



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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## **THE VICTIM PROTECTION ACT**

CHAPTER 79A

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**CHAPTER 79A**

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## CHAPTER 79A

### VICTIM PROTECTION ACT

*[Date of assent: 14th September, 2014.]*

*[Date of commencement: 3rd October, 2014.]*

**AN ACT of Parliament to give effect to Article 50(9) of the Constitution; to provide for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable victims, and for connected purposes**

[Act No. 17 of 2014, Legal Notice 43 of 2015.]

#### PART I – PRELIMINARY

##### 1. Short title

This Act may be cited as the Victim Protection Act.

##### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

"accused" means a person who is charged with an offence under any written law;

"Agency" means the Witness Protection Agency established by section 3A of the Witness Protection Act (Cap. 79);

"Board" means the Victim Protection Board established under section 19;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to justice;

"child" has the meaning assigned to it under the Children Act (Cap. 141) and includes a child of a victim born after the death of the victim;

"community service" means an instance where the offender performs some community service under the Community Service Orders Act (Cap. 93);

"compensation" means an award granted by a court to a victim who has suffered economic or emotional loss, damage of property, or physical injury or harm as a result of an offence after the victim is found to qualify for the same in accordance with the criteria prescribed under this Act;

"crisis intervention" means the provision of emergency psychosocial, legal and other services to traumatized victims so as to help them return to an adaptive level of functioning and to prevent or mitigate the negative impact of psychological and emotional trauma;

"dependant" has the meaning assigned to it under the Law of Succession Act (Cap. 160);

"financial restitution" means payment of money by the offender to the actual victim of the offence;

"financial community restitution" means payment of money by the offender to community programs;

"health professional" means a nurse registered under section 12(1) of the Nurses and Midwives Act (Cap. 257), a clinical officer registered under section

7 of the Clinical Officers (Training, Registration and Licensing) Act (Cap. 253E) or a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentist Act (Cap. 253) and includes a registered counselling psychologists and recognized physical therapist;

"individual service restitution" means where the offender with the victim's consent, performs a service to the actual victim which may include the repair of damage to the victim's property;

"immediate family" includes the victim's spouse, children, parent, grandparent, stepchild, stepsister, stepbrother, or stepparent and where the victim is a child, the guardian;

"injury" means actual bodily harm, emotional distress, trauma, pregnancy resulting from sexual assault, mental or nervous shock, actual economic loss or loss of property;

"law enforcement officer" means an officer from a law enforcement agency and includes a probation and prison officer;

"law enforcement agency" includes—

- (a) the National Police Service;
- (b) the office of the Director of Public Prosecution; and
- (c) any other department, office or agency of the state or statutory body that is responsible for investigating or taking any action in relation to an offence punishable under any written law;

"offence" means an act or omission that caused harm to a victim and that constitutes an offence under any written law;

"offender" means a person convicted of an offence under any written law;

"parent" means a biological or adoptive parent and includes a guardian;

"place of safety" means any institution, hospital, children's institutions or other suitable place the occupier of which is willing to accept the temporary care of vulnerable victim;

"rehabilitation" includes psychosocial interventions, medical treatment, legal aid and social services designed to assist victims recover from loss, injury or damage suffered as a consequence of the offence;

"restitution" means the act of restoring the victim, to the extent possible, to the status prior to the offence resulting in loss or injury;

"restorative justice" includes—

- (a) the promotion of reconciliation, restitution and responsibility through the involvement of the offender, the victim, their parents, if the victim and offender are children, and their communities; or
- (b) a systematic legal response to victims or immediate community that emphasises healing the injuries resulting from the offence;

"rights of victims" means any rights to which a victim is entitled under the Constitution, this Act or any other written law;

"spouse" means a husband or wife;

"surcharge" means a sum additional to the fine payable by the offender as provided for under this Act;

"support person" means an immediate family member, a social worker, a counsellor or victim of offences officer, or law enforcement officer or a person designated as such in this Act;

"trauma" includes physical injury, psychological or emotional distress;

"trial" includes a proceeding in which a person is sentenced;

"victim" means any natural person who suffers injury, loss or damage as a consequence of an offence;

"victim impact statement" means a statement by the victim, or where incapacitated, the victim's representative, on the psychological, emotional, physical, economic or social impact of the offence committed against the victim and includes any recording, summary, transcript or copy thereof;

