

THE VICTIM PROTECTION (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Victim Protection Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title. **1.** This Act may be cited as the Victim Protection (Amendment) Act, 2024.

Amendment of the long title of Cap. 79A. **2.** The Victim Protection Act (in this Act referred to as the “principal Act”) is amended in the long title by deleting the words “and abuse of power”.

Amendment of section 2 of Cap. 79A. **3.** Section 2 of the principal Act is amended in subsection (1) by—

(a) deleting the definition of “agency” and substituting therefor the following definition—

“Agency” means the Victim Protection Agency established under section 33A;

(b) deleting the definition of “Board” and substituting therefor the following

(c) definition—

“Board” means the Victim Protection Board established under section 33D;

(d) inserting the following new definitions in proper alphabetical sequence—

“Chief Executive Officer” means the Chief Executive Officer appointed as such under section 33H;

“complainant” means the Republic or the alleged victim of an offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint;

“response” means the provision of immediate security of the victim from further harm;

“victim service agencies” means Government and non-governmental agencies dealing with matters related to victim of offences.

Amendment of section 3 of Cap. 79A.

4. Section 3 of the principal Act is amended—

- (a) in paragraph (b)(i), by inserting the words “or other sources of funds” immediately after the words “the offender”;
- (b) in paragraph (b)(iv), by deleting the words “at all levels of Government”; and
- (c) in paragraph (c), by inserting the words “coordination and collaboration” immediately after the word “co-operation”.

Amendment of section 4 of Cap. 79A.

5. Section 4 of the principal Act is amended by deleting subsection 3 and substituting therefor the following subsection—

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

Cap. 79.

Amendment of section 5 of Cap. 79A.

6. Section 5 of the principal Act is amended by deleting sub section (2).

Amendment of section 6 of Cap. 79A.

7. Section 6 of the principal Act is amended in subsection (1) by adding the words “to the relevant requesting authority” immediately after the words “report of the offence”.

Amendment of section 8 of Cap. 79A.

8. Section 8 of the principal Act is amended—

- (a) in subsection (2), by inserting the words “or the circumstances of the matter require confidentiality” immediately after the words “requests for confidentiality”;
- (b) by adding the following new subsection immediately after subsection (3)—

(4) Where the victim is to be referred to the Witness Protection Agency or is in the Witness Protection Program, the law enforcement agency shall ensure all identifying information is redacted from the statements or documents intended to be shared to the accused, their advocate or representative, as guided by a court order.

Amendment of section 9 of Cap. 79A.

9. Section 9 of the principal Act is amended—

(a) in sub section (1), by inserting the following new paragraph immediately after paragraph (a)—

(aa) be assisted by an intermediary to communicate to the Court;

(b) by adding the following new sub section immediately after sub section (3)—

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

(a) adduce evidence that has been left out subject to the provisions of the Evidence Act; and

(b) give oral evidence or written submissions.

Amendment of Section 12 of Cap. 79A.

10. Section 12 of the principal Act is amended in subsection (2) by inserting the words “or Witness Protection Agency” after the words “victims service agency”.

Repeal and replacement of section 13 of Cap. 79A.

11. The principal Act is amended by repealing section 13 and replacing therefor the following section—

Victim as a complainant

13. Where a victim is a complainant in a criminal case, the victim shall, pursuant to the Evidence Act, be entitled to adduce evidence—

(a) in person;

(b) through an advocate; or

(c) through an intermediary.

Amendment of section 14 of Cap. 79A.

12. Section 14 of the principal Act is amended in sub section (1) by deleting the word “Board” and substituting therefor the word “Agency.”

Amendment of

13. Section 17 of the principal Act is amended in

section 17 of subsection (5) (c) by inserting the words “and any other
Cap. 79A. legislation related to children matters immediately after the
words “Children Act”.

Amendment of **14.** Section 22 of the principal Act is amended—
section 22 of
Cap. 79A.

(a) by deleting sub section (1) and substituting therefor
the following sub section—

(1) The Agency shall establish victim services in all
counties and ensure –

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

(b) in sub section (2) by deleting the words “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” and
substituting therefor the words “the Agency shall
immediately refer the victim to the Witness
Protection Agency in accordance with the Witness
Protection Act”.

