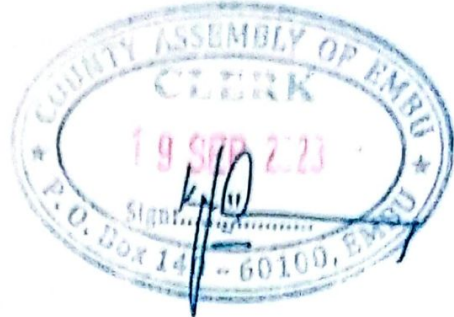


SPECIAL ISSUE

Kenya Gazette Supplement No. 3 (Embu County Bills No. 2)



REPUBLIC OF KENYA



KENYA GAZETTE SUPPLEMENT

EMBU COUNTY BILLS, 2023

NAIROBI, 20th April, 2023

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THE EMBU COUNTY SEXUAL AND GENDER-BASED VIOLENCE BILL, 2023

A Bill for

AN ACT of the County Assembly of Embu to provide measures for awareness, prevention and response to sexual and gender-based violence, to provide for the protection, treatment, counselling, support and care of victims of such violence, and for connected purposes.

ENACTED by the County Assembly of Embu, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Embu County Sexual and Gender-Based Violence Act, 2023 and shall come into operation upon publication in the *Gazette*.

Interpretation

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

“Child” has the meaning assigned to it under Article 260 of the Constitution of Kenya, 2010;

“Domestic Relationship” means a relationship, between a victim and a perpetrator in any of the following ways—

- (a) the victim and the perpetrator are or were married to each other, under any law, custom or religion;
- (b) the victim cohabits with the perpetrator in a relationship in the nature of a marriage notwithstanding that they are not married, were not married to each other or could not or cannot be married to each other;
- (c) the victim is courting or engaged to the perpetrator, or in an actual or perceived romantic, intimate, cordial or sexual relationship of any duration;
- (d) the victim and the perpetrator are parents of a child, are expecting a child together or are foster parents to a child;
- (e) the victim and the perpetrator are family members related by consanguinity, affinity or adoption, or would be so related if they are married either customarily or under any law or religion, or are able to be married, or if they are living together as spouses although they are not married;

- (f) the victim and the perpetrator, share or shared the same residence or are co-tenants;
- (g) the victim is a house-help in the household of the perpetrator;
- (h) the victim is in a relationship with the respondent determined by the court to be a domestic relationship;

“Economic Abuse” includes —

- (a) the unreasonable deprivation of economic or financial resources to which a victim is entitled under law or which the victim requires out of necessity, including household necessities for the victim, and mortgage bond repayments or payment of rent in respect of the shared residence; or
- (b) the unreasonable disposal of household effects or other property in which the victim has an interest;

“Gender-Based Violence” means —

- (a) violence visited upon a person based on their gender and includes child marriage; female genital mutilation; forced marriage; forced wife inheritance; interference from in-laws; sexual violence within marriage or domestic relationship; virginity testing; widow cleansing; damage to property; defilement; indecent act; harassment; incest; intimidation; physical abuse; sexual abuse; stalking; sexual slavery; economic abuse, verbal abuse;
- (b) any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person; or
- (c) any other act that results in, or is likely to result in, physical, sexual or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.

Cap. 226

“Gross Misconduct” has the meaning assigned to it under the Employment Act, 2007;

“Harmful Practices” means all behaviour, attitudes or practices which negatively affect the fundamental rights of people such as their right to life, health, dignity, education, freedom of choice and physical integrity;

“Inhuman Treatment” means cruel act; a deliberate infliction of pain and suffering, cruelty, abuse, ill-treatment, mistreatment, and inhumane treatment;

“Indecent Act” means an unlawful intentional act which causes contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration; and exposure or display of any pornographic material to any person against his or her will;

“Medical Practitioner” has the meaning assigned to it in the Medical Practitioners and Dentists Act [Cap. 253];

“Management Committee” means the Sexual and Gender-Based Violence County Management Committee established under section 6 of this Act;

