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*11/7/23*



**Rt. Hon. Speaker**  
You may approve for tabling  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: *03/07/23*

*COG*

*Recommended for approval  
for tabling -*

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | SECOND SESSION

**APPROVED**  
RT. HON. SEN  
AMASON J. KINGI

*03/07/2023*

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS

PARLIAMENT  
OF KENYA  
LIBRARY

REPORT ON THE PETITION BY NAYAN SAVLA CONCERNING  
THE DELAY IN DEVELOPING AND LAUNCHING A VICTIMS'  
RIGHTS CHARTER AS PROVIDED FOR UNDER THE VICTIM  
PROTECTION ACT (NO. 17 OF 2014)

PAPERS LAID		THE SENATE RECEIVED 03 JUL 2023 DEPUTY CLERK
DATE	TABLED BY	
<i>20/7/2023</i>	<i>Chair JLAHRC</i>	
	<i>JLAHRC</i>	
	<i>cherop.</i>	

Clerk's Chambers,  
The Senate,  
Parliament Buildings,  
**NAIROBI.**

*DC-EG -  
Forwarded or recommended for approval  
for Tabling  
03/07/2023  
June, 2023*

**TABLE OF CONTENTS**

Preliminaries .....	ii
Foreword by the Chairperson .....	iii
Adoption of the Report .....	vi
<b>Chapter 1: Introduction</b>	
Summary of the Petition .....	1
Legal Framework on the Victim Protection Board and the Victims' Rights Charter .....	2
Establishment of the Victim Protection Board.....	3
Functions of the Victim Protection Board .....	3
The Victims' Rights Charter .....	4
The Victim Protection Trust Fund .....	5
Victim Services .....	5
<b>Chapter 2: Consideration of the Petition</b>	
Introduction .....	6
Meeting with the Petitioner .....	6
Submissions by the Attorney General .....	7
<b>Chapter 3: Committee Observations</b>	
Committee Observation .....	12
<b>Chapter 4: Committee Recommendations</b>	
Committee Recommendations .....	14
List of Appendices .....	15

## PRELIMINARIES

### Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

### Membership of the Committee

The Committee is comprised of –

- |  |                    |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson      |
| 2) Sen. Raphael Chimera Mwinzagu, MP       | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP         | - Member           |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member           |
| 5) Sen. Hamida Ali Kibwana, MP             | - Member           |
| 6) Sen. Catherine Muyeka Mumma, MP         | - Member           |
| 7) Sen. Veronica W. Maina, MP              | - Member           |
| 8) Sen. Karen Njeri Nyamu, MP              | - Member           |
| 9) Sen. Andrew Omtatah Okoiti, MP          | - Member           |

The Minutes of the Committee in considering the Petition by Nayan Savla on the delay in developing and launching a victims' rights charter are attached to this Report as *Annex 1.*

## FOREWORD BY THE CHAIRPERSON

### **Hon. Speaker,**

The Petition by Mr. Nayan Savla was reported in the Senate on Wednesday, 3<sup>rd</sup> May, 2023, following which it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

The salient issue in the Petition relates to the failure to develop, launch and operationalize a victims' rights charter as required under sections 19(4) and 32(2) of the Victim Protection Act (No. 17 of 2014). Ancillary to this were questions on the establishment of the Victim Protection Board as an unincorporated body, and the operations of the Board since its establishment in the year 2016.

### **Hon. Speaker,**

In considering the Petition, the Committee met with the Petitioner where it sought to understand the background to the Petition. The Committee was informed that this arose from frustration that the Petitioner had gone through in seeking justice over a family-related dispute. As a victim of crime, he felt that he would have received much better assistance from the State if the operations of the Act had been operationalized, including having an effective victims' rights charter in place.

The Committee further engaged the Office of the Attorney General and Department of Justice who submitted a written response to the Petition. A summary of the submissions received and deliberations by the Committee in this regard are set out at Chapter Two of this Report.

### **Hon. Speaker,**

Having considered the submissions by the Petitioner and the response by the Attorney General, the Committee made various observations which are set out at Chapter Three of the Report. Among these are that there is a textual conflict between sections 19(4) and 32(2) of the Victim Protection Act (No. 17 of 2014) on who exactly should develop the victims' rights charter, and that the Victim Protection Board is established as an unincorporated body, which greatly hampered its operations due to lack of adequate budgetary and human resources.

The Committee further observed that the regulations to establish the Victim Protection Trust Fund were yet to be approved by the National Treasury under the Public Finance

Management Act (No. 18 of 2012), and that victim services were yet to be rolled out across the counties as envisioned under the Victim Protection Act.

**Hon. Speaker,**

Arising from its observations on the Petition, the Committee has made two key recommendations, namely –

- a) That, the Office of the Attorney General and Department of Justice sets up a working group on implementation of the Victim Protection Act (No. 17 of 2014), including to review the draft victim rights charter, the draft Victim Protection (General) Regulations and the Victim Protection (Trust Fund) Regulations, and to submit a status report to the Senate within **three months** of the tabling of this Report; and
- b) That, within **six months** of the tabling of this Report, the Office of the Attorney General and Department of Justice to submit the Victim Protection (General) Regulations and the Victim Protection (Trust Fund) Regulations for approval by the National Treasury under the Public Finance Management Act, 2012 and by Parliament under the Statutory Instruments Act, 2013.

In terms of what the Committee can do, the Committee undertakes to initiate a review of the Victim Protection Act to address the textual conflict between section 19(4) and section 32(2) on Act, and section 31 thereon on the unincorporated nature of the Victim Protection Body. The Committee further undertakes to commence a comprehensive post legislative scrutiny exercise on laws enacted by Parliament which are yet to be fully implemented, focusing on laws within the thematic mandate of the Committee.

**Hon. Speaker,**

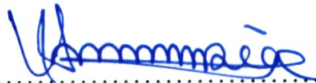
Allow me to thank the Members of the Committee for their diligence and insights during the consideration of this Petition. I also wish to thank the Petitioner for bringing this matter to the attention of the Senate, as well as the Office of the Attorney General for the submissions made in response to the Petition.

Lastly, I wish to thank the Offices of the Speaker and the Clerk of the Senate for the support accorded to the Committee during consideration of this Petition.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to Standing Order 238(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human rights on the Petition by Mr. Nayan Savla regarding the delay in developing and launching a victims' rights charter.

Signed .....



Date.....

30/6/2023

**SEN. WAKILI HILLARY SIGEL, MP  
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS  
AND HUMAN RIGHTS.**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE PETITION BY NAYAN SAVLA CONCERNING THE DELAY IN DEVELOPING AND LAUNCHING A VICTIMS' RIGHTS CHARTER**

---

**We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human rights, do hereby append our signatures to adopt this Report**

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP <i>(Chairperson)</i>	
2.	Sen. Raphael Chimera Mwinzagu, MP <i>(Vice-Chairperson)</i>	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Maina, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

## CHAPTER ONE: INTRODUCTION

### 1.1 Summary of the Petition

1. The right to present petitions to public authorities is provided for at Article 37 of the Constitution. Article 119(1) further provides that ‘Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.’
2. Parliament enacted the Petition to Parliament (Procedure) Act, No. 12 of 2012, to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Standing Orders of the Senate also makes provision of how this right may be exercised.
3. Pursuant to the said provisions, at the sitting of the Senate held on Wednesday, 3<sup>rd</sup> May, 2023, the Speaker of the Senate reported to the Senate that a Petition had been submitted by Mr. Nayan Savla concerning the delays in developing and launching a victims’ rights charter, as provided for under the Victim Protection Act (No. 17 of 2014). A copy of the Petition is attached to this Report as *Annex 2*, while an extract of the Hansard for the Senate sitting of Wednesday, 3<sup>rd</sup> May, 2023 is attached as *Annex 3*.
4. The salient issues raised in the Petition were –
  - a) That the Victim Protection Act (No. 17 of 2014) was enacted in 2014 yet the Victim Protection Board is still unincorporated;
  - b) That the Victims’ Rights Charter has not been implemented eight years since the enactment of the Victim Protection Act;
  - c) That the staff of the Victim Protection Board have been receiving a salary for eight years yet the Board remains unincorporated and the Victims’ Rights Charter has not yet been launched;
  - d) That the Petitioner has requested a copy of the Victims’ Rights Charter from the Victim Protection Board unsuccessfully and that the representatives of the Board have stated that elaborate procedure and budgetary constraints have caused the delays without providing any evidence to support this claim;
  - e) That the reasons provided by the Victim Protection Board for the delay in launching the Charter are unconvincing and material published on the website mainly consisting of repetitive annual reports does not provide a satisfactory explanation; and

- f) That the proposed legislation for the implementation of the Victim Protection Act including the Victim Protection Amendment Bill of 2019 and the Victim Protection Trust Fund Regulations 2021 have equally taken inordinately long to be enacted without satisfactory reasons.
5. The Petitioners therefore prayed that the Senate –
- i) investigates the reason for the delay in the implementation of the incorporation of the Victim Protection Board and the launching of the Victims' Rights Charter;
  - ii) inquires into the operations of the Victims Protection Board and its activities since 2014; and
  - iii) inquires into the role of the office of the Attorney-General and the Department of Justice in the operationalization of the Act.
6. Pursuant to standing order 238(1) of the Senate Standing Orders, the Petition was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

## **1.2 Legal Framework on the Victim Protection Board and the Victims' Rights Charter**

7. In the year 2014, Parliament enacted the Victim Protection Act (No. 17 of 2014). The Act was assented to on 14<sup>th</sup> September, 2014 and commenced on 3<sup>rd</sup> October, 2014.
8. The main objective of the Act is to give effect to Article 50 (9) of the Constitution, which requires Parliament to enact legislation providing for the protection, rights and welfare of victims of offences. In order to achieve this, the Long Title and section 3 of the Act, provides that the Act seeks to –
- i) provide for protection of victims of crime and abuse of power, and to provide them with better information and support services;
  - ii) provide for reparation and compensation to victims;
  - iii) provide special protection for vulnerable victims;
  - iv) recognize and give effect to the rights of victims of crime;
  - v) support reconciliation in appropriate cases by means of a restorative justice response;
  - vi) establishment of programmes to prevent victimization at all levels of government;
  - vii) preventing re-victimization in the justice process; and

- viii) promote co-operation between all government departments and other organizations and agencies involved in working with victims of crime.

### **1.2.1 Establishment of the Victim Protection Board**

9. Section 31 of the Act establishes the Victim protection Bord. Pursuant to section 31(2) of the Act, the Board is composed of –
  - i) the Director of the Witness Protection Agency who shall be the Secretary;
  - ii) the Principal Secretary of the Ministry for the time being responsible for matters relating to justice;
  - iii) the Principal Secretary of the Ministry for the time being responsible for correctional services;
  - iv) the Principal Secretary of the Ministry for the time being responsible for matters relating to children affairs;
  - v) the Director of Public Prosecutions;
  - vi) the Inspector-General of Police or his or her representative;
  - vii) one person nominated by the National Gender and Equality Commission; and
  - viii) two representatives from civil society dealing with issues relating to child and women victims protection.
10. Under section 31(2)(a), the Cabinet Secretary is mandated to appoint a chairperson of the Board from among members of the Board.
11. Regarding secretariat of the Board, section 31(5) of the Act provides that the secretariat shall reside in the Ministry responsible for matters relating justice.

