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**OFFICE OF THE ATTORNEY GENERAL AND
DEPARTMENT OF JUSTICE**

**VICTIM PROTECTION BOARD
ANNUAL REPORT 2016-2017**

FINANCIAL YEAR



Retreat on the Development of Victims Rights Charter

30th SEPTEMBER 2017

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List of Acronyms and Abbreviations

OAG § DOJ:	Office of the Attorney General and Department of Justice
NACCSC:	National Anti- Corruption Campaign Steering Committee
VRC:	Victim Rights Charter
VP:	Victim Protection
VPB:	Victim Protection Board
VPA:	Victim Protection Act

Acknowledgment

The conceptualization and development of this annual report has been made possible through a consultative process involving key stakeholders drawn from the various State and Non-State actors in the criminal justice system who are members of the Victim Protection Board and Technical Committee of the Board.

The activities were undertaken under the leadership of the Attorney General and Solicitor General. The Office of the Attorney General and Department of Justice (OAG & DOJ) together with the Victim Protection Board would like to express their sincere appreciation to the Board Members and Technical Committee Members whose precious efforts led to the fruition of this Annual Report.

Further, the OAG & DOJ and the VPB remains grateful to all organizations who have contributed to the activities of the Board in one way or the other. We are conscious too of the need to incorporate best practice standards in all that we do and we are sincerely grateful to all stakeholders, from the State and Non-State Actors, who in profound and diverse ways made contributions to the development of the Victim Rights Charter, The Victim Protection Act Rules and Regulations and the Rules and Regulations governing the Board of Trustees and this Annual Report.

Foreword by the Chairman, Victim Protection Board

The Victim Protection Act establishes the Victim Protection Board whose mandate is to among others advise the Cabinet Secretary responsible for matters relating to Justice (Attorney General) on inter Agency activities aimed at protecting victims of crime. I am delighted to acknowledge strides the Victim Protection Board (VPB) has made during the period 2016-2017 towards the implementation of the Victim Protection Act. This being the first reporting period since the inauguration of the Board, I am delighted to report the achievements of the Board and pledge to support its activities in line with expectations of Kenyans.

During the year 2016-2017 the Board played a critical role in ensuring that policy issues pertaining to the implementation of the Victim Protection Act and operationalization of victim protection services were adequately addressed. The Board took cognizance of the sad fact that for a long time the criminal justice process had focused more on addressing the rights of an accused person, while victims continued to suffer physical, emotional, and economic harm caused by both the crime and the slowly grinding processes of the justice system.

In the past year, the Board approved the formation of a technical committee which was later converted to an interim secretariat. The Secretariat has been very instrumental in supporting the activities of the Board. Members of the Board with the support of officers from the SLO&DOJ has been critical in supporting the Board in the implementation of key activities for the Financial Year 2016-17.

During the period under review, the Board developed drafts for the Victim Rights Charter, Victim Trust Fund Rules and Victim Protection Regulations among other activities as highlighted in this report. I am also aware that the board equally faced numerous challenges during the 2016-2017 period. Key among them was funding, human resource, office space and gazettelement of trustees of the Victim Trust Fund. The Board will continue to engage the National Treasury as it has done before in seeking increased budgetary allocation. The Board is committed to ensuring that activities of the Board are not grossly affected and the staff capacity and working conditions are conducive to meet the high expectations that victims and the general public have for the Board.

On behalf of the Board, I want to commend the team for the dedication and the achievement the Board has realised during the year. The good performance during the year is an indication of the commitment to meet and exceed targets set for the year. The Board will continue to support the team so as to ensure the full realization of victim rights in Kenya.



Njee Muturi, CBS

SOLICITOR GENERAL AND

CHAIRMAN, VICTIM PROTECTION BOARD

Message from the Secretary, Victim Protection Board

I am glad to present the report of the performance of the Victim Protection Board during the Financial Year 2016-2017.

During the 2016 – 2017 Financial Year, the Board drafted the Victim Rights Charter in accordance to section 19(4) of the Victim Protection Act. The Charter provides guidelines and specific rights to victims, limitations on how victims qualify for such rights and how it can be accessed. It provides for specific minimum standards of service for victims of crime.