“Member” means County Executive Committee member for the time being responsible for Gender and Social Services;

“Minimum Package of Healthcare Services” is the package of services that the County government will provide to its citizens in an equitable manner and which are often expected to achieve multiple goals for more effective care including: improved efficiency, equity, political empowerment and accountability;

“Multi-Sectoral Approach” means the holistic inter-organizational and inter-agency efforts that promote participation of people of concern, across key sectors, including health, psychosocial, legal and security;

“Probation Officer” has the meaning assigned to it in section 2 of the Probation of Offenders Act [Cap. 6];

“Public Service Board” means the County Public Service Board of Embu;

“Rehabilitation” has the meaning assigned to it in the Victim Protection Act, 2014;

“Sexual Based Violence” includes actual, attempted or threatened vaginal, anal or oral rape, including intimate partner violence; sexual abuse and exploitation; forced prostitution; transactional or survival sex; and sexual harassment, intimidation and humiliation regardless of the relationship to the victim;

“Safe House or Shelter” is a residential facility providing short-term intervention for victims of Sexual and Gender -Based Violence and their dependent children in crises. This intervention includes

meeting basic needs as well as providing support, counselling and skills development;

“Social Worker” means a person employed in any Government Department responsible for Social Welfare, Health, Child Welfare or Gender or Women’s Affairs;

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

“Stakeholders” means both state and non-state actors and includes the Kenya Police, Office of the Attorney General, Office of the Director Public Prosecution, Probation, Prisons, faith based organizations, healthcare providers, counsellors, psychologists, civil society organizations, donors, media, private sector, Community based organization, Council of elders, traditional leaders and other relevant stakeholders;

“Stalking” means willfully, maliciously, and repeatedly following or willfully and maliciously harassing another person and who making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family and includes cyber-stalking;

“Unwholesome Treatment” means treatment not conducive to physical or mental health;

No. 17 of 2014

“Victim” has the meaning assigned to it under section 2 of the Victims Protection Act and also means any natural person who suffers injury, loss damage or death as a consequence of an offence;

“Vulnerable Witness” means the alleged victim in the proceedings pending before a court; a child, elderly person or a person with mental disabilities;

“Widow” means a woman who has not remarried after her husband’s death; and

“Widower” means a man who has not remarried after his wife’s death.

Objects and Purpose of the Act

3. The object of this Act is to provide a legislative framework to—

- (a) promote public awareness about the causes, impact, consequences, means of prevention and response to Sexual and Gender-based Violence;
- (b) provide protection to victims of Sexual and Gender-Based Violence in line with existing laws and regulations which address sexual and Gender-Based violence by—
 - (i) prohibiting harmful cultural and traditional practices;
 - (ii) outlawing gender discrimination in all its forms and subtleties;
 - (iii) guaranteeing the right to privacy of the individual;
 - (iv) ensuring the provision of minimum package of healthcare services;
 - (v) ensuring the provision of psycho-social support including guidance and counselling to victims of Sexual and Gender-Based Violence;
 - (vi) guaranteeing availability of safe houses and shelters; and
 - (vii) providing access to witness protection;
- (c) positively address and seek to eradicate conditions that aggravate Sexual and Gender-Based Violence by promoting and advocating for social justice;
- (d) support and facilitate the gathering of desegregated data by age, sex, ethnicity and disability; and
- (e) establish a clear reporting and referral system to enable victims and witnesses to Sexual and Gender-Based Violence know to whom they should report.

PART II—COLLABORATION WITH OTHER AGENCIES

Collaboration Approaches

4. (1) The County Government shall in all its responses and prevention of Sexual and Gender-Based Violence adopt a multi-sectoral approach with all actors.

(2) For purposes of directing and coordinating the functions provided under this Act and all laws and policies relevant in

addressing Sexual and Gender-Based Violence the County Government shall ensure—

- (a) efficient and effective coordination of the established units under this Act; and
- (b) where necessary, establish its own service delivery coordination units for purposes of coordination with the national government and all relevant stakeholders.