### **1.2.2 Functions of the Victim Protection Board**

12. Section 32(1) of the Act sets out the main function of the Board, to advise the Cabinet Secretary on interagency activities aimed at protecting victims of crime and the implementation of preventive, protective and rehabilitative programmes for victims of crime. in this regard, pursuant to section 32(2) among the issues the Board is to advice on include –
  - i) formulation of a comprehensive and integrated program to protect victims of crime;
  - ii) coordination of activities relating to protection of victims of crime;
  - iii) dissemination of information on the law and the issues relating to victim protection through concerned agencies and non-governmental organizations;

- iv) development of a charter for victims of crime;
- v) formulating and coordinating training programs for law enforcement agents on victim protection;
- vi) monitoring and evaluation of the progress Kenya has made with respect to protection of victims of crime;
- vii) consultation and advocacy with Government departments and agencies and non-governmental organizations, to advance the purposes of this Act;
- viii) compilation and documentation of desegregated data annually, by age, County and gender, of victims of crime for purposes of policy formulation and program direction;
- ix) development of mechanisms to ensure the timely, coordinated, and effective response to cases of victim protection;
- x) measures for the rehabilitation of victims of crime including implementation of rehabilitative programmes including education and protective programmes for victims of crime, and the provision of shelter and psychosocial support to vulnerable victims; and
- xi) measures to reduce re-victimization in the justice system.

13. In addition to the functions set out under section 32 of the Act, section 33 of the Act requires the Board to 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.

### **1.2.3 The Victims' Rights Charter**

14. Pursuant to section 19(4) of the Act, the Board is required to develop, within six months from the date of commencement of the Act, a victims' rights charter. Some of the matters the victims' rights charter is supposed to set out are –
- i) the structure and operation of the justice system;
  - ii) the rights of victims in the justice system;
  - iii) the rights of the accused in the justice system;
  - iv) victim services; and
  - v) the means for the victim to report any threat by the accused before, during or after the finalization of the case.
15. It is noted that whereas section 19(4) of the Act places the responsibility of developing the victims' rights charter on the Board, section 32(2) of the Act provides that the Board is responsible for advising the Cabinet Secretary on the development of victims' rights charter.

#### **1.2.4 The Victim Protection Trust Fund**

16. Section 27 of the Act establishes the Victim Protection Trust Fund. Pursuant to section 28(1) of the Act, the sources of the Fund include monies allocated by the National Assembly, gifts, grants and donations, and victim surcharge levy levied on an accused person under section 29 of the Act.
17. In terms of section 28(2), the Fund is supposed to be utilized for paying expenses arising out of assistance to victims of crime, and expenses arising out of administering the fund.
18. With regard to management of the Fund, section 30 of the Act provides that the Fund is to be administered by a Board of Trustees. Such a Board of Trustees shall comprise the secretary to the Victim Protection Board and two other persons appointed by the Cabinet Secretary

#### **1.2.5 Victim Services**

19. Section 22 of the Act mandates the Cabinet Secretary responsible for matters relating to justice to establish victim services in all counties and ensure equal access to the services. In this regard, the Cabinet Secretary is required to ensure-
  - i) that all cases shall be investigated and prosecuted timely;
  - ii) equal access to courtrooms, prosecutors' offices and any other office that may be necessary for a victim;
  - iii) availability of culturally sensitive services for persons and members of ethno-cultural and religious minorities;
  - iv) the provision of facilities for persons with disabilities;
  - v) 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; and
  - vi) the provision of adequate and effective medical services to victims

## CHAPTER TWO: CONSIDERATION OF THE PETITION

### 2.1 Introduction

20. Pursuant to the Standing Orders, the Committee proceeded to consider the Petition and held meetings with key stakeholders as set out below.

### 2.2 Meeting with the Petitioner

21. On Thursday, 25<sup>th</sup> May, 2023, the Committee held a meeting with Mr. Nayan Savla to deliberate on the Petition. The meeting was held in Committee Room 5 at Parliament Buildings.

22. Upon invitation by the Committee, the Petitioner submitted that –

- a) arising from a contentious family matter, he had sought the assistance of Police Officers at Parklands Police Station and Spring Valley Police Station to have the matter resolved. However, he had not received the assistance sought, and instead was asked to resolve the issue within the family;
- b) this led him to seek assistance from other government entities, including the Commission on Administrative Justice (the Ombudsman), the Internal Affairs Unit (IAU) of the National Police Service, and the Independent Policing Oversight Authority (IPOA);
- c) while seeking assistance, the Petitioner became aware of the rights available to him as a victim of crime, as set out at Article 50(9) of the Constitution and in the Victim Protection Act (No. 17 of 2014);
- d) however, when he sought the assistance of the Victim Protection Board, his efforts were unsuccessful, a fact he attributed to the non-operationalization of a victims' rights charter as provided for in the Victim Protection Act;
- e) thereafter, he sought to engage the Office of the Attorney General on why the victims' rights charter was yet to be developed and launched. From these inquiries, he learnt that –
  - i) the Victim Protection Board was unincorporated;
  - ii) the Board did not have a budgetary allocation of its own and was reliant on the limited funds availed by the Office of the Attorney General;

- iii) the Board lacked full-time staff as the secretariat of the Board were officers serving in the Attorney General's Office and were assigned duties as any other officers; and
  - iv) the Board had developed a draft victims' rights charter but the same was yet to be approved or launched by the Office of the Attorney General.
23. The Petitioner therefore submitted that, had the victims' rights charter been in place and operational, he would have been protected and would not be going round to different authorities trying to address the same matter.

### **2.3 Submissions by the Attorney General**

24. Upon invitation by the Committee, the Attorney General submitted a written response to the Petition by Mr. Savla. A copy of the response is attached to this Report as *Annex 4*.
25. In the said response, the Attorney General submitted that –
- i) The Victim Protection Act, 2014 under Section 31 establishes the Victim Protection Board which handles inter-agency activities aimed at protecting victims of crime and implements preventive, protective, and rehabilitative programmes for victims of crime;
  - ii) The inaugural meeting of the Board was held on 8<sup>th</sup> August, 2015 where a technical committee was appointed with the mandate to advise on the composition and operationalization of the secretariat, operationalization of the Victim Protection Trust Fund under section 27 of the Act, and set up of the funds for the Board. The technical committee further identified the following issues as vital for the operationalization of the Board –
    - i) Review of the Victim Protection Act (challenges of implementation, funding for the Board and development of a Victims' Rights Charter);
    - ii) Identification, composition and operationalization of the secretariat and its role; and
    - iii) Operationalization of the Victim Protection Trustee Fund under Section 27 of the Victim Protection Act, 2014.
  - iii) The Board received its first budgetary allocation, in the sum of Kshs.20 million, during the FY 2016/2017. The allocation had increased gradually to the sum of Kshs.32 million during the FY 2022/2023.

- iv) The Victim Protection Trust Fund was yet to be operationalized since the Victim Protection (Trust Fund) Regulations 2020 were pending before the National Treasury;
  - v) The Board had since undertaken the following key activities –
    - i) development of a Strategic Plan for 2018/2019 to 2022/2023;
    - ii) county sensitization on the rights of the victims in counties;
    - iii) developed the Victim Protection (General) Regulations, 2020 and the Victim Protection (Trust Fund) Regulations, 2020 which was awaiting approval by the National treasury; and
    - iv) developed draft Victim protection (Amendment) Bill, 2019.
  - vi) The Victim Protection Board was planning to undertake the development of a training manual for law enforcement officers as part of ensuring the literacy level for persons handling victims of crime was enhanced and developed.
  - vii) Subject to availability of funds, the following activities would be undertaken in the FY 2023/24 –
    - i) compilation and documentation of desegregated data, by age, County and gender of victims of crime for purposes of policy formulation and program direction; and
    - ii) survey of the Safe shelters for adults and the regulatory framework for the safe shelters in Kenya.
26. The Attorney General further submitted that budgetary constraints had hampered the Victim Protection Board from achieving most of its activities.
27. On why the Victims’ rights charter was yet to be launched, the Attorney General submitted that –
- a) the development and launch of the Victims’ Rights Charter was a priority to the Board in line with section 19(1) of the Act;
  - b) in October 2016, the Board organized a technical retreat to develop the Charter, with support from REDRESS UK, a Non- Governmental organization which fully catered for conference facility and provided technical support;

- c) the Charter was developed and public participation done in line with the Constitution. The Board further organized a validation workshop where all stakeholders in the criminal justice system were invited and participated; and
  - d) the Launch of the Charter was however delayed for two primary reasons, namely –
    - i) *budgetary constraints* – the process of developing and validating the Charter was wholly sponsored by donors. When this became unavailable, the process stalled; and
    - ii) *delayed approval of regulations* – the Victim Protection (Trust Fund) Regulations and the Victim Protection (General) Regulations were yet to be approved by the National Treasury under the Public Finance Management Act, 2012 and the by Parliament under the Statutory Instruments Act, 2013. The delay was occasioned by the requirement for public participation which was hampered by the unavailability of funds.
28. On the issue of performance of the Victim Protection Board, the Attorney General submitted that –
- a) The inaugural meeting of the Board identified the secretariat as a key component for the Board to actualize its mandate under Section 32 of the Victim Protection Act, 2014;
  - b) The Victim Protection Board was housed within the Office of the Attorney General and therefore the secretariat lacks independent IPPD and draws salary from the office of the Attorney General;
  - c) While Section 31(7) of the Victim Protection Act, 2014 requires state counsel and Officers working for the Board be seconded from the Office of the Attorney General, the Officers have other duties issued by the office of the Attorney General, over and above the work of the Board. Moreover, the space available is inadequate to accommodate all the staff; and
  - d) The Board has 8 Counsel together with the Chief Executive Officer and 3 administrative staff who undertake additional functions within the Office of the Attorney General.

29. On the failure to fully implement the provisions of Victim Protection Act, 2014, the Attorney General submitted that –
- a) The Parliament of Kenya is vested with legislative authority under Article 94 of the Constitution;
  - b) The enactment of laws plays a critical role in the democracy and governance of the country and every law is enacted to cure a particular mischief; and
  - c) The enactment and the implementation of the law are two different aspects since the implementation of legislation particularly relies on the availability of funds and the consistency of the legislation to be implemented.
30. On the question why the Victim Protection Board does not have a standalone website, dedicated contact numbers, a standalone contact email and why the Board strategic plan is not published on its website, the Attorney General submitted that –
- a) The Victim Protection Board is required to get approval from the ICT Authority to establish a website together with the contact email and contact numbers. However, the Board is still domiciled under the Office of the Attorney General and adopts the communication channel set out by the Office; and
  - b) The Strategic Plan of the Board for the period 2018/2019 to 2022/2023 was published on the website [www.statelaw.go.ke](http://www.statelaw.go.ke) which is operated by the Office of the Attorney General's communications department.
31. In concluding, the Attorney General made the following recommendations for consideration by the Committee –
- i) **Enhancement of budgetary allocation:** The Victim Protection Board requires budget enhancement especially for operations and maintenance including the establishment of secretariats offices both at Headquarters and in the 47 counties;
  - ii) Set up a **technical working committee** consisting of institutions handling victims of crime in Kenya, with a view of operationalizing the Victim

Protection Act, 2014 and the Victim Protection Board, including its secretariat; and

- iii) The National Treasury to approve the Victim Protection (Trust Regulations) 2020 in line with the Public Finance Management Act, 2012.