- Deletion of heading to Part V. **15.** The principal Act is amended by deleting the heading under Part V.
- Repeal of section 27 of Cap. 79A. **16.** The principal Act is amended by repealing section 27.
- Repeal of section 28 of Cap. 79A. **17.** The principal Act is amended by repealing section 28.
- Amendment of section 29 of Cap. 79A. **18.** Section 29 of the principal Act is amended by deleting the words “calculated in accordance with a formula prescribed by the Cabinet Secretary for the time being responsible for justice” and substituting therefor the words “of ten per centum of the fine imposed”.
- Repeal of section 30 of Cap. 79A. **19.** The principal Act is amended by repealing section 30.
- Deletion of heading to Part VI. **20.** The principal Act is amended by deleting the heading under Part VI.
- Repeal of section 31 of Cap. 79A. **21.** The principal Act is amended by repealing section 31.
- Repeal of section 32 of Cap. 79A. **22.** The principal Act is amended by repealing section 32.
- Repeal of section 33 of Cap. 79A. **23.** The principal Act is amended by repealing section 33.
- Amendment to Part VI of Cap. 79A. **24.** The principal Act is amended by inserting the following new Part immediately after Part VI—

**PART VIA– ESTABLISHMENT OF THE
VICTIM PROTECTION AGENCY AND
BOARD**

Establishment of the Agency. **33A.** (1) There is established an agency to be known as the Victim Protection Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—

(a) suing and being sued;

- (b) holding and alienating movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things as may be lawfully done by a body corporate.

Functions of
the Agency.

33B. The functions of the Agency shall be to—

- (a) create programmes to prevent victimization;
- (b) formulate a comprehensive and integrated program to protect victims of offences;
- (c) coordinate activities relating to protection of victims of offences;
- (d) collect, analyse and disseminate information relating to victim to the concerned victim service agencies and organizations;
- (e) develop a victim rights charter for victims of offences;
- (f) formulate training programmes for law enforcement agencies on victim protection;
- (g) monitor and evaluate the progress of Kenya with respect to protection of victims of offences;
- (h) consult and advocate with the relevant Government departments and agencies and non-governmental organizations, for the advancement of the purposes of this Act;
- (i) collect, collate and document desegregated data annually, by age, county and gender, of victims of crime for purposes of policy formulation and program direction;
- (j) develop mechanisms to ensure the timely, coordinated, and effective response to cases involving victims

of offences;

(k) undertake measures necessary to rehabilitate victims of crime and in particular —

(i) implement education for victims of offences; and

(ii) provide shelter and psychosocial support to vulnerable victims;

(l) develop measures to reduce re-victimization in the justice system; and

(m) perform such other functions as may be necessary for the better carrying out the purpose of this Act.

Powers of the Agency. **33C.** The Agency shall have the power to—

(a) recruit, control and supervise its staff in a manner and for such purposes as may be necessary for the promotion of the purpose and the object for which the Agency is established;

(b) collect, analyse, store and disseminate information related to victim protection;

(c) enter into association with such other persons, bodies, or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance of its object and purpose;

(d) administer the funds and assets of the Agency;

(e) open bank accounts for the funds of the Agency;

(f) invest such funds of the Agency as may be prescribed under this Act; and

(g) receive any grants, gifts, donations

or endowments and make legitimate disbursement there from.

Board.

33D. (1) There is established a Board of the Agency which shall consist of —

- (a) the Principal Secretary of the Ministry for the time being responsible for matters relating to justice or his representative;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his representative;
- (c) the Principal Secretary of the Ministry for the time being responsible for probation and aftercare services or his representative;
- (d) the Principal Secretary of the Ministry for the time being responsible for matters relating to children affairs or his representative;
- (e) the Director of Public Prosecutions or his representative;
- (f) the Chief Registrar of the Judiciary or his representative;
- (g) the Inspector-General of the National Police Service or his representative;
- (h) the Director of the Witness Protection Agency;
- (i) two representatives of a civil society dealing with issues relating to victims; and
- (j) the Chief Executive Officer, who shall be an *ex officio* member.

(2) A member under subsection (2)(j) shall be appointed by the Attorney General, upon nomination by the respective nominating

body, or upon recommendation by the organizations working in the relevant field in the case of subsection (2)(j).

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

(4) The Attorney General shall appoint a chairperson of the Board among the members appointed under subsection (2).

(5) The members of the Board appointed under paragraphs (i) and (j), shall hold office for a period of three years on such terms and conditions as may be specified in the instruments of appointment and shall be eligible for reappointment for one further term of three years.

Functions of
the Board.

33E. The functions of the Board shall be to—

- (a) advise the Cabinet Secretary on inter-agency activities aimed at protecting victims of offences and the implementation of preventive, protective and rehabilitative programmes for victims of offences;
- (b) advise the Cabinet Secretary on the formulation of victim protection policies in accordance with the provisions of law and international best practices;
- (c) have general oversight on the administration of the Agency;
- (d) approve work-plans, procurement plans and budgetary estimates of the Agency; and
- (e) perform any other functions as may be conferred by this Act or any other law.

Conduct and
affairs of the
Board.