"victim officer" means a person who assists a victim through the various stages of a case;

"victim representative" means an individual designated by a victim or appointed by the Court to act in the best interests of the victim;

"victim support services" means all the services offered to the victim of offence to secure restoration of their emotional, mental, physical, legal or economic status from any harm occasioned by the offence committed;

"victimization" means any act or omission that renders a person or community a victim within the meaning of this Act;

"vulnerable victim" means a victim who, due to age, gender, disability or other special characteristics as may be prescribed by regulations under this Act, may require the provision of special justice and support; and

"Welfare services" means all the victim support services aimed at assisting the victim;

(2) In this Act, a person is a victim regardless of—

- (a) whether the crime perpetrated against the person has been reported to the police;
- (b) whether the perpetrator of the crime has been identified, apprehended, prosecuted or convicted; and
- (c) the familial relationships between the perpetrator of the crime and the victim.

## PART II – GENERAL PRINCIPLES

### 3. Objects and purposes

The objects and purposes of this Act are to—

- (a) recognize and give effect to the rights of victims of crime;
- (b) protect the dignity of victims through—
  - (i) provision of better information, support services, reparations and compensation from the offender, in accordance with this Act;
  - (ii) establishment of programs to assist vulnerable victims;
  - (iii) supporting reconciliation in appropriate cases by means of a restorative justice response;
  - (iv) establishment of programmes to prevent victimization at all levels of government;

- (v) preventing re-victimization in the justice process; and
- (c) promote co-operation between all government departments and other organizations and agencies involved in working with victims of crime.

#### **4. General Principles**

(1) A court, administrative body or a person performing any function under this Act, shall respect and uphold the values and principles in the Constitution, and in particular, be guided by the provisions of Article 10, 27(4), 47, 48 and 49 of the Constitution.

(2) Subject to subsection (1), a court, administrative authority or person performing functions under this Act shall ensure that—

- (a) the court, administrative body or person does not discriminate against any victim on the basis of race, colour, gender, age, language, creed, religion, nationality, political or other opinion, cultural belief or practices, property, birth or family status, ethnic or social origin, disability, or any other grounds;
- (b) every victim is, as far as possible, given an opportunity to be heard and to respond before any decision affecting him or her is taken;
- (c) the victim's dignity is preserved at all stages of a case involving the victim, from the pre-trial to post-trial phase;
- (d) every victim is addressed in a manner appropriate to his or her age, intellectual development, and is spoken to and allowed to speak in his or her language of choice, or through an interpreter if necessary;
- (e) every victim is treated in a manner which takes into account his or her cultural values and beliefs;
- (f) every victim is protected from secondary victimization in all informal, administrative and judicial proceedings relating to the victim;
- (g) every victim is accorded legal and social services of his or her own choice and if the victim is a vulnerable victim within the meaning of this Act, then he or she shall be entitled to legal and social services at the State's expense;
- (h) vulnerable victim is entitled to contact his or her family or any primary care giver;
- (i) the victim's dignity is upheld at all times;
- (j) the victim's cultural values and beliefs are respected;
- (k) the victim is not discriminated; and
- (l) the victim is protected from victimization of any sort.

(3) Where in the opinion of the court or a police officer there is sufficient reason to believe that a victim is likely to suffer intimidation or retaliation from the accused, offender or any agent of the accused or offender, the Board shall immediately refer the victim to the Witness Protection Agency established under the Witness Protection Act (Cap. 79).

#### **5. Application of Act**

(1) This Act applies to any person in Kenya, irrespective of nationality, country of origin or immigration status, who is—

- (a) a victim of crime committed within Kenya; or
- (b) outside Kenya, where the victim is a citizen of Kenya.



(2) The Sexual Offences Act (Cap. 63A) and the Counter-Trafficking In Persons Act (Cap. 61), apply to any person contemplated in subsection (1), except in so far as this Act provides for different procedures in respect of such person.

(3) No victim shall be denied the rights or welfare of a victim under this Act by reason only that similar protection measures are available under any other written law.