### CHAPTER THREE: COMMITTEE OBSERVATIONS

32. Having deliberated on the Petition and considered the response by the Attorney General, the Committee made various observations as set out below.
33. The Victim Protection Act (No. 17 of 2014) was enacted by Parliament in 2014 to give effect to Article 50 (9) of the Constitution, which requires Parliament to enact legislation providing for the protection, rights and welfare of victims of offences. The Act was assented to on 14<sup>th</sup> September, 2014 and commenced on 3<sup>rd</sup> October, 2014.
34. The Act set out elaborate mechanisms for its implementation, including the establishment of a Victim Protection Board and Victim Protection Trust Fund. The Act further made provision for the development and operationalization of a victims' rights charter, as well as establishment of victim services in all counties to ensure equal access to the services.
35. Section 31 of the Victim Protection Act (No. 17 of 2014) establishes the Victim Protection Board as a body unincorporated. This has hampered the operations of the Board as it is made dependent of the budget, staffing, office space and other support allocated through the Office of the Attorney General. To convert the Board into a body corporate would require an amendment to section 31 of the Act.
36. There is an internal textual conflict in the Act in that, whereas section 19(4) of the Act places the responsibility of developing the victims' rights charter on the Board, section 32(2) of the Act provides that the Board is responsible for advising the Cabinet Secretary on the development of victims' rights charter.
37. While section 22 of the Act mandates the Cabinet Secretary responsible for matters relating to justice to establish victim services in all counties and ensure equal access to the services, this is yet to be done.
38. While a draft of the Victims' Rights Charter was developed in the year 2016 and validated by the key stakeholders, the draft is yet to be subjected to public participation and thereafter to be launched and operationalized.
39. While the Victim Protection (General) Regulations and the Victim Protection (Trust Fund) Regulations have been developed to give effect to the Act, the regulations are yet to be subjected to public participation and thereafter submitted

for approval by the National Treasury under the Public Finance Management Act, 2012 and by Parliament under the Statutory Instruments Act, 2013.

## CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

40. Arising from its observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights recommends the following –
- a) That, the Office of the Attorney General and Department of Justice sets up a working group on implementation of the Victim Protection Act (No. 17 of 2014), including –
    - i) to review the draft Victims’ Rights Charter, the draft Victim Protection (General) Regulations and the Victim Protection (Trust Fund) Regulations; and
    - ii) undertaking public participation thereon;and to submit a status report to the Senate within **three months** of the tabling of this Report.
  - b) That, within **six months** of the tabling of this Report, the Office of the Attorney General and Department of Justice to submit the Victim Protection (General) Regulations and the Victim Protection (Trust Fund) Regulations for approval by the National Treasury under the Public Finance Management Act, 2012 and by Parliament under the Statutory Instruments Act, 2013.
41. The Committee further undertakes to –
- a) Initiate a review of the Victim Protection Act (No. 17 of 2014) with a view to addressing –
    - i) the textual conflict between section 19(4) and section 32(2) on Act, on the responsibility for developing the victims’ rights charter;
    - ii) the unincorporated nature of the Victim Protection Board as set out at section 31 of the Act; and
    - iii) other amendments required to ensure full implementation of Article 50 (9) of the Constitution.
  - b) Undertake a comprehensive post legislative scrutiny exercise on laws enacted by Parliament which are yet to be fully implemented, focusing on laws within the thematic mandate of the Committee.

## **LIST OF APPENDICES**

- Annex 1:** Minutes of the Committee in Considering the Petition
- Annex 2:** Copy of the Petition
- Annex 3:** Extract of the Hansard for the Senate sitting of Wednesday, 3<sup>rd</sup> May, 2023
- Annex 4:** Submissions by the Attorney General

**Annex 1: Minutes of the Committee in Considering the Petition**



13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

**MINUTES OF THE FIFTY-SIXTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 27<sup>TH</sup> JUNE, 2023 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson ( <i>Chairing</i> ) |
| 2. Sen. Fatuma Adan Dullo, CBS, MP         | - Member                          |
| 3. Sen. Catherine Muyeka Mumma, MP         | - Member                          |
| 4. Sen. Veronica W. Maina, MP              | - Member                          |
| 5. Sen. Karen Njeri Nyamu, MP              | - Member                          |
| 6. Sen. Andrew Omtatah Okoiti, MP          | - Member                          |

**ABSENT WITH APOLOGY**

- |  |              |
|--|--------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP       | - Vice-Chair |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member     |
| 3. Sen. Hamida Kibwana, MP                 | - Member     |

**SECRETARIAT**

- |                          |   |
|--------------------------|---|
| 1. Mr. Charles Munyua    | - Senior Clerk Assistant                        |
| 2. Mr. Moses Kenyanchui  | - Legal Counsel I                               |
| 3. Ms. Lilian Waweru     | - Legal Counsel II                              |
| 4. Ms. Lynn Aseka        | - Clerk Assistant III ( <i>Taking Minutes</i> ) |
| 5. Mr. Constant Wamayuyi | - Research Officer III                          |
| 6. Ms. Ndindi Kibati     | - Research Officer III                          |
| 7. Mr. Josphat Ng'eno    | - Media Relations Officer III                   |
| 8. Ms. Judith Aoka       | - Audio Officer III                             |
| 9. Mr. Kennedy Okoth     | - Fiscal Officer III                            |
| 10. Ms. Ngesa Rosebella  | - Public Communications Officer III             |

**IN ATTENDANCE**

- |                         |
|-------------------------|
| 1. Sen. John Kinyua, MP |
|-------------------------|

**MIN. NO. 280/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at twenty-five minutes past eight O'clock and opened with a word of prayer.

**MIN. NO. 281/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP. and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

**MIN. NO. 282/2023**

**THE DRAFT ELECTIONS (AMENDMENT) BILL, 2023**

The Committee was taken through a Brief on the draft Elections (Amendment) Bill, 2023, sponsored by Sen. John Kinyua, MP. The draft Bill seeks to amend the Elections Act to make it mandatory for every person to register as a voter upon attaining the age of eighteen and being issued with an identity card thereon.

Upon invitation by the Chairperson, Sen. John Kinyua, MP took the Committee through the background and rationale for the proposed Bill.

The Committee proceeded to deliberate on the legislative proposal and made observations and comments thereon. Pursuant to the provisions of Standing Orders 130 and 131, the Committee resolved that the comments and observations be transmitted to the Rt. Hon. Speaker of the Senate.

**MIN. NO. 283/2023**

**PETITION BY MR. NAYAN SAVLA REGARDING THE DELAY IN LAUNCHING THE VICTIMS' RIGHTS CHARTER UNDER THE VICTIM PROTECTION ACT (NO. 17 OF 2014)**

The Committee resumed consideration of the draft Report on the Petition by Mr. Nayan Savla regarding the delay in launching the victims' rights charter under the Victim Protection Act (No. 17 of 2014), whereupon it noted that the recommendations of the Members had been incorporated at Chapters Three and Four of the Report.

Thereupon, the Committee adopted the Report on the Petition having been proposed by Sen. Veronica Maina, MP and seconded by Sen. Okiya Omtatah, MP.

**MIN. NO. 284/2023**

**ADJOURNMENT**

The Chair adjourned the meeting at fifteen minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 29<sup>th</sup> June, 2023 at eight O'clock.

SIGNED: ..... 

DATE: ..... 



13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

**MINUTES OF THE FIFTY-FIFTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 21<sup>ST</sup> JUNE, 2023 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM**

**PRESENT**

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chair
3. Sen. Fatuma Adan Dullo, CBS, MP - Member
4. Sen. Veronica W. Maina, MP - Member
5. Sen. Andrew Omtatah Okoiti, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. William Cheptumo Kipkiror, CBS, MP - Member
2. Sen. Hamida Ali Kibwana, MP - Member
3. Sen. Catherine Muyeka Mumma, MP - Member
4. Sen. Karen Njeri Nyamu, MP - Member

**SECRETARIAT**

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Mr. Moses Kenyanchui - Legal Counsel I
3. Ms. Lilian Waweru - Legal Counsel II
4. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
5. Mr. Constant Wamayuyi - Research Officer III
6. Mr. Josphat Ng'eno - Media Relations Officer III
7. Ms. Judith Aoka - Audio Officer III
8. Ms. Ngesa Rosebella - Public Communications Officers

**MIN. NO. 275/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at twenty-five minutes past eight O'clock and opened with a word of prayer.

**MIN. NO. 276/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Veronica W. Maina, MP.

**MIN. NO. 277/2023**

**PETITION BY MR. NAYAN SAVLA REGARDING THE DELAY IN LAUNCHING THE VICTIMS' RIGHTS CHARTER UNDER THE VICTIM PROTECTION ACT (NO. 17 OF 2014).**

The Committee was taken through and considered the draft Report on a Petition by Mr. Nayan Savla regarding the delay in launching the victims' rights charter under the Victim Protection Act (No. 17 of 2014).

The Committee noted the need to clarify on the submissions by the Attorney General with regard to –

- a) whether the Victim Protection (Trust Fund) Regulations had been submitted to the National Treasury for approval under the Public Finance Management Act, 2012, or were awaiting public participation to be undertaken by the Office of the Attorney General; and
- b) whether a request had been made by the Victim Protection Board to the ICT Authority for approval to launch its own website and email domains distinct from those of the Attorney General.

Thereupon, Members made proposals to be incorporated as observations and recommendations at Chapters Three and Four of the Report, following which the Report would be scheduled for adoption by the Committee.

**MIN. NO. 278/2023**

**ANY OTHER BUSINESS**

- i) The Committee observed that most of the legislative business considered by the Committee related to matters falling within the Office of the Attorney General and Department of Justice. It was resolved that a meeting be scheduled with the Attorney General, in the month of July, to deliberate on the status of implementation of various pieces of legislation, and other matters falling within the mandate of the Committee.
- ii) The Committee noted that it had considered key legislative proposals, Bills, Petitions, and requests for Statements during the past six months, and resolved that a comprehensive report be prepared showcasing the milestones achieved by the Committee so far.

**MIN. NO. 279/2023**

**ADJOURNMENT**

The Chair adjourned the meeting at fifteen minutes past nine O'clock. The next meeting was scheduled to be held on Tuesday, 27<sup>th</sup> June, 2023 at eight O'clock.

SIGNED: W. Hammer

DATE: 29/06/2023



## 13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

### MINUTES OF THE FORTY-SEVENTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 25<sup>TH</sup> MAY, 2023 AT 9.00 A.M IN COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

#### PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. Catherine Muyeka Mumma, MP - Member
4. Sen. Andrew Omtatah Okoiti, MP - Member

#### ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chairperson
2. Sen. William Cheptumo Kipkiror, CBS, MP - Member
3. Sen. Hamida Ali Kibwana, MP - Member
4. Sen. Veronica W. Maina, MP - Member
5. Sen. Karen Njeri Nyamu, MP - Member

#### SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Mr. Moses Kenyanchui - Legal Counsel I
3. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
4. Mr. Constant Wamayuyi - Research Officer III
5. Ms. Ndindi Kibathi - Research Officer III
6. Mr. Josphat Ng'eno - Media Relations Officer III
7. Ms. Judith Aoka - Audio Officer III
8. Mr. David Barasa - Assistant Serjeant at Arms

#### IN ATTENDANCE

1. Mr. Nayan Savla - Petitioner

#### MIN. NO. 240/2023

#### PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past nine O'clock and opened with a word of prayer. This was followed by a self-introductory session by Senators, Secretariat, and the invited guest.

**MIN. NO. 241/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen Fatuma Adan Dullo, CBS, MP.

**MIN. NO. 242/2023**

**PETITION BY NAYAN SAVLA REGARDING THE  
DELAY IN LAUNCHING THE VICTIMS' RIGHTS  
CHARTER UNDER THE VICTIM PROTECTION  
ACT (NO. 17 OF 2014)**

The Committee commenced consideration of the Petition by Mr. Nayan Savla regarding the delay in launching the victims' rights charter under the Victim Protection Act (No. 17 of 2014).

