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BILLS, 2014

NAIROBI, 24th June, 2014

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THE NAKURU COUNTY GENDER EQUALITY AND WOMEN EMPOWERMENT BILL, 2014

A Bill for

AN ACT of the Nakuru County Assembly to give effect to section 27 of the Constitution of the Republic of Kenya, in so far as the empowerment of women and gender equality is concerned; to establish a legislative framework for the empowerment of women; to align all aspects of laws and implementation of laws relating to women empowerment, and the appointment and representation of women in decision making positions and structures; and to provide for matters connected therewith.

AS the Republic’s constitutional and international commitments in the field of human rights include the promotion of gender equality and the prohibition of unfair discrimination against women and the elimination of gender based violence;

AND AS measures to address discrimination against women are essential to the transformation of gender relations in the Republic and Her County Governments,

ENACTED by the County Assembly of Nakuru, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nakuru County Gender Equality and Women Empowerment Act, 2014 and shall come into operation upon assent by the Nakuru County Governor.

2. (1) Unless otherwise indicated in this Act, this Act applies to all public bodies and private bodies designated under subsection (2).

(2) The Executive Committee Member may, in order to achieve the progressive realisation of this Act, by notice in the County and Kenya Gazette, designate public bodies and private bodies which must comply with one or more provisions of this Act specified in the notice.
(3) The Executive Committee Member may from time to time, for the purposes of subsection (2), designate different public bodies and private bodies which must comply with the relevant provisions.

3. In this Act, unless the context otherwise indicates—

“applicable legislation” means, but is not limited to, the laws specified in Schedule 1;


“Department” means the Department of Women, Youth, Children and People with Disabilities;

“Discrimination” means discrimination as defined in the Convention on the Elimination of All forms Discrimination Against Women (December 1979) and Beijing Declaration and Platform of Action (September 1995);

“gender” means the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls and boys;

“gender based violence” means all acts perpetrated against women, girls, men and boys on the basis of their gender and sex which cause or could cause them physical, sexual, psychological, emotional or economic harm, and includes any threat to cause such harm;

“gender discrimination” means any distinction, exclusion or restriction made on the basis of gender and sex which has the effect or purpose of impairing or nullifying the equal recognition, enjoyment or exercise by a person of her or his human rights and fundamental freedoms in any spheres of life;

“gender equality” means the full and equal enjoyment of rights and freedoms and equal access to resources, opportunities and outcomes, by women, men, girls and boys;

“gender mainstreaming” means the process of identifying gender gaps and making women’s, men’s, girls’ and boys’ concerns and experiences integral to the design, implementation, monitoring and evaluation of policies and programmes in all sectors of life to ensure that they benefit equally;
“Executive Committee Member” means the Executive Committee Member responsible for Gender, Children, Youth and People with Disabilities;

“political party” means a party as defined in Article 260 of the Constitution 2010;

“prescribed” means prescribed by regulation in terms of this Act;

“private body” means—

(a) a natural person who carries on any trade, business or profession, but only in such capacity;

(b) a partnership which carries on any trade, business or profession; or

(c) any juristic person, but excludes a public body;

“public body” means—

(a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

(b) any other functionary or institution when—

(i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation;

“substantive gender equality” means gender equality in fact and in law;

“this Act” includes any regulation made under this Act; and

“women empowerment” means the advancement of women as contemplated by section 27(3) of the Constitution.

