



Republic of Namibia

MINISTERIAL STATEMENT

ON THE

COMBATING OF DOMESTIC VIOLENCE AMENDMENT BILL

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

MS. YVONNE DAUSAB, MP

29 October 2020

– To be checked against delivery –

**Honourable Speaker,
Honourable Members,
Members of the public,**

1. 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 United Nations Convention on the Elimination of all Forms of Discrimination Against Women, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the SADC Protocol on Gender and Development, the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, Namibia has made an significant commitment to end violence against women and children but violence against women and children in particular, continues to escalate.
2. This afternoon I would like to take this opportunity to reassure Namibians that Government is taking conscientious effort to address these issues and further, to update this August House on the progress of the Combating of Domestic Violence Amendment Bill.
3. The Combating of Domestic Violence Amendment Bill has been certified by the Attorney-General and will be tabled in the National Assembly when it resumes during 2021 to enable every member of this August House to meaningfully participate in the intended amendments, particularly in light of the recommendations made 2nd National Conference on Gender-Based Violence (GBV).
4. The purpose of the Combating of Domestic Violence Amendment 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:
5. The Bill inserts the definition of a "primary caretaker" and extends the scope of a "domestic relationship" 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”.

6. 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 in that domestic relationship.

Honourable Speaker,
Honourable Members,
Members of the public,

7. 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 why a person who applied for a protection order failed to appear in court and to ensure that the applicant is not being intimidated, the Combating of Domestic Violence Amendment Bill also strengthens safeguards against the intimidation of complainants by empowering the court to postpone the enquiry in order to consider the steps taken by station commanders and after considering the information provided by a station commander, to make an order for any further police action that may be required to protect the complainant or applicant.
8. It is also a very development to state that the Bill also empowers the court in certain situations 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 of domestic

violence has long been criticized both domestically and internationally for the unavailability of Magistrates to issue protection orders after hours (5pm to 8am). For this reason, we have now made provision in the Amendment bill for ~~Provision is now also made for~~ the issuing of emergency protection orders under the Combating of Domestic Violence Amendment Bill where it is impossible for a person who requires protection to make an application at the nearest court to file an affidavit at the nearest police station.

9. The Bill applies the provisions relating to 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, 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 by a child who is younger than 14 years as provided for in section 216A of the Criminal Procedure Act, 1977.

Honourable Speaker,

Honourable Members,

Members of the public,

10. In addition to the ‘no-contact’ provision that courts may direct in a protection order under section 14 of the Combating of Domestic Violence Act, 2003, the Bill also makes provision for the court to add provisions directing the respondent to take part in a counselling or treatment programme as part of the terms of a protection order 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.
11. In addition to the offence of breaching a protection order under section 16 of the Combating of Domestic Violence Act, 2003, the Bill 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.
12. Despite the persistence of a protection order, the Bill clarifies that the provision of temporary maintenance orders in a protection order made under section 14(2)(h) of the Combating of Domestic Violence Amendment Bill must be treated 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 also 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.
 13. Although much more needs to be done to put an end to violence against vulnerable persons, such as women and children 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.
 13. Beside the Combating of Domestic Violence Amendment Bill, Government has established a Committee consisting of senior management across various ministries to determine the best and most effective way to address increasing cases of SGBV but also to implement the resolutions adopted by the 2nd National Conference on GBV.
 14. 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 look forward to meaningfully engaging the members of this August House on the Combating of the Domestic Violence Amendment Bill with a view 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.