Upon invitation by the Chairperson, the Petitioner submitted that –

1. arising from a contentious family matter, he had sought the assistance of Police Officers at Parklands Police Station and Spring Valley Police Station to have the matter resolved. However, he had not received the assistance sought, and instead was asked to resolve the issue within the family;
2. this led him to seek assistance from other government entities, including the Commission on Administrative Justice (the Ombudsman), the Internal Affairs Unit (IAU) of the National Police Service, and the Independent Policing Oversight Authority (IPOA);
3. while seeking assistance, the Petitioner became aware of the rights available to him as a victim of crime, as set out at Article 50(9) of the Constitution and in the Victim Protection Act (No. 17 of 2014);
4. however, when he sought the assistance of the Victim Protection Board, his efforts were unsuccessful, a fact he attributed to the non-operationalization of a victims' rights charter as provided for in the Victim Protection Act;
5. thereafter, he sought to engage the Office of the Attorney General on why the victims' rights charter was yet to be developed and launched. From these inquiries, he learnt that –
  - i) the Victim Protection Board was unincorporated;
  - ii) the Board did not have a budgetary allocation of its own and was reliant on the limited funds availed by the Office of the Attorney General;
  - iii) the Board lacked full-time staff as the secretariat of the Board were officers serving in the Attorney General's Office and were assigned duties as any other officers; and
  - iv) the Board had developed a draft victims' rights charter but the same was yet to be approved or launched by the Office of the Attorney General.
6. The Petitioner therefore submitted that, had the victims' rights charter been in place and operational, he would have been protected and would not be going round to different authorities trying to address the same matter.

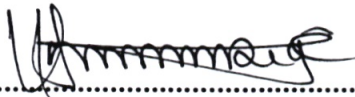
The Committee was then taken through a Brief on the Petition, and observed that –

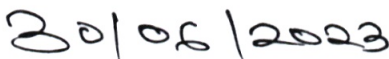
- a) The Victim Protection Board was established as an incorporated body and was domiciled in the Office of the Attorney General and Department of Justice.
- b) Whereas section 19(4) of the Victim Protection Act (No. 17 of 2014) placed the responsibility of developing the victims’ rights charter on the Victim Protection Board, section 32(2) of the Act provides that the Board is responsible for advising the Cabinet Secretary on the development of victims’ rights charter.
- c) There was need to undertake post legislative scrutiny on laws enacted by Parliament and which were yet to be operationalized or fully implemented.

Thereupon, the Committee resolved to invite a response from the Office of the Attorney General and Department of Justice. The Committee further directed that, once the response was received, a copy be shared with the Petitioner.

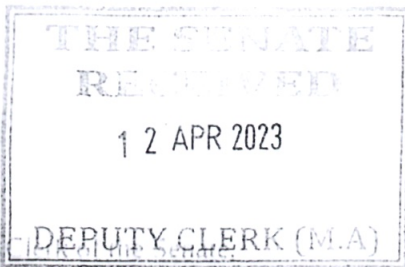
**MIN. NO. 243/2023**                      **ADJOURNMENT**

The Chair adjourned the meeting at twenty-one minutes past ten O’clock. The next meeting was scheduled to be held on Tuesday, 30<sup>th</sup> May, 2023 at eight O’clock.

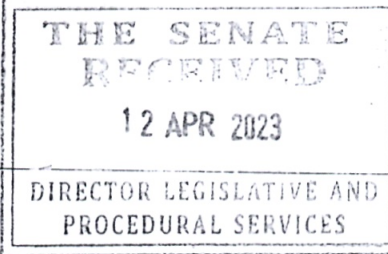
SIGNED: .....  .....

DATE: .....  .....

**Annex 2: Copy of the Petition**



The Deputy Clerk  
Parliament Buildings,  
P.O. Box 41842 - 00100, NAIROBI  
Email: [deputy@kenya.parliament.go.ke](mailto:deputy@kenya.parliament.go.ke)



RE: PETITION TO THE SENATE CONCERNING the victim rights charter  
I, the undersigned,

Citizen of the Republic of Kenya, and resident of  
le casa apartments, general mathenge gardens, westlands, Nairobi,  
post box 18820, post code 00500, Nairobi, Kenya  
mobile: +254729494466, email: [mathenge@lecasa.co.ke](mailto:mathenge@lecasa.co.ke)

DRAW the attention of the Senate to the following:

- 1) that The Victim Protection Act No. 17 was enacted in 2014.
- 2) that the Victim Protection Board is still unincorporated.
- 3) That the victim rights charter, which should have been launched by the Victim Protection Board, has not yet been implemented, even though it has been 8 years since the relevant act was passed.
- 4) THAT it appears, the staff of Victim Protection Board, have been drawing a salary all these years, yet the board remains unincorporated as well as the victim rights charter has not yet been launched.
- 5) That there is not even a first version of the victim rights charter launched.
- 6) That Despite my request for a copy of the victim rights charter from the Victim Protection Board, they have been unable to provide it, and their representative has stated that elaborate procedures and budgetary constraints have caused delays, without providing any evidence to support this claim.
- 7) The reasons provided by the Victim Protection Board for the delay in launching the charter appear unconvincing, and the material recently published on their website, which mainly consists of repetitive annual reports, does not provide a satisfactory explanation.
- 8) The proposed legislation for the implementation of the Victim Protection Act, including the Victim Protection (Amendment) Bill of 2019 and the Victim Protection (Trust Fund) Regulations, 2021, has also taken an unreasonably long time to be enacted, without any satisfactory reasons.
- 9) Other laws have been passed and implemented since 2014, even with public participation, which raises questions about the efficiency and effectiveness of the Victim Protection Board in implementing the act.
- 10) THAT, I have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.

5. THAT, none of these issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the Senate-

1. establish why the Victim Protection Board is not yet incorporated
2. establish why the victim rights charter is not yet launched.

3. Inquire into the performance and progress of the Victim Protection Board, including the number of counsel employed and their activities since 2014.
4. Conduct benchmarking to understand how other laws have been passed and implemented since 2014, while the Victim Protection Board has failed to implement the act.
5. Call upon the Office of the Attorney General and Department of Justice to explain their role in the delay, provide evidence, and establish a timeline for implementing the act.
6. Inquire into the role of the Legislative Drafting Department and the Solicitor General in the delay, and seek explanations and timelines from them.
7. Establish why the Victim Protection Board does not have a standalone website, dedicated contact numbers, and standalone contact emails, and why the VPB Strategic Plan is not published on its website.

Dated this ..... 10th ..... day of ..... April ..... 2023.

NAME: Nayan Savla

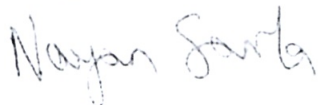
ADDRESS: post box 18820, postcode 00500, Nairobi, Kenya

mobile: +254729494466

email:

ID: 21878254

SIGNATURE:



Petition to the Senate by Nayan Savla concerning the victim rights charter.

**Annex 3:** Extract of the Hansard for the Senate sitting of Wednesday,  
3<sup>rd</sup> May, 2023

## PETITION

DELAY IN INCORPORATION OF THE VICTIM PROTECTION  
BOARD UNDER THE VICTIM PROTECTION ACT

**The Speaker (Hon. Kingi):** Hon. Senators, I hereby report to the Senate that a Petition has been sent by Nayan Salva concerning the Victim Rights Charter.

As you are aware under Article 119 (1) of the Constitution:

“Every person has a right to petition Parliament to consider any matter within its authority including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in the said Petition are as follows;

THAT, the Victim Protection Act No. 17 was enacted in 2014 yet the Victim Protection Board is still unincorporated.

THAT, the Victims Rights Charter has not been implemented eight years since the enactment of the Victim Protection Act.

THAT, the staff of the Victim Protection Board have been receiving a salary for eight years yet the Board remains unincorporated and the Victim Rights Charter has not yet been launched.

THAT, the Petitioner has requested a copy of the Victim Rights Charter from the Victim Protection Board unsuccessfully and that the representatives of the Board have stated that elaborate procedure and budgetary constraints have caused the delays without providing any evidence to support this claim.

The reasons provided by the Victim Protection Board for the delay in launching the Charter are unconvincing and material published on the website mainly consisting of repetitive annual reports does not provide a satisfactory explanation.

THAT, the proposed legislation for the implementation of the Victim Protection Act including the Victim Protection Amendment Bill of 2019 and the Victim Protection Trust Fund Regulations 2021 have equally taken inordinately long to be enacted without satisfactory reasons.

THAT, the petitioner has made efforts to address the matter by the relevant authorities, all of which have failed to give a satisfactory response.

THAT, none of the issues raised in this Petition are pending in any court of law.

The Petitioner, therefore, prays that Senate:

1. Investigates the reason for the delay in the implementation of the incorporation of the Victim Protection Board and the launching of the Victim Rights Charter.
2. Inquires into the operations of the Victims Protection Board and its activities since 2014.
3. Inquires into the role of the office of the Attorney-General and the Department of Justice in the operationalization of the Act.

Hon. Senators, pursuant to Standing Order 237, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Since we only have 30 minutes, I would like to request that we limit the time that a particular speaker takes while making their comments so that we can have as many as possible of you making their contribution. We will limit it at three minutes per Senator speaking on this subject. We shall proceed in that manner.

Sen. Mungatana, please, proceed.

**Sen. Mungatana, MGH:** Mr. Speaker, Sir, I rise in support of that Petition and I would like to say two things.

It is very sad that there are people in this country who have been collecting salaries for the last eight years. As per that Petition; they have not been doing any work and yet they have been drawing salaries from the Government coffers. It is a very deplorable situation and I would like to congratulate the petitioner who had brought this to the attention of this House.

This brings me to my final point. I stand on the Floor of this House to ask the Attorney-General of the Republic of Kenya – who has been a Member of Parliament (MP), whom we have served together in the National Assembly (NA) before and has been a Speaker of the House – to take up an audit of these laws and some of the bodies that have been formed under the laws, so that we do not have these wastages.

Measures to remedy the situation should be put in place, when these people or the various boards are discovered.

I support this Petition.

**The Speaker** (Hon. Kingi): Sen. Onyonka, proceed.

**Sen. Onyonka:** Mr. Speaker, Sir, I reiterate what Sen. Mungatana, MGH, has said. If people are paid and assumed to be working, yet nothing happens, then under those circumstances, I do not know what to do other than get the Speaker of the National Assembly to figure it out and come up with an audit, so that we can follow up on such issues.

I also support this Petition and hope it will come with better results than what we have right now.

I thank the team from Kilifi County for welcoming us when we were in their county three days ago. *Karibuni* Senate.

**The Speaker** (Hon. Kingi): Sen. Mandago, proceed.

**Sen. Mandago:** Thank You, Mr. Speaker, Sir. I rise to support the Petition. It is extremely saddening to learn that there are civil servants in this country who can withdraw salaries for more than eight years without their work well cut out.

The issue of incorporations of boards is not only limited to the Human Rights Board we are discussing in this Petition. There are quite a number of institutions that are operating outside the law because of the absence of the Board.

I am also aware that the Tobacco Control Fund has been operating for quite some time without a board. It is high time that those organisations are given a timeline.

I ask this House and the Committee that is going to handle this Petition, to give a specific timeline for incorporation of these boards, so that the functions that were intended can be achieved with the board in place.

The person responsible for ensuring that this Board should have been in place, needs to be sanctioned and reprimanded for making this country lose for paying salaries without work being done.

I beg to support this Petition.

**The Speaker** (Hon. Kingi): Sen. Mumma, proceed.

**Sen. Mumma:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute. I support the Petition.

The Victim Protection Board is provided for under the Constitution. The law to effect Victim Protection Board was put in place way back in the year 2014. The Petitioner is absolutely correct.

I suggest that the matter be placed before the Justice, Legal Affairs and Human Rights Committee (JLAC). It should have a timeline when we can look into what these civil servants have been doing in the name of this institution and see how it can be operationalized as soon as possible.

If we do this and provide the Executive with the necessary recommendations, we can stem a lot of abuse going on with institutions, that are live but not delivering any services.