33F. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

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

Committees of the Board.

33G. (1) The Board may establish committees for the better carrying out of its functions.

(2) The Board may co-opt into the committee under subsection (1) other persons whose knowledge and skills are found necessary for the function of the Board.

Chief Executive Officer of the Agency.

33H. (1) There shall be a Chief Executive Officer of the Agency who shall be appointed by the Board on such terms and conditions as the Board may approve.

(2) The Chief Executive Officer shall have all the powers necessary for the performance of his or her functions under this Act.

(3) A person shall be qualified to be appointed as the Chief Executive Officer of the Agency, if the person—

- (a) is a citizen of Kenya;
- (b) holds a minimum of a first degree in law, psychology, sociology or other relevant social science;
- (c) holds a master's degree in law, psychology, sociology or other relevant social science;
- (d) possess at least ten years' experience in victim services; and
- (e) meets the requirements of Chapter six of the Constitution.

(4) The Chief Executive Officer shall be—

- (a) the accounting officer of the Agency;
- (b) responsible for carrying out the policy decisions of the Agency;

- (c) responsible for the day to day administration and management of the Agency;
- (d) in charge of the administration, organization and control of staff of the Agency;
- (e) responsible for the performance of such other functions as may be assigned by the Board.

(5) The Chief Executive Officer may, in writing, delegate any power or function conferred to the office under this Act to a senior officer of the Agency.

(6) An officer of the Agency to whom a power or function has been delegated under subsection (5) shall exercise that power or perform that function subject to the general directions of the Chief Executive Officer.

(7) The Chief Executive Officer may at any time in writing withdraw the delegation under subsection (6).

(8) The delegation of any power or function under this section does not prevent the Chief Executive Officer from exercising or performing that power or function in person.

Term
vacation
office.

and
of

33I. (1) The Chief Executive Officer shall hold office for a term of five years and may be eligible for re-appointment for a single further term of five years.

(2) The Chief Executive Officer may be removed from office for—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) conviction for a criminal offence attracting a term of imprisonment of

not less than six months without the option of a fine; or

- (e) any other ground that would lawfully justify removal from office under the terms and conditions of service.

(3) A person desiring the removal of the Chief Executive Officer shall in writing, present a petition to the Board, setting out the alleged facts constituting the grounds for removal.

(4) The Board shall consider the petition and, if it is satisfied that it discloses the existence of a ground under subsection (3), remove the Chief Executive Officer.

(5) The Chief Executive Officer shall be accorded appropriate opportunity to defend himself or herself before the question of his or her removal in line with the provisions of the Fair Administrative Action Act and any other applicable law.

Appointment
of Corporation
Secretary.

33J. (1) There shall be a Corporation Secretary of the Agency who shall be appointed by the Board following a competitive recruitment process.

(2) The terms and conditions of service of the Corporation Secretary shall be determined by the Board in consultation with the Salaries and Remuneration Commission.

Qualifications
of corporation
secretary.

33K. A person qualifies for appointment as the Corporation Secretary if that person—

- (a) holds a degree in the relevant field from a university recognized in Kenya;
- (b) has at least five years' experience as a corporation secretary or a similar governance role;
- (c) is a member in good standing of

the Institute of Certified Public Secretaries of Kenya; and

(d) meets the requirements of Chapter Six of the Constitution.

Duties of the Corporation Secretary.

33L. (1) The Corporation Secretary shall be the Secretary to the Board and shall—

- (a) provide legal services and advice to the Board;
- (b) provide guidance to the Board on the duties and responsibilities of the Board;
- (c) ensure Board procedures are followed and reviewed regularly, and that the Board complies with the law, rules and regulations;
- (d) maintain and update the register of conflict of interest;
- (e) assist the Board in the implementation of the code of conduct and ethics;
- (f) assist the Board in organizing Board activities, including providing information, preparing the agenda of a Board meeting, issuing notices and keeping a record of attendance of meetings;
- (g) keep in safe custody the seal of the Authority and a record of its usage;
- (h) ensure that the minutes of the Board and Board committees are promptly prepared and circulated;
- (i) keep the Board abreast of and informed on matters of governance;
- (j) coordinate the governance audit process; and

(k) perform any other duties as may be assigned by the Chief Executive Officer and the Board.

(2) In the performance of duties under this Act, the Corporation Secretary shall be accountable to the Chief Executive Officer.

Staff of the Agency.

33M. (1) The Agency may, for the proper discharge of its functions under this Act, appoint such professional, technical and other staff on such terms and conditions as the Agency may, in consultation with the Salaries and Remuneration Commission, approve.

(2) The Agency may request the Public Service Commission for the secondment of such public officers as it may determine.

