as a result of an alternative placement under the Child Care and Protection Act, 2015 (Act No. 3 of 2015) or any other law”.
7. The Bill extends the scope of a domestic relationship to the primary caretaker of a child and clarifies that a domestic relationship between a child and a parent continues even after the child has 18 years of age. The importance of the definition of a primary caretaker and the extension of the scope of a domestic relationship lies in the fact that any person who is in a domestic relationship is entitled to apply for a protection order against another person who is in that domestic relationship.

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8. In addition to the power granted to courts under section 12(15) of the Combating of Domestic Violence Act, 2003 to direct station commanders to enquire the reasons as to why a person who applied for a protection order failed to appear in court and further, to direct station commanders to ensure that the applicant is not being intimidated, the Bill continues to strengthen the safeguards against the intimidation of complainants by further empowering the courts to postpone enquiries in order to consider whether the steps taken by station commanders are sufficient, and if not, to make an order for any further police action that may be required to protect the complainant or applicant.
9. The Bill also makes another significant amendment that empowers the court to grant an interim protection order on an urgent basis in an *ex parte* application even when the respondent was not given notice of the proceedings and an opportunity to be heard. Our legal framework on combatting domestic violence has long been criticized both domestically and internationally for the unfortunate unavailability of magistrates to issue protection orders after hours (5pm to 8am). For this reason, we have now made provision for the issuing of emergency protection orders in the Bill in cases where it is impossible for a person who requires protection to make an application at the nearest court, by entitling them to file an affidavit at the nearest police station.
10. The Bill also applies the provisions relating to the special arrangements for vulnerable witnesses in section 158A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as well as the provisions of section 166(3) to (6) of the Criminal Procedure Act, 1977 relating to the cross-examination of witnesses and to proceedings relating to application for and issuing of protection orders under the Combating of Domestic Violence Act, 2003. The Bill also empowers the court to admit any previous statements made by a child who is younger than 14 years as provided for in section 216A of the Criminal Procedure Act, 1977.

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11. In addition to the ‘no-contact’ provision that courts may direct as part of the terms of a protection order under section 14 of the Combating of Domestic Violence Act, 2003, the Bill also makes provision for the court to add further provisions directing the respondent to take part in a counselling or treatment programme and provision to grant temporary sole custody of a child born to, or jointly adopted by, the complainant and the respondent, to the complainant or to another suitable custodian.
12. It is also an important feature that the Bill extends the offences under section 16 of Domestic Violence Act, 2003, and now requires a notification of any breach of a protection order by a police officer who opens the docket to the clerk of the court which issued the protection order to ensure that a notation is entered on the relevant file. The Bill also clarifies that the provision of temporary maintenance orders made as part of the terms of a protection order must be treated and effected in the same way as maintenance orders under the Maintenance Act, 2003 (Act No. 9 of 2003).
13. Lastly, it is important to state the Bill clarifies that protection orders and criminal charges can be pursued simultaneously and places a duty on police officers who open dockets in respect of a domestic violence complaint to advise a complainant of the possibility of applying for a protection order while the criminal charge is pending.
14. Although much more needs to be done to put an end to violence against vulnerable persons, such as women, children and persons with disabilities in Namibia, the tabling of the Combating of Domestic Violence Amendment Bill is an important step in that direction and enables policymakers to take the lead to changing the attitudinal and social patterns and to raise increased awareness about the rights of women and children. The Late Koffi Annan said: “Violence against women is perhaps the most shameful human rights violation and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it

continues, we cannot claim to be making real progress towards equality, development and peace". This is particularly important and demonstrates why the State needs to continue to take a strong stance against violence against women and children.

15. I therefore urge this August House to support this Bill to promote the protection of vulnerable women, children and men who continue to suffer the atrocities of violence perpetrated by those who are close to them in their homes and elsewhere.

I thank you and so submit.