The Victim Rights Charter was subjected to stakeholder validation workshop. Their views and experiences were incorporated into the Charter. The Charter is awaiting the launch by the Attorney General during the current financial year.

During the period under review, the Board prepared a draft Victim Protection Trust Fund Rules. Section 27 of the Act establishes the Victim Protection Trust Fund which shall be administered by a Board of Trustees. The object and purpose of the Trust fund is to facilitate assistance and awards to victims of crime in line with the Act. Section 30(1) provides that the Board of Trustees shall conduct its affairs in accordance with regulations prescribed by the Cabinet Secretary and law relating to trustees. The Rules will facilitate effective and efficient implementation of the Victim Protection Act. The appointment of the Victim Protection Board of Trustees is still pending and we look forward to having the trustees appointed during this financial year.

Section 34 of the Victim Protection Act provides for the promulgation of the Victim Protection Regulations. I am pleased to report that during the year, the Board prepared a draft Victim Protection Regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with the Act. The regulations once completed are to provide for the implementation of the Act and monitoring, with the object of assessing the implications, effectiveness, proper application and compliance with the Act.

The Regulations also set out procedures and mechanisms to affect the rights of victims including participation in the court process and accessing information, support and

protection as contemplated in the Victim Protection Act, 2014 and international best practices in victim rights.

The draft Victim Protection Trust Fund Rules and Regulations will be finalized in collaboration with officials from the Kenya Law Reform Commission and the legislative drafting department of the Office of the Attorney General. Thereafter, the draft Rules and Regulations will be taken through a validation exercise by stakeholders before final gazettelement. Once completed, they will provide a road map for the operationalisation of the Victim Protection Act.

The Victim Protection Board strengthened its collaboration and linkages with stakeholders. The Board was able to secure donor support from REDRESS who provided financial and technical expertise. The International Justice Mission also provided technical experts during preparation of the Charter as part of the collaboration that exists between Victim Protection Board and the Institutions. The collaboration will continue during this financial year.

The Victim Protection Board continued to face challenges in attaining its legal mandate despite operational success. Some of the notable challenges faced during the period under review were minimal budget allocation to secure personnel to operationalize the Act, procurement of office space and establishment of the Victim Protection Trust Fund.

In the coming financial year, the Board will continue to finalize the outstanding activities that had already began during the year under review. May I take this opportunity to thank the Chairman of the Board, the Board and the interim secretariat for their support, commitment and zeal during the 2016-2017 period. Their concerted efforts ensured the realisation of the set targets by the Board during the period under reviews.

Thank You.



Alice Ondieki (Mrs.)

SECRETARY, VICTIM PROTECTION BOARD

CHAPTER 1

1.0 INTRODUCTION

1.1 Background

For a long time, victims of crime have been marginalised and situated on the periphery of the criminal justice process with little focus on their rights. The Criminal justice process focused more on addressing the rights of an accused person while victims continued to suffer physical, emotional, and economic harm caused both by the crime and the grinding processes of the criminal justice system.

The Kenyan society has come to the realisation that victims of crime are vital to the operation of the criminal justice system. Consequently, the rights of the victims have become a matter of priority concern. Article 50(9) of the Constitution stipulates that Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences.

The Victim Protection Act was enacted on 4th September 2014, to give effect to Article 50 (9) of the Constitution. The Act provides for protection of victims of crime and for reparation, compensation and special protection for vulnerable victims and the development of a mechanism for dissemination of information, provision of victim support services. The implementation of the Victim Protection Act is bestowed upon the Victim Protection Board established by the Act.

1.2 Overview of the VPB

The Victim Protection Board was gazetted vide gazette notice number 2487 of 10th April, 2015. The Victim Protection Board was inaugurated during its 1st Board Meeting held on 8th October, 2015 where the Board resolved to urgently implement the Act and functions as provided for in the Act. The Solicitor General chairs the Board while the Secretary to the Board is the Director of the Witness Protection Agency. Further, the Secretary to the Board chairs the technical committee which is comprised of members drawn from the Victim Protection Board and technical officers from the various stakeholders represented on the Board. The Secretariat is mandated to assist the Board carry out its immediate functions.

1.3 Mandate

The Key mandate of the Board is to advise the Cabinet Secretary responsible for matters relating to Justice (Attorney General) on inter Agency activities aimed at protecting victims of crime. The board is also charged with the implementation of preventive, protective and rehabilitative programmes of victims of crime.