*(Sen. Madzayo, walked into the Chamber)*

**The Speaker** (Hon. Kingi): Sen. Madzayo, kindly, have your seat. Hon. Senators, there being no other Senator wishing to contribute to this Petition, Pursuant to Standing Order 238 (1), the Petition is hereby committed to the Standing Committee on Justice, Legal Affairs and Human Rights for its consideration.

In terms of Standing Order No. 238 (2), the Committee is required in not more than 60 calendar days, from the time of reading this prayer, to respond to the petitioner by way of a Report addressed to the petitioner and lay on the Table of the Senate.

Thank you.

Clerk, proceed to read the next Order.

## PAPERS LAID

### REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS ENTITIES

**The Speaker** (Hon. Kingi): Senate Majority Whip, kindly proceed to lay the Papers and thereafter, the Chairperson, Standing Committee on Education to lay his Paper.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of the Senate, today, 3<sup>rd</sup> May, 2023-

Report of the Auditor-General on the Financial Statement of the Homa Bay County Executive Car Loan and Mortgage (Members) Scheme Fund for the year ended 30<sup>th</sup> June, 2022.

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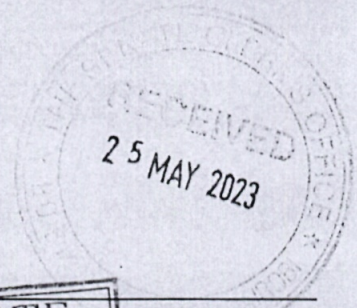
**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

**Annex 4: Submissions by the Attorney General**

REPUBLIC OF KENYA

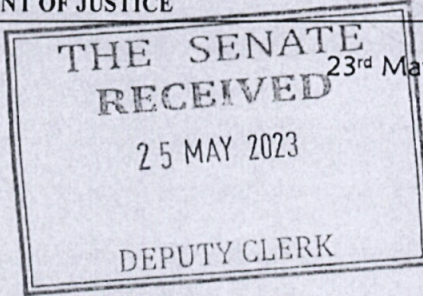


OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE



DOJ/PM/9/7 VOL.I

Mr. Jeremiah M Nyegenye, CBS  
Clerk of the Senate  
Clerk's chambers  
P.O Box 41842- 00100  
NAIROBI



23<sup>rd</sup> May, 2023

DGAC

Kindly deal.  
Eg

25/05/23

RE: INVITATION TO A MEETING OF THE STANDING COMMITTEE ON JUSTICE,  
LEGAL AFFAIRS AND HUMAN RIGHTS

Reference is made to your letter under Reference No. **SEN/DGAC/JLAHRC/2023/(104)** dated 4<sup>th</sup> May, 2023 received by us on 8<sup>th</sup> May, 2023 inviting the Honourable Attorney General to respond to the Petition on the Victim Protection Board.

Much as the Hon. Attorney General would have wished to appear before the committee unfortunately due to exigencies of duty he couldn't hence the following are our responses:

**A. INTRODUCTION**

The Office of the Attorney General is established under Article 156 of the Constitution of Kenya, read together with the Office of the Attorney General Act, 2012 as the Principal legal adviser to Government and provides policy, coordination, and oversight regarding various legal sector institutions.

The National Assembly enacted the Victim Protection Act, 2014 under Article 50(9) of the Constitution of Kenya, 2010. The Act was passed in 2014 under the long title,

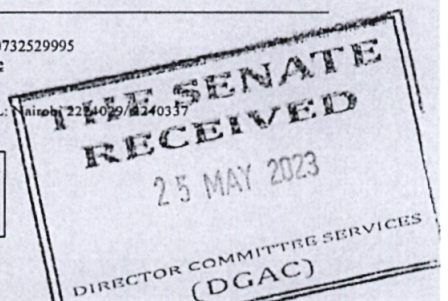
*"An ACT of Parliament to give effect to Article 50 (9) of the Constitution; to provide for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable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

The Victim Protection Act, 2014 under Section 31 establishes the Victim Protection Board which handles inter-agency activities aimed at protecting victims of crime and implements preventive, protective, and rehabilitative programmes for victims of crime.

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2254029/22540337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified



By a letter dated 4<sup>th</sup> May, 2023, the Senate standing committee on Justice, Legal Affairs and Human Rights invited the Honourable Attorney General to appear before it on 25<sup>th</sup> May, 2023 to discuss several specified issues.

The issues raised will be addressed chronologically as listed below:

- a) *Establish why the Victim Protection Board is not yet incorporated*
- b) *Establish why the Victim rights charter is not yet launched*
- c) *Inquire into the performance and progress of the Victim Protection Board, including the number of counsel employed and their activities since 2014*
- d) *Conduct benchmarking to understand how other laws have been passed and implemented since 2014, while the Victim Protection Board has failed to implement the Act.*
- e) *Call upon the Office of the Attorney General and Department of Justice to explain their role in the delay, and seek explanations and timelines from them.*
- f) *Establish why the Victim Protection Board does not have a standalone website with a dedicated contact numbers and standalone contact email and why the VPB strategic plan is not published on its website.*

**a) Establish why the Victim Protection Board is not yet incorporated.**

1. The Victim Protection Board is established under Section 31 of the Victim Protection Act, 2014. The Board was gazetted vide Gazette Notice No. 2487 of 10<sup>th</sup> April, 2015 and Board consists of the following institutions.
  - a) chairperson appointed by the Cabinet Secretary from among the members; the chairperson is **the Solicitor General**
  - 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`s 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 victim`s protection (**FIDA and IMLU**)
  - i) A representative from National Treasury.
2. Victim Protection Board`s key mandate is to advise the Cabinet Secretary responsible for matters relating to Justice (Attorney General) on the inter-agency activities aimed at protecting victims of crime and implementing preventive, protective and rehabilitative programmes for victims of crime, the Board is specifically required to:
  - (a) formulation of a comprehensive and integrated program to protect victims of crime;

- (b) coordination of activities relating to the 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 in Kenya concerning to the 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.
3. The First inaugural meeting of the Victim Protection Board was held on 8<sup>th</sup> August, 2015 chaired by the Solicitor General Mr. Njee Muturi where the terms of reference for the technical committee were developed as indicated by the letter dated 3<sup>rd</sup> November, 2015, marked as Annexure 1. **Provides the terms of reference for the working committee.**
4. The Terms of reference for the technical working committee were identified as follows: **the composition and operationalization of the secretariat, operationalization of the Victim Protection Trust Fund** under section 27 of the Victim Protection Act, 2014 and **set up funds for the Board.** Kindly note some issues will recur throughout the submission since they are interlinked and touch on the crux of the matter at hand.
5. During the Victim Protection Board meeting held on 22<sup>nd</sup> October, 2015, the technical working committee further identified the following issues as vital for the operationalization of the Board, **marked as Annexure 2**
- a) Review of the Victim Protection Act (implementation actions for the Board, challenges of implementation, the proposal for a review of the Victim

Protection Act, **funding for the Board** and development of a **Victim Rights Charter**)

- b) Identification, composition and operationalization of the secretariat and its role.
  - c) Operationalization of the Victim Protection Trustee Fund under Section 27 of the Victim Protection Act, 2014.
6. On the 19<sup>th</sup> of April 2016, a letter was sent from PS National Treasury to the Solicitor General informing the Victim Protection Board to prioritize the funding within the FY 2016/2017 budget ceilings. *Vide* a letter dated 24<sup>th</sup> February, 2017 the Victim Protection Board prepared an itemized budget as part of operationalizing the Board (marked as **annexure 3 and 4** respectively). The first allocation of the Board as allocated by the National Treasury in the FY 2016/2017 was Ksh. 20 Million.
7. From the historical analysis, the Victim Protection Board was set up and institutionalized in law, and aligned with Public Finance Management Act, 2012. In addition, the **Victim Protection Trust Fund** is yet to be operationalized since the Victim Protection (Trust Fund) Regulations 2020 are pending before the National Treasury albeit the Funds are to be utilized in compensating the Victims of crime, payment of emergency medical support to victims of crime and in offering psychosocial support. Kindly find a brief on the Victim Protection Board on the current status of the **operationalization of the Board** as of 7<sup>th</sup> December, 2016. Marked as **Annexure 5. The key challenge in actualizing the majority of activities is linked to inadequate financial allocation.**
8. **The Board has undertaken these key activities**
- a) The Victim Protection Board developed a Strategic Plan for 2018/2019-2022/2023;
  - b) The Victim Protection Board has undertaken county sensitization on the rights of the victims in 34 counties;
  - c) Developed the Victim Protection (General Regulations) 2020 and Victim Protection (Trust Fund) 2020 awaiting approval by the National treasury;
  - d) The Victim Protection Board developed draft Victim protection (Amendment) Bill, 2019;
  - e) The Victim Protection Board is planning to undertake the development of a training manual for law enforcement officers as part of ensuring the literacy level for persons handling victims of crime is enhanced and developed.

#### **8.1 The following activities will be undertaken in the FY 2023/24**

- f) compilation and documentation of desegregated data, by age, County and gender of victims of crime for purposes of policy formulation and program direction. This is critical as it indicates the crime prone-areas and psychosocial support to be provided as well as useful in developing a national database for victims of crime. **(subject to availability of funds)** .
- g) survey of the Safe shelters for adults and the regulatory framework for the safe shelters in Kenya **(subject to the availability of funds)**.

9. Budgetary constraints have hampered the Victim Protection Board from achieving majority of its activities. The current allocation to the Board is **32 Million** for operations and maintenance which has been utilized effectively and efficiently. In previous meetings with committees of Parliament, the Board has always requested for additional funds to effectively execute its mandate.
- b) **Establish why the Victim rights charter is not yet launched**
10. As highlighted in the Inaugural meeting for the Victim Protection Board, the development and launch of the Victim Rights Charter was a priority to the Board in line with section 19(1) of the Act. The Board organized a technical retreat to develop the Charter which was held on 24<sup>th</sup> -28<sup>th</sup> October 2016. The Board got support from **REDRESS UK**, a Non- Governmental organization which fully catered for conference facility and technical support.
11. The Charter was developed and public participation done in line with the Constitution. The Board further organized a validation workshop where all stakeholders in the criminal justice system were invited and participated in the validation of the Draft Charter.
12. The Launch of the Charter was delayed for two primary reasons.
- a) **Budgetary constraints** since the whole process of developing and validating the Victim Rights Charter was wholly sponsored by the Donors, when donor support became unavailable the process of development of the Charter stalled. The Allocation for Victim Protection Board was made available in FY2016/2017 by the National Treasury which was 2 years after the Board was inaugurated.
- b) **Delayed approval of regulations:** The **Regulations** on Victim Protection (**Trust Fund**) Regulations 2020 and Victim Protection (**General Regulation**) 2020 are yet to be approved by the National Treasury under Public Finance Management Act, 2012 and by Parliament, under Statutory Instruments Act, 2013. The delay was occasioned by the requirement of public participation which process was hampered due to **unavailability of funds** thus delay in the launching of the Charter.
- c) **Inquire into the performance and progress of the Victim Protection Board, including the number of counsel employed and their activities since 2014**
13. The inaugural meeting of the Board under Annexure 1 identified the secretariat as a key component for the Board to actualize its mandate under Section 32 of the Victim Protection Act, 2014. The Victim Protection Board is housed within the Office of the Attorney General and therefore the secretariat lacks independent IPPD and draws salary from the office of the Attorney General. While Section 31(7) of the Victim Protection Act, 2014 requires state counsel and Officers working for the VPB be seconded from the Office of the Attorney General, the Officers have other duties issued by the office of the Attorney General, over and above VPB work. Moreover, the space available is inadequate to accommodate all the staff.