### PART III – RIGHTS, RESPONSIBILITIES AND PROTECTION OF VICTIMS

#### **6. Preliminary assessment of victims**

(1) Any person charged with the duty of assisting victims shall undertake a preliminary assessment of every victim and file a report on the victim, within twenty-four hours of report of the offence.

(2) A report under subsection (1) shall provide the details of the case, including the alleged offender, any other action taken by the victim prior to reporting the case, and details of the victim as set out in section 7.

(3) A person making a report under subsection (1) shall classify the victims according to the case into general victims and vulnerable victims.

(4) Where there are several victims as a consequence of an act of terrorism, internal civil unrest, war or any other activity that is likely to cause mass victimization, the officers shall immediately open a special register that shall contain the details of victims set out in section 7.

#### **7. Victims Details**

Details of a victim shall in appropriate cases include—

- (a) name, age or, if unknown, the approximate age of the victim;
- (b) the complexion of the victim;
- (c) the ethnicity or race of the victim;
- (d) height or approximate height of the victim;
- (e) any distinguishing feature of the victim;
- (f) in cases of deceased victims, any distinguishing item on the victim such as clothing, jewellery or other distinguishing item;
- (g) location at which victim was found;
- (h) any person accompanying the victim;
- (i) any other document of identification of the victim.

#### **8. Right to privacy and confidentiality**

(1) A victim has a right to privacy—

- (a) from the media, whether print, electronic or other types;
- (b) from unreasonable intrusion from health professionals;
- (c) of confidentiality of their communication with victim support service providers; or
- (d) from any other person.

(2) Where a victim requests for confidentiality, the head of the law enforcement agency investigating the offence shall ensure that the residential address, telephone number, cell phone number, email, fax and place of employment of the victim and members of the victim's family are not disclosed by the agency except to the extent required—

- (a) by law, or for the purpose of law enforcement or prosecution or other legal proceedings; or
- (b) to ensure the safety and security of any person.

(3) The right to privacy protected under subsection (1) shall be deemed to have been waived where the victim publicizes or consents to publication of matters relating to their case.

## **9. Rights during the trial process**

(1) A victim has a right to—

- (a) be present at their trial either in person or through a representative of their choice;
- (b) have the trial begin and conclude without unreasonable delay;
- (c) give their views in any plea bargaining;
- (d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law;
- (e) be informed in advance of the evidence the prosecution and defence intends to rely on, and to have reasonable access to that evidence;
- (f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and
- (g) be informed of the charge which the offender is facing in sufficient details.

(2) Where the personal interests of a victim have been affected, the Court shall

- 
- (a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and
  - (b) ensure that the victim's views and concerns are presented in a manner which is not—
    - (i) prejudicial to the rights of the accused; or
    - (ii) inconsistent with a fair and impartial trial.

(3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.

## **10. Right to protection**

A victim has a right to—

- (a) be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;
- (b) have their safety and that of their family considered in determining the conditions of bail and release of the offender; and
- (c) have their property protected.

## **11. Security of the victim**

(1) Any person dealing with a victim shall ensure that the victim shall immediately be secured from further harm before any other action is taken in relation to the victim.

(2) Without prejudice to the generality of the foregoing, the action contemplated in subsection (1) shall include—

- (a) placing the victim in a place of safety, in case of a vulnerable victim;
- (b) securing food and shelter until the safety of the victim is guaranteed;
- (c) securing—
  - (i) urgent medical treatment for the victim;
  - (ii) immediate psychosocial support for the victim;
  - (iii) police protection for the victim where appropriate;
- (d) placing the victim with a relative where appropriate;
- (e) rescuing and placing in a place of safety, any other persons related to the victim who may still be in the custody or control of the offender.

## **12. Victim impact statements**

(1) A victim of a criminal offence may make a victim impact statement to the court sentencing the person convicted of the offence, in accordance with section 329C of the Criminal Procedure Code (Cap. 75) and that statement may be considered by the court in determining the sentence of the offender.

(2) If a victim expresses a wish to make a victim impact statement, a prosecuting agency shall refer the victim to an appropriate victims' services agency for assistance in preparing the victim impact statement.

(3) A victim has a right to present a victim impact statement in all cases where the court is to consider victim protection and welfare.

(4) The statement referred to under subsection (1) shall include information on the impact of the offence on the victim's life and any concerns the victim may have about their safety.