1.4 Functions

Section 32 of the Victim Protection Act set out the functions of the Victim Protection Board which includes advising 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. The Board is also expected to 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 issues relating to victim concerned agencies and 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 Kenya with respect to protection of victims 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 including education 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.

In accordance with Section 33 of the Act 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 the Act.

This report is therefore done in fulfillment of Section 33 of the Victim Protection Act. The report contains achievements, challenges and way forward.

CHAPTER 2

2.0 REPORT OF THE ACTIVITIES OF VICTIM PROTECTION BOARD

2.1 Set up the Secretariat of the Board

Upon inauguration the Board resolved to urgently implement the Act and activities of the Board as provided for in the Act. The Board resolved to set up an interim technical committee to advise on the implementation of the Act. The Secretary to the Board, convened a technical committee meeting with members drawn from the Victim Protection Board and technical officers from the various stakeholders as represented on the Board. The technical committee was tasked to assist the Board carry out its immediate functions and set up structures of an interim Secretariat. Among the recommendations of the technical committee was the conversion of the committee to an interim secretariat. The Board approved the proposed composition of the secretariat during its inaugural meeting on 8th October, 2015. Members of the Board also offered to serve on the interim secretariat, with the support of officers from the SLO&DOJ. During this reporting period the activities of the Board, were undertaken by the Board with support of interim secretariat.

2.2 Proposed structure of the secretariat

The Board approved the proposed composition of the secretariat during its inaugural meeting on 8th October, 2015. The proposed interim secretariat was to comprise of the following:

- a) Lawyers with experience in review of case files and prosecution;
- b) Children officers, Probation officers who have a technical background on psycho-social issues & trauma issues which mostly touch on the victims of crime including children and vulnerable witnesses;
- c) Finance officer's accountant's auditor's procurement officers research and planning officers to facilitate the finance aspects of the secretariat as well support the Victim Trust Fund;
- d) Secretary to assist the Board on administrative issues including matters touching on preparation of notice of Board meetings, facilitating the meetings and ensuring that all administrative issues are taken care of;

- e) Clerical officer-To ensure that all the office correspondence is delivered, filing of the Board's files, ensuring that all sensitive & confidential information is properly filed and secure and any other duty in relation to filing and handling of the Board's documents;
- f) Such professional, technical and administrative officers and support staff as the Board may deem fit.

The above structure could however, not be implemented due to inadequate funding.

The nature of victim services envisaged are to involve the Department of Justice, Police, Office of the Director of Public Prosecutions, Law Courts, Witness Protection Agency, Children's Department, Probation Services and other related government Departments and Agencies, who are the victim service providers.

It is proposed that the secretariat will work with these Victim's Service providers to ensure realization of rights, provided for victims under the Act, since the government departments represented on the Victim Protection Board are already providing victim protection services. The secretariat will mainly coordinate and liaise with the relevant government departments providing victim services to ensure compliance with the Act. The secretariat will require a lean team of fulltime officers responsible for the day to day administration of the Secretariat and in particular facilitate the activities of Board and implement the decisions of the Board.

The technical committee considered three options on staffing the secretariat. The various stakeholders represented on the Board (especially public sector representatives) can deploy technical staff to the secretariat in the interim to assist the Board carry out its immediate functions and to set up the structures of the secretariat. In the medium term, the Board will consider recruiting officers on a permanent basis subject to obtaining approvals from Treasury and advice from Salaries & Remuneration Commission. The Board can also request the Public Service Commission to deploy officers of the various competencies.

2.3 Staffing the Secretariat of the Board

The Board conducted a human resource needs assessment to determine the operational staff requirement for the secretariat. The Board came up with the following interim staff requirements with the following staff competencies;

- a) Lawyers with experience in review of case files and prosecution
- b) Children officers, Probation officers who have a technical background on psycho-social issues & trauma issues which mostly touch on the victims of crime including children and vulnerable witnesses.
- c) Finance officer's accountant's auditor's procurement officers, research and planning officers to facilitate the finance aspects of the secretariat as well support the Victim Trust Fund.
- d) Secretary to assist the Board on administrative issues including matters touching on preparation of notice of Board meetings, facilitating the meetings and ensuring that all administrative issues are taken care of and decisions of the Board are implemented.
- e) Clerical officer-To ensure that all the office correspondence is delivered, filing of the Board's files, ensuring that all sensitive & confidential information is properly filed and secure and any other duty in relation to filing and handling of the Board's documents.
- f) Such professional, technical and administrative officers and support staff as the Board may deem fit.