(3) For the purposes of this Act, a public officer who is seconded to the Agency under subsection (2) shall be deemed to be a member of staff of the Agency and subject only to the control and direction of the Agency.

Reporting mechanism.

33N. (1) The Agency shall within four months after the end of each financial year, make a report of the policies, programmes and activities relating to the implementation of the Act to the Board during the financial year.

(2) The Board shall submit the annual report to the Cabinet Secretary within fourteen days of receipt of the report.

(3) The Cabinet Secretary shall within fourteen days after receipt of the report from the Board, submit the report to the National Assembly.

Funds of the Agency.

33O. The funds of the Agency shall comprise of—

(a) such monies as may be appropriated by Parliament for purposes of the Agency;

(b) such monies as may accrue to or vest in the Agency in the course of

the exercise of its powers or the performance of its functions under this Act;

- (c) such grants, gifts, bequest and other donations as may be made to the Agency:

Provided that the Agency shall not accept any grant, gift, donation or bequest made on any condition that the Agency performs any function or discharges any duty or obligation other than duties under this Act.

Estimates of Expenditure.

33P. (1) The financial year of the Agency shall be the period of twelve months ending on the thirtieth day of June in each year.

(2) The Agency shall in accordance with the law relating to the public finance management prepare annual estimates of the expenditure of the Agency and the Board for that financial year.

(3) The annual estimates shall make provision for all estimated expenditure of the Agency and the Board for the financial year to which they relate, including a reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(4) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the National Treasury for approval.

(5) Expenditure shall not be incurred by the Agency except in accordance with the annual estimates provided under subsection (2) or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary.

Accounts and audit.

33Q. (1) The Agency shall keep books, and other proper records of accounts of the expenditure, assets and liabilities of the

Cap. 412B.	Agency. (2) The annual accounts of the Agency shall be prepared, audited and reported upon in accordance with the Public Audit Act.
Remuneration of Board Members.	33R. Members of the Board shall be paid such allowances as may be determined from time to time by the Cabinet Secretary responsible for matters related to finance, in consultation with the Salaries and Remuneration Commission.
Transition provision.	33S. (1) A person serving as a member of the former Board immediately before the commencement of this Act and where the term of office has not expired shall be deemed to be a member of the Board appointed under this Act for the remainder of their term. (2) Any person who was an officer or employee of the former Board immediately before the commencement of this Act shall be deemed to be an officer or employee of the Agency. (3) For purposes if this section “former Board” means the Victim Protection Board existing before the commencement of this Act.
Insertion of new section to Cap. 79A.	25. The principal Act is amended by inserting the following new section immediately after section 34—
Regulations	34A. The Chief Justice may, in consultation with the Cabinet Secretary, make such rules of court as may be required or permitted by this Act to be made or as may be necessary or expedient to be made for carrying out or giving effect to this Act.
Amendment of section 34 of Cap. 79A.	26. Section 35 of the principal Act is amended in subsection (1)(a) by deleting the words “in a proceeding respecting an offence” and substituting therefor the words “or a victim attending their case in respect to court proceedings.
Insertion of new section 37 to	27. The principal Act is amended by adding the following new section immediately after section 36—

Cap. 79A.

Compliance with data protection.

37. The implementation of this Act shall conform to the provisions on data protection, right to privacy and access to information.

Amendment of the Schedule to Cap. 79A.

28. The principal Act is amended by repealing the Schedule and replacing therefor the following Schedule—

SCHEDULE

s.33F(1)&(2)

THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. 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, upon request in writing by at least five members, 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 five 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.

2. 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 member's 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 shall, on conviction, be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred thousand shillings, or to both.

3. 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.

4. 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.

MEMORANDUM OF OBJECTS AND REASONS.

The principal object of the Bill is to amend the Victim Protection Act to introduce a new Part to provide for the establishment, functions, powers, financial and operational management of the Victim Protection Agency. The Agency shall be a body corporate and have the mandate of coordinating activities related to protection of victims of crime.

The Bill seeks to amend section 22 such that the roles assigned to the Cabinet secretary for the time being responsible for matters relating to Justice be vested in the Victim Protection Agency and the Victim Protection Board.

The Bill also seeks to delete section 22(3) and 22(4) of the Act on the retention by police of property of the victim obtained by the offender in the cause of the commission of an offence.

The Bill seeks to include the Chief Registrar of the Judiciary in the membership of the Board and in section 34, empower the Chief Justice in consultation with the Cabinet Secretary to make rules of court as may be required to give effect to this Act. This was informed by the recognition that the Judiciary is a key player in the criminal justice sector.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

Dated this.....2024.

J. B. N MUTURI,
Attorney-General.