(3) For effective coordination mechanism specific to Sexual and Gender-Based Violence, the County Government shall—

- (a) enhance strategic capacity information sharing and management;
- (b) work with the community to increase use of secondary prevention services and further primary prevention efforts to increase awareness of the intersection of Sexual and Gender-Based Violence and gender inequality as well as existing laws on Sexual and Gender-Based Violence; and
- (c) establish centres and integrated Sexual and Gender-Based Violence services with referral linkages to police, health services, psychosocial support and legal aid in a collaborative manner.

Determination of Sexual Gender-Based Violence coordination mechanism

5. The County Government shall determine the type of Sexual and Gender-Based Violence coordination units suitable within its jurisdiction for effective administration of justice to the victims of Sexual and Gender-Based Violence.

PART III –SEXUAL AND GENDER-BASED VIOLENCE COUNTY MANAGEMENT COMMITTEE

Establishment of Management Committee

6. (1) There is established the Sexual and Gender-Based Violence County Management Committee.

(2) The Management Committee shall consist of—

- (a) a Chairperson who shall be the County Executive Committee Member responsible for Gender, and Social Services;
- (b) the County Commissioner or his representative;

- (c) one person representing the County Executive Committee Member responsible for Finance;
- (d) one person representing the County Executive Committee Member responsible for Health;
- (e) one Officer from the Department of Gender, and social services or a senior Social worker having specialized skill or knowledge on gender issues who shall be the Secretary ;
- (f) one person representing the County Executive Committee Member responsible for Education;
- (g) two persons representing the Civil Society Organizations;
- (h) one person representing persons with disability; and
- (i) the County Attorney or his representative as an *ex-officio* member.

(3) The Agencies nominating persons under subsection 2(f) and (g) shall—

- (a) ensure nomination process is competitive;
- (b) forward names representing both genders; and
- (c) ensure the persons nominated meet the requirements of Chapter Six of the Constitution.

(4) The Management Committee Members shall be appointed by the Governor.

(5) Appointment shall take into consideration gender, ethnicity, regional balance, youth and persons with disabilities inclusion.

(6) A person with a past conviction on a sexual offences charge shall be disqualified from membership of this Committee. Failure to disclose such past conviction shall be an offence and upon conviction such person shall be liable to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand or both.

(7) The Committee shall be established within twelve (12) months upon commencement of this Act.

Tenure of members

7. The members of the County Sexual and Gender-Based Violence Management Committee shall serve for a term of three years renewable once.

Functions of Committee

8. The functions of the Management Committee shall be to—

- (a) monitor and oversight the activities of all the relevant institutions on matters connected with Sexual and Gender-Based Violence;
- (b) ensure that there is adequate financial and technical resources that correspond to the nature and scope of the activities planned for Sexual and Gender-Based Violence intervention; prepare budgetary estimates and develop plans before the end of each financial year, setting out the priorities and objectives of the committee and the justification thereof to be submitted to the Member;
- (c) advice the County Executive Committee Member on policy matters connected with Sexual and Gender-Based Violence and inter-agency activities aimed at protecting victims of sexual and Gender-Based violence and the implementation of preventive, protective and rehabilitative programmes for the victims within the County;
- (d) propose and promote strategies to prevent and combat sexual and gender-based violence;
- (e) ensure that there is sufficient and adequately trained staff to carry out planned Sexual and Gender-Based Violence interventions;
- (f) prepare and submit reports on a quarterly basis to the County Assembly on the status of Sexual and Gender-Based Violence interventions under this Act;
- (g) develop a County Action Plan for prevention and response to Sexual and Gender-Based Violence within one year of establishment;
- (h) develop, cultivate and promote effective linkages with other relevant agencies;
- (i) implement the national and county policies relating to the sexual and Gender-Based violence within the County;
- (j) propose and advise the County Executive committee member on education programmes related to sexual and Gender-Based Violence to be included in Early childhood development and education centres and polytechnics;

- (k) develop a working communication system for reporting of Sexual and Gender-Based Violence cases including a toll free number; and
- (l) perform any other function as may be assigned by legislation.