Upon consulting Salaries and Remuneration Commission on the remuneration of the above proposed interim staff, the Board requested the parent Ministry to deploy the required staff. The Board is awaiting action from the parent Ministry.

Regarding the determination of the procedure of appointment, the Salaries and Remuneration Commission gave authority to the Office of the Attorney General and Department of Justice to second staff to the Board.

The Board was also to liaise with Directorate of Public Service Management (DPSM) to provide technical officers to work with the interim secretariat and to determine the establishment of the Secretariat-This has however not been realized.

2.4 Development of TORS for the Interim Secretariat

To enable the Board, commence its operations, it developed the following terms of reference to guide the activities of the interim secretariat during the 2016-17 financial year:

- a) To facilitate the functions of the Board as per the provisions of the Act.
- b) To assist the Board in the conduct of meetings including drawing board meeting notices, writing minutes, and facilitation of Board Members among others.
- c) The secretariat as the Victim Services Agency will work under section 17 (5) to design and implement programmes to ensure realization of the victims.
- d) Work with victim service providers to ensure realization of rights.
- e) Coordinate and liaise with other government agencies/departments providing victim services to ensure compliance with the Act.

2.5 Develop Policies and Programmes to operationalize the VPA

During the reporting period, the Board the following mechanisms and strategies were employed to operationalize the activities of the Board. The mechanisms and strategies provided a road map for implementation of the Board is activities for the financial year 2016-17 in terms of development of the Victim Rights Charter, Trust Fund Rules, and resource mobilisation among other activities as highlighted in this report. They include;

- i. 2016/17 VPB work plan,
- ii. 2016/17 VPB Procurement plan,
- iii. 2016/17 VPB budget,
- iv. 2016/17 VPB resource mobilization mechanism,
- v. VPB inter-agency collaboration and cooperation mechanism.

It is noted however that with permanent personnel of the Board, there will be need for development of various policy manuals touching on finances, human resource and other operational areas.

2.6 Development of the Victim Rights Charter

Section 19 (4) of the Victim Protection Act requires that the Board shall, within Six (6) months of the commencement of the Act, in consultation with the Director of Public Prosecutions (DPP) develop a Victim's Rights Charter. The Act came into force on the 08th October, 2014, as per the Provisions of the Act, the Board is way past the time stipulated for development of the Victims Rights Charter as the stipulated six months lapsed on 03rd April, 2015 hence the need and urgency to facilitate the development of the Charter.

To enable the Board, develop the charter, it was necessary to carry out a review of the legal and policy document to be carried out in the legal and Policy Instruments to identify the Key elements to be included in the Charter.