13. The Victim Protection Board has a performance contract which is contracted each financial year. The Central Planning and Project Monitoring Department under the Office of the Attorney General evaluates the performance of the Board on quarterly basis and at the end of each financial year. The Board has had excellent performance over the years despite the challenges it is facing. The performance is pecked on performance indicators as developed by the Public Service Commission and National Treasury.
14. The Board has 8 Counsel together with the CEO and 3 administrative staff who undertake additional functions within the Office of the Attorney General. Kindly find annexure 5 on the brief on Victim Protection Board on the current status of the operationalization of the Board as at 7th December 2016, majority of challenges are tied on availability of funds and still recur to date.
  - d) **Conduct benchmarking to understand how other laws have been passed and implemented since 2014, while the Victim Protection Board has failed to implement the Act.**
15. The Parliament of Kenya is vested with legislative authority under Article 94 of the Constitution of Kenya. Parliament may consider and pass amendments to the Constitution and alter county boundaries as per article 94(3) and duty is placed on Parliament to protect the Constitution and promote the democratic governance of the Republic.
16. The role of Parliament is to legislate, represent and oversight. The enactment of laws plays a critical role in the democracy and governance of the Country and every law is enacted to cure a particular mischief identified by the Government through the Majority leader who represents government interests in Parliament or through private members Bill.
17. The Role of the Attorney General is usually limited to advising the government under Article 156(4)(a) while the Solicitor General is the principal assistant to the Attorney General as per Section 9(4) of the Office of the Attorney General Act and also the Accounting officer in the Office of the Attorney General. The key function of the Legislative Drafting Department is to draft legislation and advise the Attorney General on the need to enact, amend or review particular legislation in the country and the role of the Legislative Department is a facilitative role both to the Attorney General and the Parliament of Kenya. The enactment and the implementation of the law are two different aspects since the implementation of legislation particularly relies on the availability of funds and the consistency of the legislation to be implemented.
  - f) **Establish why the Victim Protection Board does not have a stand alone website dedicated contact numbers and a stand alone contact email and why the VPB strategic plan is not published on its website**
18. The Victim Protection Board is required to get approval from the ICT Authority to establish a website together with the contact email and contact numbers. However,

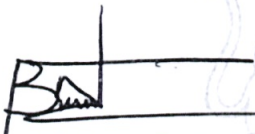
Victim Protection Board is still domiciled under the Office of the Attorney General and Department of Justice. Naturally it adopts the communication channel set out by the Office of the Attorney General which is [info@ag.go.ke](mailto:info@ag.go.ke) telephone no. 0735529995 or 0700072929 or P.O BOX 40112-00100 Nairobi Kenya.

19. The Strategic Plan **2018/2019-2022/2023** is published on the website [www.statelaw.go.ke](http://www.statelaw.go.ke) which is operated by the Office of the Attorney General's communications department. A copy is attached for ease of reference.


#### **B) RECOMMENDATIONS**

- a) Enhancement of budgetary allocation: Victim Protection Board requires budget enhancement especially for operations and maintenance including the establishment of secretariats offices both at Headquarters and in the 47 counties.
- b) Set up a technical working committee consisting of institutions handling Victims of crime in Kenya, with a view of operationalizing the Victim Protection Act, 2014 and The Victim Protection Board with the secretariat of the working committee being the Victim Protection Board.
- c) The National Treasury to approve the Victim Protection (Trust Regulations) 2020 in line with the Public Finance Management Act, 2012.

We respectfully submit this report for your due consideration.



HON. J.B.N MUTURI, EGH  
ATTORNEY GENERAL



12

REPUBLIC OF KENYA



OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

DEPARTMENT OF JUSTICE

INTERNAL MEMO

TO : Solicitor General

THRO : Secretary, Justice and Constitutional Affairs  
*forwarded mmdani 3/11/15*

FROM : Deputy Chief Legal Officer

REF : AG/CONF/8/263 VOL I (12)

DATE : 03 November 2015

SUBJECT : BRIEF ON THE PROGRESS OF THE VICTIM PROTECTION BOARD

*Approved 10 Nov 10/11/15*

The above mentioned matter refers.

Further to the inaugural meeting of the Board held under your Chairmanship the 08<sup>th</sup> October, 2015. The first meeting was held immediately after the inaugural meeting on 08<sup>th</sup> October 2015. This meeting, inter alia, came up with terms of reference of the Technical Committee and it also created sub committees based on thematic areas of which the members considered as requiring brainstorming and further interrogation.

Terms of Reference (TOR's)-

The members of the technical working committee came up with TOR's which would result in the operationalization of the act and the functions of the board. The TOR's are as follows:

1. Review the Victim Protection Act with a view to identify:

- a) Implementation actions by the Board
  - b) Challenges of implementation by the Board
  - c) Proposals for review of the Victim Protection Act
  - d) Funding for the Board
  - e) Development of the Victims' Rights Charter
2. Identification, composition and operationalization of the Secretariat of its role  
 Questions include:
- a) Are the members to be seconded from the Public Service Commission or elsewhere?
  - b) Where will the Secretariat reside?
  - c) Who should be in the Secretariat?
  - d) What size of office space should the Secretariat occupy?
3. Operationalization of the trustee fund under section 27 of the Victim Protection Act
4. Preparation for Board meetings until the Secretariat is set up

**Sub Committees-**

The Technical Working committee was divided into three sub committees, which would enable the technical committee to tackle the terms of reference expeditiously.

SUB COMMITTEE	ACTIVITY
SUB COMMITTEE NO.1	Review of the Act with a view to identify: <ul style="list-style-type: none"> <li>a) Implementation actions by the board</li> <li>b) Challenges of implementation by the Board</li> <li>c) Proposals for review of the Victim Protection Act</li> <li>d) Development of a victims' rights charter</li> </ul> (TOR No.1)
SUB COMMITTEE NO.2	Identification, composition and operationalization of the secretariat and its role (TOR No.2)
SUB COMMITTEE NO.3	Set up and operationalization of the trustee fund under Section 27 of the Victim Protection Act (TOR No.3)

The second technical working committee meeting was held on 22nd October, 2015 where the various sub committees each gave the position paper of the organizations they were representing. The meeting deliberated on the proposals and agreed to make one consolidated paper which shall refer to as the 'Board paper'. The Board also commissioned three people to compile the board paper namely: Mr Joseph Riungu from the Office of the Director of Public Prosecutions; Mr. Joel A. Omari of the Witness Protection Agency; and Ms Leah Nyambeki of the International Justice Mission.

The purpose of this memo is to achieve the following:

1. Bring to your attention as the Chair of the Victims' Protection Board, the above deliberations of the Technical Committee
2. Bring to your attention and that of the Board, the proposed priorities identified by the Technical Committee for immediate action; these are:
  - a) Establishment of an interim Secretariat for the Board and its offices. The Secretariat is the key organ of the Board which will bring to effect guidelines and regulations that will put parameters to the operation of the Act and the Board;
  - b) Proposed measures for creation of the Victims' Rights Charter which under the Act is time bound; and
  - c) Measures to create the Victims Protection Trust Charter.
3. To request you as Chair to kindly provide a date for the next meeting of the Board. We suggest the following dates Tuesday 10<sup>th</sup> November at 10.00 am or 17<sup>th</sup> or 18<sup>th</sup> November 2015 at 10.00 am

Please give us your directions on the dates accordingly.

Thank you.



MARY WAIRAGU

Enclosures

MINUTES OF THE INAUGURAL MEETING OF THE VICTIMS PROTECTION BOARD  
HELD ON 8TH OCTOBER 2015 AT THE ATTORNEY GENERAL'S CHAMBERS  
BOARDROOM 1st FLOOR

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PRESENT

1. Mr. Njee Muturi :Office of Attorney General & Department of Justice chair
2. Ms. Josephtha Mukobe :Principal Secretary  
Ministry of Interior Coordination &National  
Governance
3. Ms. Alice O. Ondieki : Witness Protection Agency & Secretary to the Board
4. Ms. Christine Ochieng : FIDA
5. Mr. Kanampiu J. K :National Police Service
6. Ms. Leah Owuor :International Justice Mission
7. Mr. Joseph G. Riungu :Office of Director of Public Prosecution
8. Ms. Mary M. Wairagu :Office of Attorney General & Department of Justice
9. Mr. Simon J. Ndubai :National Gender and Equality Commission
10. Mr. Nevis Ombasa :Office of Attorney General & Department of Justice
11. Mr. Elijah K. Song'ony :Ministry of Labour Social and Security Services

AGENDA

1. Prayers
2. Introductions
3. Adoption of the Agenda
4. Preliminaries
5. Welcome by the Chair
6. Composition of the Secretariat
7. Deliverables expected of the board
8. Victims' Rights Charter
9. Way Forward
10. Any Other Business

MIN 1/08/10/15 Opening Prayer

The meeting began with a word of prayer by Ms. Leah Owuor.

MIN 2/08/10/15 Introductions

The meeting was called to order at 9:47 am by the Chairperson Mr. Njee Mururi (Solicitor General). This was followed by introductions by the various members present.

MIN 3/08/10/15                      Welcome by the Chairperson of the Victims' Protection Board (The Solicitor General).

The Chairperson welcomed members to the inaugural meeting of the Victims' Protection Board. The Chair reminded members that the Board<sup>1</sup> was established following the enactment of the *Victims' Protection Act* in 2014 with the aim of giving 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 and to provide special protection for vulnerable victims.

The Chairperson observed that The *Victims' Protection Act (2014)* under Section 31 establishes the Victim Protection Board which has been gazette vide Gazette Notice No. 2487 of the 10th April 2015. It will play an important role in policy development.

The Board shall consist of-

1. a chairperson appointed by the Cabinet Secretary from among the members;
2. the Director of the Witness Protection Agency who shall be the Secretary;
3. the Principal Secretary of the Ministry for the time being responsible for matters relating to justice;
4. the Principal Secretary of the Ministry for the time being responsible for correctional services;
5. the Principal Secretary of the Ministry for the time being responsible for matters relating to children affairs;
6. the Director of Public Prosecutions;
7. the Inspector-General of Police or his or her representative;
8. one person nominated by the National Gender and Equality Commission; and
9. Two representatives from civil society dealing with issues relating to child and women victims protection.

The Chair guided the members through The Board's key mandate which is to advise the Cabinet Secretary responsible for matters relating to Justice (Attorney General) 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 in discharging this advisory role is expected to among others:

---

<sup>1</sup> The 'Board' refers to the Victims' Protection Board.

- a. Formulate a comprehensive and integrated program to protect victims of crime;
- b. Coordinate activities relating to protection of victims of crime;
- c. Formulate training programs for law enforcement agencies to protection of victims of crime
- d. Development of charter for the victims of crime;
- e. Consultations and advocacy with government departments and agencies and non-governmental organizations to advance the purposes of the Act;
- f. Develop mechanisms to ensure effective, timely and coordinated response to cases of victim protection;
- g. Monitor and evaluate the progress of Kenya in the protection of victims of crime.

Further, the Board is expected to submit to the Cabinet Secretary and the National Assembly an annual report of the policies, programmes and activities relating to the implementation of the Act.

As you will note the requirements of the Act, the Victims' Rights Charter should be in place by now, and it is therefore prudent to expedite the process of consultations and preparation of a draft framework at the earliest.

#### MIN 4/08/10/15                      Composition of the Secretariat

The Act under Section 31(5) provides that the secretariat of the Board shall reside at the Ministry responsible for matters relating to Justice. Which in this case is the Office of the Attorney General & Department of Justice. However, questions arose as to the composition of the secretariat, for example;

- a) Should the secretariat be appointed by the Board?
- b) Are members to be seconded from the Public Service Commission or elsewhere?
- c) Where will the Secretariat reside?
- d) Who should be in the secretariat?
- e) What size of office space should the Secretariat occupy?

The issue of allowances also arose.

