
PARTICIPANTS' PAPERS

PROTECTION OF THE RIGHTS OF CRIME VICTIMS INCLUDING CHILDREN: THE KENYAN RESPONSE TO CHILD VICTIMS

*Caroline Karimi Kariuki**

I. INTRODUCTION

A. Current Situation of Protection of the Rights of Child Victims

Kenya has made great strides in creating a comprehensive legislative framework on the protection of the rights of child victims.¹ Kenya enacted the Victim Protection Act² (VPA) in order to safeguard and uphold the dignity and well-being of the victims in the justice system and to breathe life into Article 50 (9) the Constitution of Kenya, 2010. The objects of the VPA³ are:

- i) Provision of support services
The VPA makes provision for victim support services which include, *inter alia*, psycho-social support,⁴ medical support⁵ and the right to protection and security.⁶
- ii) Active involvement in court processes
This practice is popularly known as “watching Brief”. It is a practice that was developed in England as legal tool for protection of child victims in the criminal justice system.⁷ The victim is entitled to a myriad of rights in Kenya,⁸ which include the right to be present during trial, the right to submit on bail/bond and sentence,⁹ the right to a legal representative of their choice, the right to be informed in advance of the evidence the prosecution and defence intend to rely on, the right to present their views, concerns and statements of the impact of the offence in court and the right to choose whether or not to participate in restorative justice.
- iii) Protection measures before and during trial
Once a child victim enters the criminal justice system, the duty bearers are impressed upon by law to ensure that their vulnerabilities are assessed and appropriate measures are put in place. These include referral to the Witness Protection Agency or place of safety,¹⁰ protection measures for the child victim during giving of evidence such as use of protection boxes, use of intermediaries, reduction of statements, in-camera proceedings etc.¹¹
- iv) Infrastructure
Kenya has made significant progressive steps towards putting in place policies and infrastructure such as separate holding places for children referred to Child Protection Units (CPU) at police stations, places of safety such a Remand homes and shelters, the Victim Protection Trust Fund, One-stop

* Senior Principal Prosecution Counsel, Children Division and Anti-FGM Unit, Office of the Director of Public Prosecutions, Kenya.

¹ The Sexual Offences Act (SOA) No. 3 of 2006, the Children Act, 2001, the Counter-trafficking in Persons Act No.8 of 2010.

² [Act No. 17 of 2014, Legal Notice 43 of 2015.]; and the Sexual Offences Act (SOA) No. 3 of 2006.

³ Section 3.

⁴ Also in Section 31 and 32 of the SOA.

⁵ Also in Section 35 SOA.

⁶ Section 10, 11 and 14 of the VPA.

⁷ Patmalar Ambikapathy, ‘The use of Watching Brief as a legal tool for the Protection of Child Victims in the Criminal Justice Process’ (Malaysia).

⁸ Section 9 of the VPA, 2014.

⁹ Mary Kinya Rukwaru vs. Ragunathan Santosh & Another [2014] eKLR; Joseph Lendrix Waswa v Republic [2019] eKLR.

¹⁰ The Witness Protection Act, the Children Act, the VPA.

¹¹ Section 31 of the SOA, section 76 of the Children Act, section 8 and 9 of the VPA.

Centre for Sexual and Gender based Violence victims (Policare)¹² and toll-free hotlines,¹³ and the Office of the Director of Public Prosecutions (ODPP) is in the final stages of setting up seven child-friendly interview rooms across the Country.

II. CHALLENGES

Notwithstanding all these classic efforts towards victim protection, the journey of the child victim through the criminal justice system leaves the child with a bitter after-taste and sometimes in a worse state due to the secondary victimization occasioned (whether inadvertently or not) by the very system that was intended to restore the child's well-being and self-worth.

On the one hand, the attitudes of duty bearers handling the victims, the social and cultural response of the society to the victims of especially sexual offences, the handling of interviews/interrogation and observance of the rights of victims during trial and investigations are the key areas in which secondary victimization is perpetrated.

On the other hand, secondary victimization manifests through the victims themselves. This is by victims lacking knowledge of when and where to report an offence.¹⁴ According to the Violence against Children Report (VAC),¹⁵ a service seeking survey for victims of sexual abuse showed that 24.7 per cent of the females and 12.9 per cent of the males of 18–24-year-olds knew where to seek professional help, whereas 28.3 per cent of children between 13 and 17 years knew where to seek professional help. For those between 18 and 24 years, 6.8 per cent of the females and 2.1 per cent of the males tried to get professional help, whereas for children between 13 and 17 years, 7.9 per cent tried to get professional help. These low percentages are an indication that victims do catalyse the process of secondary victimization.

Notably several challenges present an obstacle to reducing or eliminating secondary victimization. These are:

- (i) Lack of cooperation and coordination among the key government agencies. This leads to a breakdown of communication and response in the management of the child victim.
- (ii) Lack of information and knowledge of the victim services that exist, where they are situated and how to access them.¹⁶ In addition, most duty bearers in the justice system do not know what secondary victimization is and, therefore, cannot recognize it when it manifests during their interactions with victims. Consequently, they cannot address it.
- (iii) Unskilled professionals and poor attitude of duty bearers within the justice system on victim management. Police officers, prosecutors and judicial officers do not possess the necessary skills to handle victims and especially child victims. What's more, the attitude of the duty bearers towards the victims is more often than not gravely wanting.
- (iv) Lack of data on the number of victims. A country that cannot account for the number of victims being processed through its justice system cannot make any realistic strategic provision for them, neither can it benefit from facts that qualified data can provide.
- (v) Lack of financial and human resource allocations by the Government. This manifests in lack of government infrastructure such as safe houses for vulnerable/at-risk victims and lack of resources for institutions to build the capacity of their personnel on victim management and support.

¹² www.nationalpolice Service.go.ke

¹³ Child Helpline No. 116, 999, 1195/1193 Gender Based Violence, 1192 for Alcohol and Drug Abuse etc.

¹⁴ The Violence Against Children Report in Kenya, Findings from a 2010 National Survey, 59 – 71.

¹⁵ Supra.

¹⁶ VAC page 17

III. SOLUTIONS

There does not exist a one-size-fits-all solution to addressing secondary victimization in the criminal justice system. It is a clarion call on the government of the day to begin by understanding the underlying issues that catalyse secondary victimization and that impede efforts to resolve the challenges of secondary victimization. This can be achieved through the following ways:

- i) The Government should offer a strategic commitment to strengthen the existing legal and infrastructural framework on protection of child victims and creation of strategic partnerships to cater for insufficiencies.
- ii) The Government must, thereafter, financially invest in human resources, physical and psycho-social support for child victims at all levels. For instance, increasing the number of safe houses and the number of courtrooms that have witness protection boxes and video-conferencing equipment, and building capacity of investigators and prosecutor on forensic interviewing of child victims.
- iii) The state and non-state actors must create synergy by collaborating and coordinating their efforts in how they manage the victims and information dissemination to the public on victim support.