## **PART IV – VICTIM SERVICES**

### **13. Victim as a complainant**

Where a victim is a complainant in a criminal case, the victim shall, either in person or through an advocate be entitled to—

- (a) subject to the provisions of the Evidence Act (Cap. 80), adduce evidence that has been left out;
- (b) give oral evidence or written submission.

### **14. Purpose of support and welfare services**

(1) In addition to the enforcement of rights provided under section 8, the Board shall provide support services as may be appropriate.

(2) The services to be accorded to the victims under this Act shall be accorded so as to assist victims—

- (a) deal with physical injury and emotional trauma;
- (b) access and participate in the criminal justice process;
- (c) participate in restorative justice to obtain reparations; or
- (d) cope with problems associated with victimization.

### **15. Right to choose whether or not to participate in restorative justice**

- (1) A victim has a right to restorative justice.

(2) Where the victim elects to participate in any process towards restorative justice, the process shall proceed on condition that—

- (a) the participation of the offender shall not prejudice any of the offender's rights under any law or be deemed as evidence of admission or proof of guilt in respect of the offence complained of;
- (b) any of the parties may withdraw their participation to the process at any time;
- (c) where a process for restorative justice fails, the criminal trial of the offender shall proceed to final determination, but without prejudice to the right of the victim to seek appropriate relief in civil proceedings; and
- (d) The process towards restorative justice does not violate the provisions of Article 159(3) of the Constitution.

(3) Any agreement for restoration or other redress agreed between the victim and the offender shall be recorded and enforced as an order of the Court and may be enforced as a decree of the Court.

(4) Any restorative justice process shall be for a period of six months and may only be extended with the leave of the court.

#### **16. Right to prompt release of victim's property held as exhibit**

Where a law enforcement agency is in possession of any property of a victim, the head of the law enforcement agency shall, where the agency is satisfied that the property is no longer needed as evidence for an investigation or prosecution, ensure that the property is returned to the victim promptly.

#### **17. Rights of vulnerable victims**

(1) A court or competent authority may, on its own motion or at the request of the prosecution or the victim officer declare a victim a vulnerable victim, where in the opinion of the court or competent authority, the victim is likely to be vulnerable on account of—

- (a) physical, intellectual, or psychological impairment;
- (b) age;
- (c) dependency on the accused;
- (d) trauma;
- (e) disability;
- (f) cultural differences;
- (g) religious differences;
- (h) gender;
- (i) language;
- (j) race;
- (k) the nature of the offence committed against them; or
- (l) health status.

(2) Where the court or competent authority has doubts as to whether a victim should be declared a vulnerable victim in terms of this Act, the court may summon an expert to appear before it and advise it on the vulnerability of the victim.

(3) Upon the declaration that a victim is a vulnerable victim for the purposes of this Act, the court or competent authority shall direct that a representative be appointed in respect of such a victim.

(4) A representative so appointed under this section shall be summoned to appear before the court or competent authority on a specified date and time to act as a representative and shall upon failure to appear as directed, appear before the court or competent authority to advance reasons for such failure upon which the court or competent authority may act as it deems fit.

(5) A victim who is a person considered to be vulnerable as defined under this Act, shall be accorded all the rights conferred to them in the Constitution and shall—

- (a) receive special consideration from the criminal justice agencies and victim support service providers in matters related to victim protection and welfare services;
- (b) be provided by the Director with programs designed to ensure their enjoyment of the benefits provided for victims under this Act; and
- (c) in the case of a child, ensure that the best interest of the child is of paramount consideration and all the rights accorded in the Children Act (Cap. 141) are observed.

(6) Despite the above provisions, where a victim who is a person considered as a vulnerable victim is not able to act under this Act in person, the victim shall—

- (a) appoint a representative to act on their behalf;
- (b) request the victim officer to act on their behalf; or
- (c) in the case of a child, have the parent, guardian or legal representative acting on their behalf.

#### **18. Rights of a child victim**

(1) Where it appears to any police officer or the Director of Public Prosecutions or any public officer presiding in a case where there is a vulnerable child victim, and it appears that it would not be prudent to place the victim with the parents, guardians, or care-givers, the child victim shall be committed to a place of safety until the court makes a decision in relation to the matter.