Meetings

9. (1) The Committee shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairperson may determine.

(2) The quorum of the meeting shall not be less than six of the appointed members.

(3) Except as provided in this section, the Committee may regulate its own procedures.

(4) Upon giving notice of not less than fourteen days, a meeting of the Committee may be called by the Chairperson and shall be called if not less than one-third of the members so request in writing.

(5) Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving at least two days' notice.

Conflict of Interest

10. (1) If any person is present at a meeting of the Committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subparagraph (1) commits an offence and shall be liable, upon conviction to a fine not exceeding Two hundred and Fifty thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(4) No member or staff of the Committee shall transact any business or trade with the Committee.

Vacancy of office

11. (1) The Office of the chairperson or a member of the Management Committee, shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Governor;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment not exceeding six months;
- (d) completes the term of office;
- (e) is absent from three consecutive meetings of the committee without good cause; or
- (f) is removed from office on any of the following grounds—
 - (i) gross violation of the Constitution or any other written law;
 - (ii) gross misconduct or behavior;
 - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
 - (iv) incompetence or neglect of duty; and
 - (v) bankruptcy.

(2) A vacancy under this section shall be filled within three months.

Allowances of Members

12. There shall be paid to the members of the Committee such allowances as the Public Service Board may, with the approval of the salaries and Remuneration Commission, determine.

**PART IV—SEXUAL AND GENDER-BASED VIOLENCE
EDUCATION AND INFORMATION****Duty to assist or Inform victim of rights**

13. A police officer, social worker, counsellor, medical practitioner, legal practitioner, nurse, religious leader, traditional leader, teacher, employer or other person or institution with information concerning the commission of an Act of Gender-Based Violence shall—

- (a) inform a victim of the victim's rights and any basic support which may be available to assist the victim;
- (b) obtain for the victim, or advise the victim how to obtain shelter, medical treatment, legal services, counselling or other service that may be required in the circumstances; and
- (c) advise the victim of the victim's right to lodge a complaint against the respondent including remedies available to the victim under this Act and any other relevant law.

Obligation to report domestic violence

14. (1) An adult person who knows, or believes or suspects on reasonable grounds, that an act of domestic violence has been committed against a child, a person with a disability or an elderly person, must report such knowledge, belief or suspicion as soon as possible, to a social worker or the Kenya Police Service.

(2) The report referred to in subsection (1) must—

- (a) be made in the prescribed form;
- (b) set out the reasons for such knowledge, belief or suspicion; and
- (c) in the prescribed manner be submitted to a social worker or a member of the Kenya Police Service.

(3) A person referred to in subsection (1)—

- (a) who makes the report in good faith, is not liable to civil, criminal or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and
- (b) is entitled to have their identity kept confidential, unless the interests of justice require otherwise.

(4) A person who fails to comply with subsection (1) is guilty of an offence.

Vulnerable Witnesses

15. (1) A vulnerable witness, who is to give evidence in criminal proceedings in which a person is charged with the alleged commission of an offence under this Act, shall be informed of protective measures available to him or her prior to such witness commencing his or her testimony at any stage of the proceedings.

(2) The provisions of the Sexual Offences Act, 2007 shall apply with necessary modifications to witnesses under this Act.

Education and information

16. (1) The County Government through multi-sectoral approaches shall promote public awareness about the causes, impact, consequences, means of prevention and response to Sexual and Gender-Based Violence.

(2) The educational and information campaign referred to in subsection (1) shall—

- (a) employ pragmatic and innovative approaches;
- (b) focus on the family as the basic social unit;
- (c) confront the dangers and impact of Sexual and Gender-Based Violence; and
- (d) be carried out in learning institutions, places of worship and in all communities within the County.

(3) In conducting the educational and information campaign referred to in this section, the County Government shall—

- (a) collaborate with relevant stakeholders; and
- (b) ensure the involvement and participation of victims and perpetrators of Sexual and Gender-Based Violence.