4. The objectives of this Act are to—

(a) give effect to the letter and spirit of the Constitution, in particular—

(i) the equal enjoyment of all rights and
freedoms by every person;

(ii) the promotion of equality, specifically gender equality; and

(iii) the values of human dignity, equity, social justice, inclusiveness and protection of the marginalized contained in section 10 of the Constitution;

(b) facilitate compliance by designated public bodies and designated private bodies, with the country's commitments to international agreements, including—

(i) the Convention on the Elimination of All Forms of Discrimination Against Women (December 1979);

(ii) the Beijing Declaration and Platform for Action (September 1995);

(iii) the Millennium Declaration and Development Goals (September 2000);

(iv) the Solemn Declaration on Gender Equality in Africa (July 2004); and

(c) align all aspects of the laws and the implementation of the laws relating to women empowerment and the appointment and representation of women in decision-making positions and structures;

(d) facilitate the development and implementation of plans and strategies by designated public bodies and designated private bodies for the promotion of 55 women empowerment and gender equality, and the submission of those plans and strategies to the Executive Committee Member for consideration, evaluation and guidance;

(e) provide for the implementation of measures to achieve a progressive realisation of a minimum of 50 percent presentation and meaningful participation of women in decision-making structures including Boards by designated public
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bodies and designated private bodies, as contemplated in section 8;

(f) provide for the implementation of gender mainstreaming by designated public bodies and designated private bodies as contemplated in section 9; and

(g) provide for the development and implementation of public education programmes on practices that unfairly discriminate on grounds of gender as contemplated in the applicable legislation and in international agreements in order to promote gender equality and social cohesion

PART II—SOCIAL DEVELOPMENT

5. (1) Designated public bodies and designated private bodies must develop and implement plans and measures in compliance with applicable legislation and international agreements, to—

(a) address the pervasive discriminatory patriarchal attitudes and the lingering effects of apartheid faced by women in the education system, and ensure that woman’s childbearing responsibilities are not the cause for drop out or exclusion, in order to achieve the progressive realisation of access to education for all;

(b) educate and train women in order to achieve the progressive realisation of equitable and sustainable development for women and gender equality;

(c) capacitate and enable women to assimilate and develop knowledge, requisite skills and values, in order to achieve the progressive realisation of at least a minimum of 50 percent equal representation and meaningful participation of women in all decision-making position and structures, contemplated in section 7(1) and their economic empowerment contemplated in section 10(1);

(d) improve access to education on reproductive
rights for women, particularly young women; and

(e) eliminate prejudices and current practices that hinder the achievement and enjoyment of gender equality and social cohesion.

(2) Designated public bodies and designated private bodies must submit to the Executive Committee Member their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(3) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

6. (1) Designated public bodies and designated private bodies must, within its available resources, develop and implement a model for delivering women’s health, including reproductive health, in order to achieve the progressive realisation of access to health and reproductive rights for women, in compliance with the applicable legislation and international agreements such as the Millennium Declaration and Development Goals.

(2) Designated public bodies and designated private bodies must submit to the Executive Committee Member their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(3) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

7. (1) Designated public bodies and designated private bodies must develop and implement plans to educate the public on practices that unfairly discriminate on grounds of gender, including gender based violence, in compliance with applicable legislation and international agreements.
such as the Beijing Declaration and Platform for Action (September 1995), in order to achieve substantive gender equality in society and the workplace.

(2) The Executive Committee Member may establish mechanisms to undertake research, educational programmes and other measures to strengthen efforts of designated public bodies and designated private bodies to prevent and respond to gender-based violence.

(3) Designated public bodies and designated private bodies must submit to the Executive Committee Member their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(4) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (3), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

PART III—EQUAL REPRESENTATION AND EMPOWERMENT

8. (1) Despite any other law, designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop and implement measures, in order to achieve the progressive realisation of a minimum of 50 per cent representation and meaningful participation of women in decision-making structures including Boards, which must include—

(a) building women’s capacity to participate;

(b) enhancing the understanding and attitudes of communities to accept the capabilities and participation of women as their equals; and

(c) developing support mechanisms for women.

(2) Despite any other law, all political parties must develop and implement measures for the progressive realisation of a minimum of 50 per cent representation and meaningful participation of women in decision-making positions and structures.
(3) The Executive Committee Member may develop guidelines to assist designated public bodies and designated private bodies to comply with subsection (1).