(2) A child victim who is held in any institution shall be accorded treatment in accordance with the Children Act (Cap. 141).

#### **19. Right to information**

(1) A victim has the right to information under Article 35 of the Constitution, this Act or any other written law.

(2) The information referred to in subsection (1) shall be such information as is necessary for the realization by the victim of their rights under this Act.

(3) The right to obtain information under this Act shall not unreasonably delay or prejudice the investigation or prosecution or affect the safety or security of any person or in any way, interfere with the course of justice.

(4) The Board shall within six months of the commencement of this Act, in consultation with the Director of Public Prosecution, develop a victims' rights charter which shall include—

- (a) the structure and operation of the justice system;
- (b) the rights of victims in the justice system;
- (c) the rights of the accused in the justice system;

- (d) the role of lawyers and other officers of the court in the case;
- (e) victim services;
- (f) the status of the police investigations;
- (g) the specific offences the accused is charged with as relates to the victim and the reasons therefor;
- (h) the name or names of the accused;
- (i) the dates and locations for hearing of the case;
- (j) any interim or final decisions as relates to the case including decisions on bail or any final judgment;
- (k) where the accused is in custody, information as to where he or she is detained;
- (l) where the accused is due to be released from custody, the due dates of release and any conditions attached to the release pending hearing;
- (m) the means for the victim to report any threat by the accused before, during or after the finalization of the case;
- (n) the Board on the Power of Mercy and the means to contact the Committee for purposes of giving the perspective of the victim in accordance with Article 133 (4) of the Constitution; and
- (o) where an offender is convicted to serve a non-custodial sentence, including community service orders under the Community Service Orders Act (Cap. 93), or probation under the Probation of Offenders Act (Cap. 64), the area where the offender is likely to serve the term and whether the offender will be in the vicinity of the victim.

**20. Right to submit information**

- (1) A victim has a right to submit any information for consideration to the—
  - (a) police or prosecution on a decision whether or not to lay a charge, or to appeal or withdrawal;
  - (b) court during plea bargaining, bail hearing and sentencing;
  - (c) Advisory Committee on the Power of Mercy established under the Power of Mercy Act (Cap. 94), on the release or pardon of a convict.
- (2) Where a victim gives any information to a law enforcement officer, the officer shall inform the victim that—
  - (a) the information shall be ascertained for submission to the Court;
  - (b) the victim shall ensure that any information that the victim gives is true; and
  - (c) the information may be recorded and signed by the victim.
- (3) The collection of any views from a victim under this section shall not prejudice or delay any proceedings relating to the offence complained of.

**21. Information to be given in appropriate circumstances**

The Cabinet Secretary for the time being responsible for matters relating to prisons and correctional services shall give the following information to the victim on request if, in the opinion of the Cabinet Secretary, the interest of the victim outweigh the privacy interests of the accused or offender in the circumstances—

- (a) where the offender is serving a custodial sentence, the name and address of the institution where the sentence is being served;

- (b) the due date of release of the offender from prison or other correctional institution;
- (c) any conditions attached to the release of the offender;
- (d) if the offender is to be released from custody under orders including supervisory orders, and whether or not the terms of supervision are to change, the nature of the change and the date the change begins.

## **22. Victim services**

(1) The Cabinet Secretary for the time being responsible for matters relating to justice shall establish victim services in all counties and ensure equal access to the services, and without prejudice to the generality of the foregoing, ensure—

- (a) that all cases shall be investigated and prosecuted timely;
- (b) equal access to courtrooms, prosecutors' offices and any other office that may be necessary for a victim;
- (c) availability of culturally sensitive services for persons and members of ethno-cultural and religious minorities;
- (d) the provision of facilities for persons with disabilities;
- (e) every court room shall be fitted with special facilities for victims awaiting courtroom appearance and the same shall be separate from holding facilities for accused persons;
- (f) the provision of adequate and effective medical services to victims.

(2) Where there is sufficient reason to believe that a victim may suffer intimidation or retaliation from the accused, offender or any agent of the accused or offender, the Cabinet Secretary for the time being responsible for matters relating to justice shall immediately place the victim under a witness protection program in accordance with the Witness Protection Act (Cap. 79).

(3) Where the property of the victim obtained by the offender in the cause of the commission of an offence has been retained by the police, the same shall be returned promptly to the victim, unless it can be proved that the said property is needed for investigations or prosecution purposes.