Education in institutions of learning

17. (1) The County Executive Committee member shall work with relevant stakeholders in the Education sector to—

- (a) integrate instruction on the causes, impact, consequences, means of prevention and response to Sexual and Gender-Based Violence in subjects taught in public youth polytechnics, Early Childhood Development and Education centres and related institutions of technical industrial vocational education and training.
- (b) promote sensitization and awareness creation on Sexual and Gender-Based Violence in the learning institutions.

Education as a healthcare service

18. (1) Sexual and Gender-Based Violence education and information dissemination shall form part of the delivery of healthcare services by healthcare providers.

(2) For the purposes of subsection (1), the County Government in collaboration with relevant stakeholders in the health sector shall ensure training of healthcare providers on proper information dissemination and education on Sexual and Gender-Based Violence.

(3) The training of healthcare providers under this section shall include education on Sexual and Gender-Based Violence-related ethical issues such as sensitivity, confidentiality, the duty to provide treatment, and report to the relevant authorities for further action.

Education in the workplace

19. (1) The County Government shall ensure the provision of basic information and instruction on Sexual and Gender-Based Violence to—

(a) employees of all County Government Departments, authorities and other agencies; and

(b) employees of private and informal sectors.

(2) The information provided under this section shall cover issues such as confidentiality in the work-place and mechanisms of reporting Sexual and Gender-Based Violence victims.

(3) The County Government shall develop Anti-Sexual and Gender-Based violence Policy within the work place to address the problem.

Information in communities

20. (1) The County Government, in collaboration with all the relevant stakeholders, shall conduct an educational and information campaign on Sexual and Gender-Based Violence within its area of jurisdiction.

(2) In addition to subsection (1) above, the information disseminated shall include the designated toll free line.

(3) The information provided under this section shall cover issues such as details of where to get help and the processes involved.

PART V—ACCESS TO HEALTH CARE SERVICES

Access to healthcare services

21. (1) Every health institution, whether public or private, and every health management organization shall facilitate access to healthcare services to Sexual and Gender-Based Violence victims without unnecessary impediments.

(2) The County Government shall facilitate the establishment of a County Forensic Laboratory for purposes of analysis of samples on Sexual and Gender-Based Violence.

(3) The County Government shall ensure access to essential healthcare services and the minimum package of healthcare services for victims of Sexual and Gender-Based Violence.

Sexual and Gender-Based Violence Recovery Centres

22. (1) The County Government shall establish Centres to be known as Sexual and Gender-Based Violence Recovery Centres in every County and sub-county referral Hospital within the County.

(2) In addition to clause (1) above, the Committee may in coordination with the management of private hospitals within the sub-counties; establish the centres within their hospitals.

Functions of Recovery Centres

23. The Centres shall—

- (a) be a one-stop centre which offers medical, security, legal and psychosocial services;
- (b) create awareness through community, engagement and School Outreach programs to facilitate behavior change, and equip diverse stakeholders with skill and knowledge on sexual and Gender-Based violence;
- (c) offer specialized free and comprehensive Gender-Based violence medical treatment;
- (d) offer psychosocial support to survivors of Gender-Based violence within the County;
- (e) engage the public in advocacy issues and primary prevention of abuse;
- (f) create awareness on the existence of free Gender-Based violence services through Community Health Workers;

- (g) offer mandatory community-friendly complaint and feedback platform to enable accountability in health care service provision; and
- (h) have a working referral system for specialized cases that need further management.

Management of Recovery Centres

24. The Centres shall be managed by trained clinical and mental health practitioners with special expertise on dealing with victims of Gender-Based violence prevalent within the region.

PART VI—SAFE HOUSES AND SHELTERS

Establishment of safe houses/ shelter

25. (1) The County Government shall facilitate the establishment of at least one safe house per Sub-county.

(2) The County Government shall make budgetary allocations for new and existing shelter programs.