#### MIN 5/08/10/15                      Deliverables expected of the Board

It was agreed among the members that the Chair in his welcome remarks had addressed the agenda when he guided the members through The Board's key mandate which is to advise the Cabinet Secretary responsible for matters relating to Justice (Attorney General) on inter agency activities aimed at protecting victims of crime and the implementation of preventive, protective and rehabilitative programmes for victims of crime.

MIN 6/08/10/15

### Victims' Rights Charter

The Chair brought to the attention of the members the fact that the Board is expected under Section 19 (4) to develop a Victims' Rights Charter in consultation with the Office of the Director of Public Prosecution as a priority agenda.

The Victims' Rights Charter is to include among others:

- i. The structure and operation of the Justice system
- ii. The rights of Victims in the justice system
- iii. Victims' services

MIN 7/08/10/15

### Way Forward

During the lengthy deliberations, various issues that required extra attention were raised for example;

- a) Composition of the secretariat: whether the secretariat is to be seconded
- b) Conflict of interest
- c) The relationship between the Board of trustees and the Victims Protection Board
- d) Funding of the Board

As a result of the issues raised the member found it necessary to form a Technical Working Committee to help look into the issues and make proposals to the Board which would give result to the objective of operationalizing the Act and therefore the functions of the Board so as to have a targeted outcome.

The Chairperson guided members in to formation and membership of the technical committee and Ms. Alice Ondieki was elected as the Chairperson while Ms. Mary Wairagu was elected secretary to the Technical Committee. The other members appointed into the Committee were as follows;

1. Ms. Alice O. Ondieki :Witness Protection Agency - Chair
2. Ms. Mary M. Wairagu :Office of Attorney General & Department of Justice
3. Ms. Christine Ochieng' :FIDA
4. Mr. Kanampiu J. K :National Police Service
5. Ms. Leah Owuor :International Justice Mission
6. Mr. Joseph G. Riungu :Office of Director of Public Prosecution
7. Mr. Simon J. Ndubai :National Gender and Equality Commission
8. Scholastica Ndambuki :Ministry of Labour Social and Security Services
9. Clement Okech :Ministry of Interior Coordination & National Governance

The Committee was given a timeline of two weeks from the date of this inaugural meeting to submit its proposals to the Board.

MIN 7/08/10/15 Date of next meeting

The members agreed that the next meeting of the Board would be on Thursday 29<sup>th</sup> October 2015 at 10:00 am at the Attorney General's Chambers Boardroom 1st floor subject to confirmation of Solicitor General (Chairperson) with the agenda of considering the various proposals by the Technical Committee.

MIN 8/08/10/15 Any Other Business

The Chair thanked the members for attending the meeting. There being no other business. The meeting was adjourned at 10.47 am.

CONFIRMED AS A TRUE COPY OF THE PROCEEDINGS BY:

.....  
MR. NJEE MUTURI  
CHAIRPERSON

.....  
DATE

.....  
MS. ALICE O. ONDIEKI  
SECRETARY

.....  
DATE



REPUBLIC OF KENYA

**OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE**

FIN.B/SAG/1/VOL.1(32)

16<sup>th</sup> May 2016

In-charge  
Victims protection Board  
**NAIROBI**

**RE: REQUEST FOR BUDGET TO IMPLEMENT THE VICTIM PROTECTION  
ACT AND OPERATIONALIZE VICTIM PROTECTION BOARD**

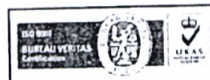
Forwarded herewith, please find a copy of letter from Treasury  
Ref.1251/15/01'A'(75) in regard to the above mentioned matter for your  
information.

**Eric Kirui**  
**FINANCE OFFICER**

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112 - 00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/0700072929 / 0732529995  
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE  
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2224029 / 2240337  
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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93

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

INTERNAL MEMO

TO : Secretary Administration

REF. : DOJ/CONF/LJM/3/02 VOL.I/(93)

DATE : 24<sup>th</sup> February, 2017

SUBJECT : (1.) ITEMISED BUDGET OF THE VICTIM PROTECTION BOARD AS APPROVED BY THE BOARD


(2.) VICTIM PROTECTION BOARD: BOARD PAPER AS PRESENTED AND APPROVED BY THE BOARD ON 24/02/2017

(3.) MINUTES OF THE BOARD 24/02/2017

Please find attached for your information the following original documents which were authorized by the Victim Protection Board in its meeting today 24<sup>th</sup> February, 2017.

The Budget reflects activities that the Board will undertake in the year ending 30<sup>th</sup> June, 2017.

Thank you.

  
MAIM M. WAIRACU  
DEPUTY CHIEF STATE COUNSEL

Copy to:

Mr. Murgu - Chief Finance Officer

92

'Appendix 1'

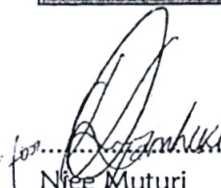


OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

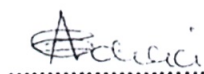
VICTIM PROTECTION BOARD

VICTIM PROTECTION BOARD	
PROPOSED RECURRENT ITEMISED BUDGET ESTIMATES FOR 2016/17 FY	
RECURRENT BUDGET	BUDGET ESTIMATES 2016/2017
<b>SOURCES OF FUNDS</b>	
GoK Grants - Recurrent	60,000,000
Total Income	60,000,000
<b>EXPENDITURE</b>	
<b>Board Expenses</b>	
Board allowance	5,000,000
conference & accommodation	3,000,000
Professional fees	1,000,000
Publicity/Publications & Adverts	1,000,000
Sub Total	10,000,000
<b>Staff Costs</b>	
Top-up Allowance	2,000,000
Sub Total	2,000,000
<b>Administrative Costs</b>	
Conference & Workshops	6,000,000

Postage & Courier Services	300,000
Publishing and Printing services	2,000,000
advertisements	1,300,000
Telephone and mobile phone Services	300,000
Internet connections	300,000
Office and general supplies and services	1,000,000
Supplies of accessories of computer	1,600,000
General Repair & Maintenance	200,000
Temporary committees	2,000,000
Domestic travel & subsistence Allowance	2,000,000
Foreign travel and subsistence Allowance	22,000,000
Training & Development	5,000,000
Official Entertainment/Catering	500,000
Purchase of computers and Equipments	2,000,000
Purchase of office furniture and fittings	1,000,000
purchase of software	200,000
Purchase of ICT networking & communication Equipments	300,000
Sub Total	48,000,000
Grand Total	60,000,000

  
 Njoo Muturi  
 Chairperson

24.02.17  
 Date

  
 Ms. Alice Ondieki  
 Secretary

24/02/17  
 Date



OFFICE OF THE ATTORNEY GENERAL AND  
DEPARTMENT OF JUSTICE

A BRIEF ON BEHALF OF THE  
VICTIM PROTECTION BOARD ON THE CURRENT  
STATUS OF OPERATIONALIZATION OF THE BOARD

DATED 7<sup>TH</sup> DECEMBER, 2016

*M. Camp*

Provisions of the Victims Protection Act as relates to the powers of the Hon. Attorney General.

1. Long Title of the Act:

*“An Act of Parliament to give effect to Article 50(9) of the Constitution; to provide for protection of victims of crimes, 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.”*

2. Interpretation Section:

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Justice” To this end, the report is being forwarded to you for implementation in your capacity at the Cabinet Secretary responsible for matters relating to justice.

3. Section 22: Victim Services

The section provides your roles as follows:-

- 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 for holding facilities for accused persons;
  - f) The provision of adequate and effective medical services to victims.

## A BRIEF ON BEHALF OF THE VICTIM PROTECTION BOARD ON THE CURRENT STATUS OF OPERATIONALIZATION OF THE BOARD

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The above matter refers:

### Background/ Legal Framework

As you are aware, Kenya is a State Party to the declaration of *Basic Principles of Justice for Victims of Crime and Abuse of Power*. The Declaration recognizes the victims of crime and victims of abuse of power, their families, witnesses and others who aid them. It further recognizes that such victims are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders.

Kenya being a State Party and in compliance with international standards provided for victims in the Constitution. Article 50(9) of the Constitution of Kenya requires Parliament to enact legislation for protection, rights and welfare of victims of offences. As a result, the Victim Protection Act, 2014 was enacted on 19<sup>th</sup> September 2014 and pursuant to Section 31(2) of the Act, a Victim Protection Board established vide Gazette Notice No. 2487, dated 10<sup>th</sup> April 2015. The Board is mandated to develop a Victims' Rights Charter among other functions.

As you may recall, you appointed the Solicitor General as Chair of the Victim Protection Board on February 20<sup>th</sup>, 2015, and Gazetted him with the rest of the Board on 10<sup>th</sup> April, 2015.

On the same day, February, 20<sup>th</sup> 2015, you also appointed Ms. Mary Wairagu, Deputy Chief State Counsel of Department of Justice, as a member of the Victims' Protection Board. The Solicitor General, by individual letters later appointed the other members of the Board, by letters dated 25<sup>th</sup> September, 2015.

### Action by Attorney General

It is suggested by both the Victim Protection Board and The Technical Committee that Ms. Mary M. Wairagu be considered for appointment as AIE Holder for the Board Vote and the head of the secretariat, responsible for the day to day matters of the Board that are administrative and operational. Currently, the Funds of the Victim Protection Board are held under the National Anti-corruption Campaign Steering Committee (NASCCS) Vote.



The establishment of victim protection services in the 47 counties will be spearheaded by the Board once the Victim Protection Fund has received funding.

#### 4. Section 27 - Victim Protection Fund

There is established a Fund to be known as the Victim Protection Fund: (herein after, "The Fund")

##### Action required by the Attorney General

The fund has not been established. The Board proposes the appointment of the Board of Trustees.

#### 5. Section 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.

##### Action Required by the Attorney General

The Board is requesting the appointment of the Trustees and their Gazettement.

#### 6. Section 32: Functions of the Victim Protection Board



The Victim Protection Board commenced its work in November, 2015. The immediate business of the Board was to make a victims' Rights Charter under Section 19(4). The charter was already late. At inception of the Board no funds were allocated for performance of its duties and the Board commenced the work of aggressively seeking for funds.

The Board has held two meeting and approved the budget and budget of the Victim Protection Board. A technical Committee was set up by the Board and has held seven meetings and two retreats.

(1) As you may be aware, the functions of the Board shall be to advise the Cabinet Secretary on interagency 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;

To this end, the Board has drafted the Victims Rights Charter (Copy attached)The Charter is ready for stakeholders validation and subsequent launch. The Technical Committee has lined up activities in respect of finalization and of the Charter.

Secondly, the Technical Committee will commence drafting regulations regarding the proceedings to be put in place to monitor and assess the proper application of and compliance with pursuant to section 34 of the Act. Once ready, the Regulations will be forwarded to you for gazettelement.

Request for the Victim Protection Board to be a member of National Council on Administration of Justice

Since the Victim Protection deals with all sectors in the criminal justice system, Victim Protection Board requests to be made part of the National Council on Administration of Justice. We hereby attach a letter requesting honorable Attorney General to sign.

#### Source of Funds by the Board

Through concerted efforts by members of the Board, the Board was allocated Kshs.20 million by Treasury for the 2016/2017 financial year, and Kshs.5 million for the 2017/2018 financial year. The board had requested for Kshs.226,440,000.00 for drawn up activities and budget. The Board further obtained a grant of REDRESS International of Kshs.600,000/=through efforts of one of its members, Leah Owuor of International Justice Mission (IJM).