(4) Designated public bodies and designated private bodies must submit to the Executive Committee Member their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(5) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

9. (1) Designated public bodies and designated private bodies must develop and implement plans and measures which seek to ensure gender mainstreaming.

(2) The measures may include—

(a) the integration of gender considerations by all managers into all policies, structures, systems and processes relating to the designated public bodies and designated private bodies;

(b) steps to ensure that decisions and activities of the designated public body or designated private body are preceded by a gender equality analysis;

(c) remedial measures to—

(i) prevent or alleviate actual and potential prejudice on the basis of gender; and

(ii) reduce disparities between women and men;

(d) steps aimed at ensuring compliance with obligations contained in applicable legislation and the international agreements; and

(e) assessing the implications of its planned measures, in relation to gender mainstreaming.

(3) The policies, plans, programmes and strategies must, in the case of the designated public bodies, be approved by the Gender Focal Point contemplated in section 15, and in
the case of designated private bodies, by the accounting officer also contemplated in that section.

(4) The Executive Committee Member may require a designated public body or a designated private body to submit its plan and measures contemplated in subsection (1) within one year of being designated to the Executive Committee Member, for consideration, evaluation and guidance.

(5) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

(6) The Executive Committee Member may develop guidelines to assist designated public bodies and designated private bodies to comply with subsection (1).

10. (1) Despite any other law, targets for women in all laws and policies on empowerment shall be at least 50%.

(2) Designated public bodies and designated private bodies must, within their ambit of responsibilities, develop and implement plans and strategies to align their laws and policies with subsection (1) within two years of coming into operation of this Act.

(3) Designated public bodies and designated private bodies must, within their ambit of responsibilities, develop and implement plans and strategies which will assist women to gain power and control over decisions and resources that determine the quality of their lives, in order to achieve the progressive realisation of women empowerment and gender equality.

(4) Designated public bodies and designated private bodies must promote women empowerment by taking measures such as—

(a) changing the conditions and circumstances which hinder the achievement of sustainable and substantive gender equality;

(b) establishing appropriate and relevant measures designed to recognise and support the roles of
women in various sectors of life; and

(c) implementing the applicable legislation, policies and strategies within their mandate and—

(i) aligning targets to improve compliance with such legislation, policies and strategies; and

(ii) auditing factors that cause and contribute to non-compliance with such legislation, policies and strategies.

(5) Designated public bodies and designated private bodies must develop and implement policies or programmes—

(a) designed to protect and advance women who have been disadvantaged by unfair discrimination;

(b) ensuring and promoting equal opportunities for women;

(i) seeking to eliminate

(ii) gender discrimination;

(iii) exploitation of women in the labour market; and

(iv) gender-based violence.

(6) The policies or programmes may include—

(a) economic and land reform initiatives that benefit women; and

(b) initiatives that aim to promote the rights and benefits of women and achieve the requisite conditions for women empowerment in the workplace.

(7) Designated public bodies and designated private bodies must submit within one year of being designated, the—

(a) plans and strategies contemplated in subsection (2);

(b) plans and strategies contemplated in subsection (3);
(c) measures contemplated in subsection (4); and

(d) policies or programmes contemplated in subsection (5), to the Executive Committee Member for consideration, evaluation and guidance.

(8) The Executive Committee Member may, at any time after the submission of the plans, strategies or measures contemplated in subsection (7), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

(9) The Executive Committee Member may develop guidelines to assist designated public bodies and designated private bodies to comply with this section.

11. (1) Despite any other law, targets for women in all laws and policies on economic empowerment shall be at least 50%.

(2) Designated public bodies and designated private bodies must, within their ambit of responsibilities, develop and implement plans and strategies to align their laws and policies with subsection (1) within two years of coming into operation of this Act.

(3) Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop and implement plans and measures, to—

(a) promote the economic empowerment of women;

(b) promote women’s access to economic and educational opportunities and productive resources;

(c) increase access to financing, procurement, land rights, skills development, especially entrepreneurial skills and capacity building of women;

(d) facilitate employment opportunities and access to the markets for women;

(e) compile such data relating to economic
(2) The Executive Committee Member may require a designated public body or a designated private body to submit to the Executive Committee Member its plan and measures contemplated in subsection (1) within one year of being designated, for consideration, evaluation and guidance.