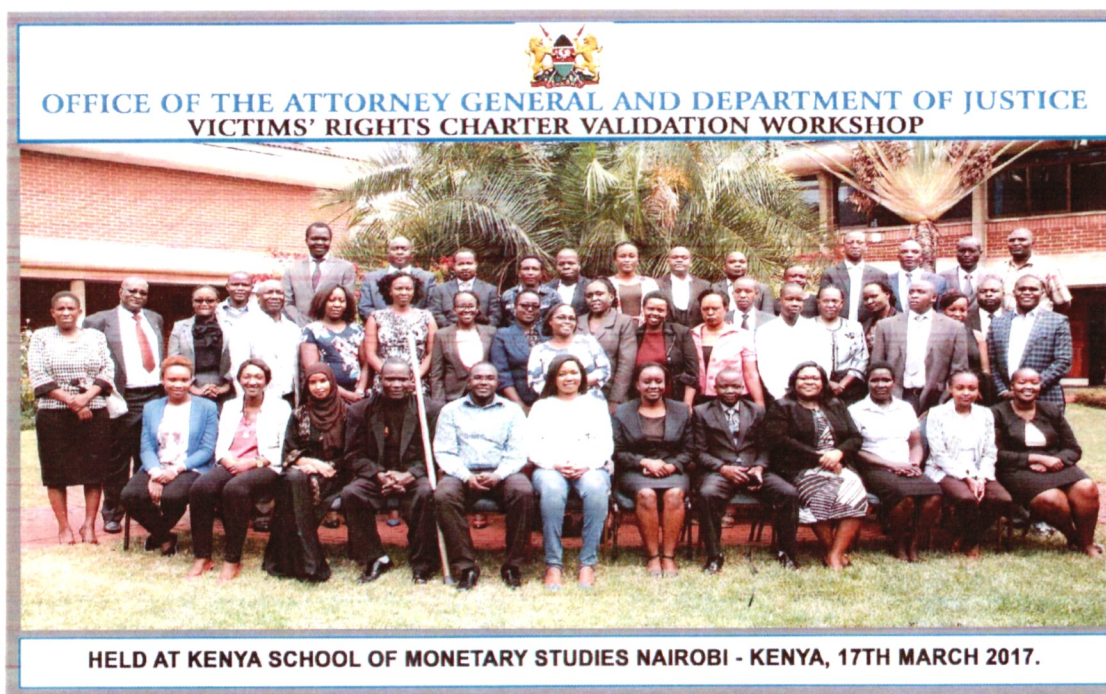


Retreat on the Development of Victims Rights Charter

At Lake Naivasha Country Club, 24th - 28th October 2016

Two retreats were held one in Naivasha and one in Machakos where members identified countries with the best Victim Rights Charters and isolated best modules of developing a Victims' Rights Charter after cross-checking with countries like Canada, South Africa, England, and New Zealand among others. The Board was also able to engage an international consultant with technical expertise on victim rights and the aspects on best practices of victim participation in the criminal Justice system. The Board was then able to draw a draft Victim Rights Charter. Further, the Board held a

follow-up consultation with the ODPP for of Public Prosecutions for further comments in compliance with the requirements of the Act.



The Board held a validation meeting in March 2017 to validate the draft Victim Rights' Charter. The stakeholders were drawn from criminal justice system agencies including Civil Society organizations working and or interested in the area of victim protection, The Judiciary, and Office of the Director of Public Prosecutions, The Law Society of Kenya, and the Witness Protection Agency.

The Board has finalised the charter awaiting its launch and dissemination.

2.7 Development of the Victim Protection Rules and Regulations

Section 34 (1) of the Victim protection Act provides that the cabinet secretary may make regulations regarding the procedures to be put in place to monitor and assess the proper application of and compliance with the Act. For effective implementation of the Act, the Board saw a compelling need to set out rules and regulations to be observed by all parties to judicial proceedings, to ensure that Victims' rights are secured and justice done. The Board held a retreat in May 2017 to draft the Victim Protection Rules and Regulations.

The Board dispensed with a draft Rules and Regulation which is to be subjected to legislative drafter's technical input. The draft Rules and Regulations will thereafter follow the requisite legislative process in accordance with provisions of the Statutory Instruments Act.

2.8 Office Space Requirement

The VPB was expected to determine the office space requirement, identify a suitable office space and location, procure enough office space for the secretariat, partitioning of the office space, and procure office furniture and equipment

This was not achieved because the secretariat was not in place. Further, given the limited funds allocated, and with broad Board activities, the board determined that it was not a priority to proceed with that objective and deferred it to the next financial year 2017-2018.

The Victim Protection Board is domiciled at the Office of Attorney General and Department of Justice. The OAG & DOJ has three premises - Sheria House, Attorney – General Chambers and Cooperative Bank House. The VPB has been able to carry out its deliberations by conducting meetings at any of the three premises of the Office of the Attorney General and Department of Justice. The Board made a request to the Hon. Attorney General to provide office space for the Victim Protection Board. Further, the Victim Protection Act envisions the Victim Protection Board will have operations at the national and county levels which will require offices at both levels.

2.9 Financial requirements of Victim Protection Board, Secretariat and the Trust Fund

The VPA provides for the establishment of Trust Fund which is supposed to receive money from the national government, donations, victim surcharge levy, investments and interests accruing from the Fund. Such monies should be used for victim assistance, administrative expenses and any other purpose the Board may recommend. The fund has not been able to operate and get money because it has not been constituted. The Victim Protection Board has recommended members for the appointment to the Victim Protection Trust Fund.