#### Way forward

The Board still requires urgent funds to do the following:

1. Set up an independent secretariat and offices.
2. Staff its secretariat, by development or otherwise.
3. Complete the Draft Rights Charter
4. Draft Regulations through a consultant
5. Undertake study tour
6. Board allowances
7. Vehicles.
8. Equipments
9. Review the Victims' Protection Act.
10. Sensitize citizens on the provision of the Act.
11. Sensitize/Brainstorm with the Director of Public Prosecution, the Judiciary, the Law Society of Kenya and other stakeholders of the provisions of the Act.

It is to be noted that the Victim Protection Act creates a paradigm shift in the Criminal Justice System in that a victim of crime, or secondary victim, has rights to participate in a trial from investigations to sentencing.



We wish to thank the Chairman of the Board and the entire Board for the facilitation received so far in operationalisation of the Board.

Submitted for your information and further guidance.

Copy to:

The Solicitor General

Encls.

1. Victim Protection Act with Highlights
2. Budget 2017/2018
3. Workplan
4. Draft Victims' Right Charter



THE REPUBLIC OF KENYA

LAWS OF KENYA

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**VICTIM PROTECTION ACT**

NO. 17 OF 2014

Revised Edition 2014

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A handwritten signature in black ink, appearing to read 'M. O. Ochieng'.

No. 17 of 2014

VICTIM PROTECTION ACT  
ARRANGEMENT OF SECTIONS  
PART I — PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II — GENERAL PRINCIPLES

3. Objects and purposes of the Act.
4. General principles.
5. Application of Act.

PART III — RIGHTS RESPONSIBILITIES AND PROTECTION OF VICTIMS

6. Preliminary assessment of victims.
7. Victim details.
8. Right to privacy and confidentiality.
9. Right to during trial the process.
10. Right to protection.
11. Security of the Victim.
12. Victim impact statements.

PART IV — VICTIM SERVICES

13. Victim as a complainant.
14. Purpose of support and welfare services.
15. Right to choose whether or not to participate in restorative justice.
16. Right to prompt release of victim's property held as exhibits.
17. Rights of vulnerable victims.
18. Rights of a child victim.
19. Right to information.
20. Right to submit information.
21. Information to be given in appropriate circumstances.
22. Victim services.
23. Right to compensation.
24. Award of compensation by Court.
25. Compensation or restitution orders not part of a sentence.
26. Victim restitution.

PART V — VICTIM PROTECTION TRUST FUND

27. Establishment of the Fund
28. Sources of funds.
29. Victim surcharge levy.
30. Board of Trustees.

PART VI — VICTIM PROTECTION BOARD

31. Establishment of the Board.
32. Functions of the Board.
33. Reporting requirements.

PART VII — PROVISIONS ON DELEGATED POWERS

34. Regulations.

PART VIII — MISCELLANEOUS PROVISIONS

35. Employers not to penalize victims.

36. General penalties.

SCHEDULE

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

No 17. OF 2014

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, L.N. 43 of 2015.]

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Victim Protection Act, 2014.

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 under section 3A, of the Witness Protection Act, 2006;

“**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's Act 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, 1998;

“**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, 1981;

“**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 Act, a clinical officer registered under section 7 of the Clinical Officers Act or a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentist Act and includes a registered counselling psychologists and recognized physical therapist;

**"individual service restitution"** means where the offender with the victims 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 the Victim Protection Board established under section 19;

**"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) 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 representatives**" 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 case involving the 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 and Victim Protection Agency established under the Witness Protection Act, 2006.

#### **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 2006 (No. 6 of 2006), and the Counter- Trafficking In Persons Act, 2010 (No. 8 of 2010), 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) a victim of crime committed within Kenya; or
- (b) the complexion of the victim;
- (c) the complexion 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 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 victims 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 sub-section (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 victim is guaranteed;
- (c) securing—
  - (i) urgent medical treatment for the victim;
  - (ii) immediate psychosocial support for 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-

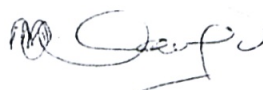
- (a) subject to the provisions of the Evidence Act, (Cap. 80), adduce evidence that has been left out;
- (b) give oral evidence or written submission.

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

*Victim Protection*

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(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 declared 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's Act 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's Act.

**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 effect 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, or probation under the Probation of Offenders Act, 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, 2014 (No. 21 of 2011), 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) where the offender is serving a custodial sentence, the name and address of the institution where the sentence is being served;
- (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, 2008.

(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 of 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 —s

- (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.

### 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 POWER

### 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, 2013 (No. 23 of 2013).



## 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.

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SCHEDULE  
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 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.



## VICTIM PROTECTION BOARD

### PROGRESS REPORT ON OPERATIONALISATION OF THE VICTIMS PROTECTION ACT

#### 1.0 Background

The Victim Protection Act was enacted on 4<sup>th</sup> September 2014, to give effect to Article 50 (9) of the Constitution. The Act provides for protection of victims of crime and aims to provide them with better information and support services. The Act also provides for reparation, compensation and special protection for vulnerable victims and the development of a mechanism for dissemination of information, provision of support services.

The Victim Protection Act provides for the establishment of the Victim Protection Board, which is expected to develop a Victims Rights Charter and carry out other functions as set out in section 32 and 33 of the act.

The Solicitor General chairs the Board and the Secretary to the Board is the Director of the Witness Protection Agency. The Board approved the constitution of the technical committee into the secretariat of the board during its inaugural meeting on 8th October, 2015. The secretariat has continued to carry out activities assist the board in its functions of implementing the Act and the design and implementation of programmes to ensure realization of rights, provided for victims under the Act. 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.

#### 2.0 Purpose

The purpose of this paper is to provide an update of the steps taken so far in the implementation of the Victims Protection Act, and to request for approval of other proposed activities.

#### 3.0 Key Implementation Activities

### **3.1 Supplementary Budget allocated to the Victim Protection Board**

To enable the Board and the secretariat initiate the process of operationalization there is need for financial resources. During the financial year 2015/16 the technical committee made a request to treasury for one line budget to finance the activities of the board.

Treasury had declined the request for a one line budget; instead it allocated a total of Kshs. 20 Million, for the Victim Protection Board, under the vote of the National Anti-Corruption Campaign Steering Committee (NACCSC). The secretariat also participated the supplementary budgetary process in the just concluded supplementary budget allocation and the Board was reallocated a further 60 M to Operationalize the Board. The Secretariat has developed an itemized budget attached at appendix '1'.

#### **Request to the Board**

Consider and approve the itemized budget attached and marked 'appendix 1'

### **3.2 Victim's Rights Charter Validation Workshop**

The Board in consultation with the Director of Public Prosecutions (DPP) has developed a Draft Victim's Rights Charter in accordance with Section 19 (4) of the Victim Protection Act. The charter was developed during a retreat of the technical committee in Naivasha in September 2016 and a subsequent consultation with the DPP in Machakos in November 2016.

The next step is to hold a validation workshop to allow stakeholders consider the draft charter and give their feedback and enrich the document.

The Technical Committee on the implementation of the Victim Protection Act is proposing to hold a Victim's Rights Charter validation workshop on 17<sup>th</sup> March 2017. This is also in line with the Board's work plan.

#### **Requirements from the Board.**

Consider and approve the proposed Victim's Rights Charter validation workshop in Nairobi on 17<sup>th</sup> March 2017.

### **3.3 Development of the Victim Protection Trust Fund Regulations**

Section 24 of the Act provides that the court may award compensation under the Act and such compensation from the offence complained of which shall be charged from the Victim Compensation Trust Fund. The Act establishes the Fund under section 27, and sets out the various sources of funds among them the victim surcharge levy under section 29 of the Act. The Trust Fund for Victims is established to support and implement programmes to provide for protection of victims of crime. Its mandate is two-fold: first, to implement court ordered reparations and secondly, to provide physical, psychological and material support to victims and their families. It contributes to realization of sustainable and long lasting peace through the promotion of restorative justice and reconciliation.

The Board is expected, in discharging its advisory role, to develop the Victim Protection trust fund regulations to guide the Board of Trustees on the conduct its affairs. The development of regulations is therefore a key step in the operationalization of the Board of trustees and the Trust fund.

The Victim Protection Board technical committee is proposing to hold a retreat from **27<sup>th</sup> February to 3<sup>rd</sup> March 2017** (exclusive of travelling dates), to develop the Victim Protection Trust Fund Regulations. This is also in line with the Board's work plan.

#### **Requirements from the Board.**

Consider and approve the proposal to hold a retreat from **27<sup>th</sup> February to 3<sup>rd</sup> March 2017** (exclusive of travelling dates), to develop the Victim Protection Trust Fund Regulations.

### **3.4 Development of the Victim Protection Compensation, Reparations and other Reliefs Regulations.**

The Victim Protection Act was enacted, 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 support services.

The Victim Protection Board is charged with advising on inter Agency activities aimed at protecting victims of crime and the implementation of preventive, protective and rehabilitative programmes of victims of crime. To this end the Board is at an advanced stage in the development of the Victim Rights Charter. The Charter recognizes and applies the principles that govern victims of crime and the standard service they can expect to receive from agencies in the criminal justice system and other relevant agencies.

The Victim Protection Board technical committee is also proposing to develop to develop Victim Protection Trust Fund Regulations.

Having developed the above instruments there will be need to start developing the Victim Protection Compensation, Reparations and other Reliefs Regulations in order to provide the Victim service providers and the victims as well their legal representatives on how to go about accessing rights provided for under article 50 of the constitution as well the Victim protection Act.

The Victim Protection Board is proposing to hold a retreat from 20<sup>th</sup> to 24<sup>th</sup> March 2017 (exclusive of travelling dates), to develop the Victim Protection Compensation, Reparations and other Reliefs Regulations. This is also in line with the Board's work plan.

#### Requirements from the Board.

Consider and approve the proposal to hold a retreat from 20<sup>th</sup> to 24<sup>th</sup> March 2017 (exclusive of travelling dates), to develop the Victim Protection Compensation, Reparations and other Reliefs Regulations.

### 3.5 Victim Protection board Study Tour

The Board is expected to advise the Cabinet Secretary responsible for matters relating to Justice on inter agency activities aimed at protecting victims of crime, among other roles set out in 32 of the Victim Protection Act.

The development of the Victims' Rights Charter is at an advanced stage. The Charter recognizes and applies the principles that govern victims of crime and the standard service they can expect to receive from agencies in the criminal justice system and other relevant agencies. The Victim Protection Board technical committee is also proposing to develop to develop the Victim Protection Compensation, Reparations and other Reliefs Regulations and Victim Protection Trust Fund Regulations.

As this is a new idea in Kenya and since the Board will have to grapple with so many issues like how victims qualify for protection, compensation, the minimum standards of service, how to raise resources to sustain the program; generally, operationalizing the Act, the Board sees it fit to conduct a study tour to learn from those jurisdictions with established system on the running and operationalization of the Act. This will build the capacity of officers to competently deal with issues of victim rights and protection. The Board has a lot of work cut out for them and thus needs to be fully equipped to handle the task as well as build capacity for members.

Board has a lot of work cut out for them and thus needs to be fully equipped to handle the task.

The Board proposes to conduct a study tour on the best practices and emerging issues on victim protection rights and procedures. The Board proposes to conduct the study tour in three leading jurisdictions, namely: The Hague (Netherlands), Indonesia and South Africa which have been identified as having established Victim Protection systems. The attendant costs of travel and subsistence will be borne by the Board. This is also in line with the Board's work plan.

#### Requirements from the Board.

Consider and approve the proposed study tour on the best practices and emerging issues on victim protection rights and procedures.


#### 4.0 Requests to the Victim Protection Board

The technical committee requests the Board to:

- i. Discuss and approve the proposed activities on the operationalization of the Victim Protection Act and the annexed budget.

  
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MR. NJEE MUTURI  
CHAIRPERSON

24.2.17

  
.....  
MS. ALICE O. ONDIEKI  
SECRETARY

24.2.17