(3) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, review and guidance.

13. (1) Designated public bodies and designated private bodies must develop and implement plans and measures for the economic empowerment of women with disabilities, including special measures to facilitate equal access to education and employment, and their meaningful participation in all areas of economic, social and cultural life, to achieve the progressive realisation of their right to substantive gender equality.

A designated public body or a designated private body must submit its plans and measures contemplated in subsection (1) within one year of being designated to the Executive Committee Member for consideration and evaluation.

(2) The Executive Committee Member may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Executive Committee Member a report on its implementation of subsection (1), for consideration, evaluation and guidance.

PART IV—GOVERNANCE

14. (1) The Executive Committee Member may, in order to promote women empowerment and the achievement of substantive gender equality for women, in consultation with designated public bodies and designated private bodies—

(a) develop frameworks in relation to the promotion of women empowerment and gender equality;

(b) require the development and implementation of plans and strategies by designated public bodies.
15. (1) The Executive Committee Member may, on the basis of the information obtained in exercising her or his powers in terms of this Act and with regard to the applicable legislation, in consultation with the Executive Committee Member, provide guidance to the relevant designated public body or designated private body, for them to promote women empowerment and gender equality.

(2) Failure or refusal to comply with the guidance provided by the Executive Committee Member to a designated public body or a designated private body will be addressed in terms of the enforcement procedures as contemplated in section 17.

16. (1) Every designated public body must, within a period of three years from the commencement of this Act, establish a Gender Focal Point and appoint suitable personnel, at senior management level, to assist the designated public body to implement gender mainstreaming and, generally, to assist the designated public body to comply with this Act.

(2) The accounting officer of the designated public body referred to in the Public Finance Management Act, 2012, and the accounting officer of the designated private body must ensure that the designated public body or designated private body, as the case may be, implements gender mainstreaming and women empowerment.

(3) The Executive Committee Member must, by notice in the County and Kenya Gazette, make regulations on the qualifications, skills and duties of the personnel to be appointed in the Gender Focal Point.

PART V—ENFORCEMENT

17. Subject to the Intergovernmental Relations Act, 2012, the Executive Committee Member, acting in the interests of women as a group or class of persons, may use any dispute resolution mechanisms to address non-compliance with this Act or applicable legislation.
directions the Executive Committee Member
may impose;

(b) must be in writing;

(c) may include the power to sub-delegate or
reassign; and

(d) does not divest the Executive Committee
Member of the responsibility concerning the
exercise of the power or the performance of the
duty.

SCHEDULE

(Section 2)

APPLICABLE LEGISLATION

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<tr>
<th>Serial No.</th>
<th>Short Title</th>
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<td>Children’s Act, 2001</td>
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<td>Persons with Disability Act, 2003</td>
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<td>Sexual Offences Act, 2006</td>
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<td>Public Finance Management Act, 2012</td>
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<td>Basic Education Act, 2013</td>
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3. Objects of the Bill

3.1 It is submitted that the proposed legislation does not aim to create new anti-gender discrimination legislation; however, its aim is to introduce measures and targets to strengthen existing legislation on the promotion of women empowerment and gender equality. The proposed legislation carries forward the constitutional vision of equality by requiring the development and implementation of plans and measures to redress gender imbalances and to submit those plans and measures to the Executive Committee Member for consideration, evaluation and guidance.