During the reporting period, the Board requested for the appointment of the Board of Trustee to operationalize the fund. This would enable the Board to conduct other operationalization of the activities including disbursement of victim compensation funds.

The VPB requested for allocation of 200 million in its forward budget. However, in 2016- 2017 financial year, VPB was allocated a one-line budget of 20 million to cater for all its envisioned activities including operationalization of the Board, development of the Victim Protection Rights charter, related regulations and other activities.

The said allocation of 20 million was embedded in the allocation to Office of the Attorney - General and Department of Justice under the vote of the National Anti-Corruption Campaign Steering Committee. The Board intended to seek through the Cabinet Secretary the National Treasury authority to open an independent bank account for the Board. This was however not possible because the Board was still at the initial teething stage and this will be followed up with National Treasury after it has received specific vote allocated to it.

Section 23 VPA provides that the fund can receive monies from donors or gifts from non - governmental or non - public sources. The VPB received Kes. 500,000 from a development partner (REDRESS) to assist in the development of the Victim Rights Charter. REDRESS is an international non – governmental organization dealing with victim and has its headquarters in London.

3.0 Review of the Victim Protection Act

The Board noted that there are sections in the Act that require amendments for operationalization and to keep the spirit intended by the Act.

Some of the provisions requiring amendments include sections on: -

- i. Provisions related to formation of the Board
- ii. Staffing
- iii. Funding of the Board
- iv. Contradictory and ambiguity clauses

Amendment of the Act has been given priority during the 2017-2018 financial year.

CHAPTER 3

3.0 CHALLENGES

3.1 Human Resource

The Board had challenges in operationalising the secretariat because of lack of personnel, the Board is operating without the administrative staff deployed to support the operations of the Board. These include Human resource officer, supply chain, accountants, planners etc. The Board has no technical officers to assist in the roll out of victim services throughout the country. Further the Act envisages having victim service officers at national and county level.

3.2 Office space

Lack of office space has hindered effective delivery of the mandate of the Board. Since the gazette and inauguration of the Board it has been operating without a designated office location. The interim secretariat has been operating from respective offices volunteered by respective Board members. The Board has also been holding its meeting at the various boardrooms as availed from time to time.

3.3 Financial requirements for the Board

In the Financial year under review, the Board was allocated Kshs 20 Million which was not sufficient, thus most of the Board activities were not implemented. The amount was not sufficient to set up operations of the Board and consequently to dispense services to the victims.

The VPB is yet to get its own vote head, consequently the Board's allocation has to be made through the account of the National Anti-Corruption Campaign Steering Committee pausing effective administration challenges.

The Board was unable to fully discharge functions relating to victim services due to non-establishment of the Victim Protection Trust Fund. Even if it were established there are no resources to enable the Board discharge its mandate.

3.4 Review of the VP Act.

The Act provides that the Director WPA shall be the Secretary to the VPB. This poses a challenge of competing interest and devotion to the activities of the VPB. The role

of the Secretary is the day to day running of the Board services, currently the Director Witness Protection Agency is the Secretary of the VPB.

The Victim Protection Act does not make provision for staffing and financing of the activities of the Board yet it's activities should spread to the Counties.

The VPA has provisions which are ambiguous and contradictory, for instance the preamble envisages the protection of victims of abuse of power, but there are no corresponding provisions in the Act. The Act also makes provision for a Victim Service Agency yet it does not make provision for its establishment.

4.0 RECOMMENDATIONS AND WAY FORWARD

4.1 Human resource

There is need to set up a permanent secretariat to assist the Board in its activities.

There is need for deployment of adequate **technical officers and other** staff to run the said secretariat and help the Board in the implementation of its activities.

4.2 Finance

There is need for adequate resource allocation to enable the Board full operationalize its mandate and functions under the Act.

4.3 Office space

The VPB needs to be provided with adequate office space.

4.4 Review of the Act

There is urgent need to amend the VP Act to address contradictions and ambiguities in order to bring about clarity and make other provision for victim protection and services. This include:

- Need to amend the Act to set aside a percentage of the trust for administering the Trust Fund.
- Need to appoint trustees to the Victim Protection trust fund.