(4) Where property is retained under subsection (3) for use in prosecution purposes, the prosecution shall undertake to finalize the case expeditiously to avoid any unnecessary loss and inconvenience to the victim.

## **23. Right to compensation**

(1) A victim has a right to restitution or compensation from the offender and the enforcement thereof in accordance with this Act.

(2) Subject to any limitations and conditions set out in this Act, the victim has a right to compensation by the offender for—

- (a) economic loss occasioned by the offence;
- (b) loss of or damage to property;
- (c) loss of user over the property;
- (d) personal injury;
- (e) costs of any medical or psychological treatment; and
- (f) costs of necessary transportation and accommodation suffered or incurred as a result of an offence.

(3) A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in this Act.

(4) A compensation order made against a convicted offender may be enforced as a judgment in civil proceedings.

#### **24. Award of compensation by Court**

The court may award compensation under this Act and such compensation may include financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of which shall be charged from the Fund.

#### **25. Compensation or restitution orders not part of a sentence**

A compensation or restitution order made by a court against a convicted offender—

- (a) is in addition to any other sentence or order the court may make against a person;
- (b) is not, for any purpose, to be taken to be part of a sentence passed against the person and;
- (c) is not a bar to civil proceedings.

#### **26. Victim restitution**

(1) Where a person is convicted of an offence under any written law, the court may, in addition to any other penalty prescribed under that law, order the person to make restitution or compensate the victim for—

- (a) the cost of any damage to the property of the victim;
- (b) the costs of any medical or psychological treatment incurred the victim;
- (c) the costs of necessary transportation, accommodation and other living expenses relating to the court proceedings leading to the conviction; or
- (d) any other relief that the court may consider necessary.

(2) Where the Court orders payment of both a fine and compensation, the enforcement of the compensation order shall take precedence.

(3) In every case, the enforcement of an order for compensation, restitution or restoration shall be governed by the Civil Procedure Rules.

### **PART V – VICTIM PROTECTION TRUST FUND**

#### **27. Establishment of the Fund**

There is established a Fund to be known as the Victim Protection Trust Fund.

#### **28. Sources of Funds**

(1) The Fund shall consist of—

- (a) monies appropriated by the National Assembly;
- (b) monies received by the Fund as grants, donations or gifts from non-governmental or non-public sources;
- (c) the victim surcharge levy;
- (d) income generated by investments made by the Board of Trustees;
- (e) interest accruing from the fund.



- (2) The Board of Trustees may make payments out of the Fund for—
- (a) the expenses arising out of assistance to victims of crime;
  - (b) balances that may accrue to the Fund;
  - (c) expenses arising out of administering the fund;
  - (d) such other purposes as the Board may recommend.

### **29. Victim surcharge levy**

Without prejudice to section 26, if a fine is imposed on a person, under any law in Kenya, the person shall pay to the government, at the time and place where the fine is payable, a victim surcharge levy calculated in accordance with a formula prescribed by the Cabinet Secretary for the time being responsible for justice.

### **30. Board of Trustees**

(1) The Fund shall be administered by a Board of Trustees which shall consist of—

- (a) the Secretary of the Board;
- (b) two persons appointed by the Cabinet Secretary of whom—
  - (i) one shall be a person with experience in financial management; and
  - (ii) the other shall be a person conversant with issues relating to victim protection.

(2) Appointment of members under subsection (1)(b) shall be by notice in the *Gazette*, and shall serve for a term of three years which may be renewed for a further and final term of three years.

(3) Not more than two thirds of the Board members shall be of the same gender.

(4) The Board of Trustees shall conduct its affairs in accordance with regulations prescribed by the Cabinet Secretary and subject to the law relating to trustees.

## **PART VI – VICTIM PROTECTION BOARD**

### **31. Establishment of the Board**

(1) There is established a board to be known as the Victim Protection Board as a body unincorporated.

(2) The Board shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary from among the members;
- (b) the Director of the Witness Protection Agency who shall be the Secretary;
- (c) the Principal Secretary of the Ministry for the time being responsible for matters relating to justice;
- (d) the Principal Secretary of the Ministry for the time being responsible for correctional services;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to children affairs;
- (f) the Director of Public Prosecutions;
- (g) the Inspector-General of Police or his or her representative;

- (h) one person nominated by the National Gender and Equality Commission; and
- (i) two representatives from civil society dealing with issues relating to child and women victims' protection.