3.2 Based on section 27 of the Constitution, the Bill seeks to establish a legislative framework—

(a) to provide the Executive Committee Member of Women, Children and People with Disabilities (the “Executive Committee Member”), with the necessary governance authority to monitor, review and oversee gender mainstreaming, the promotion of women empowerment and equal representation and meaningful participation of women in all decision-making positions and structures;

(b) for the protection and advancement of women and girl children, as envisaged by section 27(2) of the Constitution, through—

(i) public education on prohibited practices that discriminate on the grounds of gender;

(ii) supporting and reinforcing the rights and remedies contained in applicable legislation, policies and mechanisms on the empowerment of women and the promotion of gender equality;

(iii) enhancing capacity for the implementation of applicable legislation through development of integrated strategies, frameworks, programmes, plans, activities and budgets which aim to eliminate structural and systemic inequalities and to enable women to gain power and control over decisions and resources that determine the quality of their lives in a sustainable manner;

(iv) advancing, developing, promoting and protecting the rights of women through capacity building and training, lobbying, advocacy, awareness raising, empowerment and monitoring of compliance by all entities;
4.6 Clause 5 (Access to Health Care, including Reproductive Health)

Clause 5 provides that designated public bodies and designated private bodies must develop and implement a model for delivering women’s health, including reproductive health.

4.7 Clause 6 (Public Education on Prohibited Practices, including Gender Based Violence)

Clause 6 provides that designated public bodies and designated private bodies must develop and implement plans and measures to educate the public on practices that unfairly discriminate on the grounds of gender, including gender based violence, in compliance with the applicable legislation and international agreements.

Clause 6(2) provides that the Executive Committee Member may establish mechanisms to undertake research, educational programmes and other measures to strengthen the efforts of designated public bodies and private bodies.

4.8 Clause 7 (Equal Representation and Participation)

Clause 7 provides that despite any other law, designated public bodies and designated private bodies must develop and implement measures in order to achieve the progressive realisation of at least 50 percent representation and meaningful participation of women in decision making structures.

Furthermore, clause 7(2) provides that despite any other law, all political parties must develop and implement measures in order to achieve the progressive realisation of at least 50 percent representation and meaningful participation of women in decision making structures.

4.9 Clause 8 (Gender Mainstreaming)

Clause 8 provides for implementation of gender mainstreaming and the submission of plans to the Executive Committee Member by the designated public bodies and designated private bodies within a year of being designated.

4.10 Clause 9 (Measures to Empower Women and to Eliminate Discrimination)

Clause 9 provides that despite any other law, targets on women and men in all laws and policies on empowerment shall be at least 50% women;

It provides that all designated public bodies and designated private bodies must develop and implement plans and special measures to protect
4.17 **Clause 16 (Enforcement)**

Clause 16 provides that subject to the Intergovernmental Relations Act, 2012, the Executive Committee Member, acting in the interests of women as a group or class of persons, may use any dispute resolution mechanisms to address non-compliance with this Act.

4.18 **Clause 17 (Code of Good Conduct)**

Clause 17 provides that the Executive Committee Member may, by notice in a *Gazette*, publish a code of good conduct on gender mainstreaming and women empowerment.

4.19 **Clause 18 (Framework)**

Clause 18 provides that the Executive Committee Member may develop a framework on gender mainstreaming and women empowerment.

4.20 **Clause 19 (Regulations)**

Clause 19 provides that the Executive Committee Member may develop regulations.

4.21 **Clause 20 (Delegations)**

Clause 20 provides that the Executive Committee Member may delegate any power conferred, or assign any duty imposed upon the Executive Committee Member in terms of this Act, except the powers and duties contemplated in sections 14, 17, 18 and 19.

4.22 **Clause 21 (Short title)**

Clause 21 contains the short title of the Bill.

**Schedule 1:** Applicable legislation.

5. **Financial Implications for County Government**

6.1 The approved organisational structure of the DWCPD provides for monitoring and evaluation of sub-programmes within the Programmes: Women Empowerment and Gender Equality, Children’s Rights and Responsibilities and Rights of People with Disabilities. The strategic objectives of these sub-programmes are to monitor and evaluate progress on women empowerment and gender equality, the realisation of children’s rights into government’s policies and programmes and the progressive realisation of the rights of people with disabilities.