Functions of Safe Houses

26. The safe house or shelter shall—

(a) offer temporary stay to victims of sexual and Gender-Based violence; and secure the safety of victims and their dependent children where necessary;

(b) offer a programme aimed at—

(i) the provision of counselling to victims;

(ii) the provision of rehabilitation services to victims; and

(iii) the reintegration of victims into their families and communities;

(c) in co-operation with the Department responsible for Education, offer a programme aimed at the provision of education to adult victims; and

(d) in co-operation with the Department responsible for vocational training, offer a programme aimed at the provision of skills development training to adult victims.

Minimum norms and standards of shelters

27. A shelter for victims shall comply with the norms and standards as the member may by statutory instrument prescribe.

Assessment of victims

28. Upon admission of a victim to a shelter, an assessment shall be made by a social worker to determine —

- (a) the risks to the safety and life of the victim;
- (b) the immediate needs of the victim; and
- (c) the long term needs of the victim.

Management of safe houses/ shelters

29. (1) The Governor through the County Public Service Board shall appoint a person to be charged with the day to day management of the shelter.

(2) The manager appointed under section 27(1) above shall report to the Sexual and Gender-Based Violence County Management Committee.

(3) The manager shall be tasked with the preparation and submission of reports on the status of safe houses to the Sexual and Gender-Based Violence County Management Committee bi-annually or upon request.

PART VII—GENERAL PROVISIONS**Funding**

30. (1) The County Government shall ensure a sustained budget through its annual budgetary allocations for purposes of prevention, control and management of Sexual Gender-Based Violence.

(2) The County Government may seek grants from the national government, development and other implementing partners to facilitate its Sexual and Gender-Based Violence programmes and activities.

(3) The County Executive Committee member shall provide Annual Comprehensive Financial statements and Reports for the Sexual and Gender-Based Violence programmes and activities and submit them to the County Assembly.

Protection from personal liability

31. No matter or thing done by a member of the Management Committee or by any officer, member of staff, or agent of the Management Committee shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Management Committee under this Act, render the member, officer, employee or

agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

General Penalty

32. 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, shall be guilty of an offence and liable to a fine not exceeding Kenya Shillings Two Hundred and Fifty thousand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Regulations

33. (1) The County Executive Committee Member for the time being responsible for Gender shall make rules to regulate any matter of practice or procedure under this Act.

MEMORANDUM OF OBJECTS AND REASONS

This principal objective of this Bill is to provide for the promotion of public awareness on causes, impact and consequences of Sexual and Gender-Based Violence. Pursuant to this objective, the Bill proposes means of prevention of Sexual and Gender-Based Violence and protection for those subjected to Sexual and Gender-Based Violence. This Bill is premised on Article 189 of the Constitution of Kenya which emphasizes on cooperation between county and national governments to the implementation of national and county legislations, procedures and policies. The Bill is in addition to and not in derogation to the Sexual offences Act, The witness Protection Act, The Penal code and any other relevant law with regard to sexual and Gender-Based violence.

PART I of the Bill contains the preliminary matters. These provisions are related to the short title, commencement of the Act and interpretation.

PART II of the Bill outlines a framework for collaboration with stakeholders and other agencies.

PART III of the Bill provides for the establishment of the Sexual and Gender-Based Violence County Management Committee. It also sets out the tenure of office for Members of the Committee and stipulates functions of the Committee.

PART IV contains the standards for Sexual and Gender-Based Violence education and information. It also outlines with whom and how the education and information will be disseminated.

PART V provides for access to health services. The Bill obligates healthcare institutions and insurance companies to facilitate ease in access for Sexual and Gender-Based Violence victims without unnecessary difficulty.

PART VI provides for establishment of safe houses and shelters for victims of Sexual and Gender-Based Violence.

PART VII of the Bill sets out the financial provision for enabling Sexual and Gender-Based Violence activities, as well as a clause on making of regulations.

Dated 14th February, 2023.

MARY IGOKI KAVINDA,
*Chairperson, Youth, Gender, Sports, Culture and Social Services
Committee.*