(3) The members under subsection (2)(h) and (i), shall be appointed by the Cabinet Secretary, upon nomination by the respective nominating bodies, or recommendation by the organizations working in the relevant field in the case of subsection (2)(i), and shall hold office for a term of three years, which may be renewed for a further and final term of three years.

(4) Not more than two-thirds of the members of the Board shall be of the same gender.

(5) The Secretariat of the Board shall reside at the Ministry responsible for matters relating justice.

(6) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(7) Except as provided in the Schedule, the Board may regulate its own procedure.

[L.N. 43/2015, Sch.]

## **32. Functions of the Board**

(1) The functions of the Board shall be to advise the Cabinet Secretary on inter-agency activities aimed at protecting victims of crime and the implementation of preventive, protective and rehabilitative programmes for victims of crime.

(2) Without prejudice to the generality of subsection (1), the Board shall advise the Cabinet Secretary on—

- (a) formulation of a comprehensive and integrated program to protect victims of crime;
- (b) coordination of activities relating to protection of victims of crime;
- (c) dissemination of information on the law and the issues relating to victim protection through concerned agencies and non-governmental organizations;
- (d) development of a charter for victims of crime;
- (e) formulating and coordinating training programs for law enforcement agents on victim protection;
- (f) monitoring and evaluation of the progress of Kenya with respect to protection of victims of crime;
- (g) consultation and advocacy with Government departments and agencies and non-governmental organizations, to advance the purposes of this Act;
- (h) compilation and documentation of desegregated data annually, by age, County and gender, of victims of crime for purposes of policy formulation and program direction;
- (i) development of mechanisms to ensure the timely, coordinated, and effective response to cases of victim protection;
- (j) undertake measures necessary to rehabilitate victims of crime and in particular—

- (i) implementation of rehabilitative programmes including education and protective programmes for victims of crime;
- (ii) the provision of shelter and psychosocial support to vulnerable victims;
- (k) measures to reduce re-victimization in the justice system.

### **33. Reporting requirements**

The Board shall, in every year, submit to the Cabinet Secretary and to the National Assembly, an annual report of the policies, programmes and activities relating to the implementation of this Act.

## **PART VII – PROVISIONS ON DELEGATED POWERS**

### **34. Regulations**

(1) The Cabinet Secretary may make regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act.

(2) The regulations contemplated in subsection (1) may—

- (a) provide that the implementation of this Act be monitored annually or at such other interval as may be prescribed, with the object of assessing the implications, effectiveness and proper application of and compliance with this Act;
- (b) be made after consultation with the Cabinet Secretary for the time being responsible for matters relating to women and children;
- (c) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfilment of the objectives of this Act; and
- (d) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

## **PART VIII – MISCELLANEOUS PROVISIONS**

### **35. Employers not to penalize victims**

(1) An employer shall not discharge, suspend, intimidate, coerce, impose financial or other penalty on or otherwise discriminate against an employee because that person is absent from work—

- (a) to appear in court as a witness in a proceeding respecting an offence;
- (b) to attend at a meeting with law enforcement officers at the request of those officers to assist in an investigation or preparation for the prosecution of an offence.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of not exceeding six months, or to both.

### **36. General Penalties**

A person who contravenes any provision of this Act for which no penalty is specified shall be liable, upon conviction to a fine not exceeding one million or to imprisonment for a term not exceeding ten years.

## SCHEDULE

[s. 31(6)]

PROVISIONS AS TO THE CONDUCT OF  
BUSINESS AND AFFAIRS OF THE BOARD

## 1. Tenure of office

Any member of the Board, other than an *ex-officio* member shall, subject to the provisions of this Schedule, hold office for a single term of three years, on such terms and conditions as may be specified in the instrument of appointment, and shall not be eligible for re-appointment.

## 2. Meetings

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business of the Board shall be seven members including the chairperson or the person presiding.
- (5) The chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.
- (7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

## 3. Disclosure of interest by Board members

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

**4. Execution of instruments**

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

**5. Minutes**

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

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