

**SPECIAL ISSUE**

COUNTY ASSEMBLIES FORUM (CAF)  
P. O. Box 73552 - 00200,  
NAIROBI, KENYA

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REPUBLIC OF KENYA

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**KWALE COUNTY BILLS, 2018**

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**NAIROBI, 19th November, 2018**

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**THE KWALE COUNTY SEXUAL AND GENDER VIOLENCE  
BILL, 2018**

COUNTY ASSEMBLIES FORUM (CAF)  
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**THE KWALE COUNTY SEXUAL AND GENDER VIOLENCE  
BILL, 2018**

**A Bill for**

**AN ACT of the County Assembly of Kwale to create the County Sexual and Gender Violence Board, the Sexual and Gender Technical Working Groups, Gender Based Violence Recovery Centres, Safe Houses, to protect the rights of victims of Sexual and Gender based violence within the County, and for connected purposes**

**ENACTED** by the County Assembly of Kwale as follows—

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the Kwale County Sexual and Gender Violence Act, 2018.

**Interpretation**

2. In this Act;

“board” means the County Sexual and Gender Violence Board established under section 3;

“centre” means Sexual and Gender Based Recovery Centre;

“chief officer” means an officer of the County Government established within the County Government Act (No. 17 of 2012);

“county government” means the devolved government within as established under the Constitution;

“department” has the meaning assigned to it in the County Governments Act (No. 17 of 2012);

“gender based violence recovery centres” means a centre established under section 24 of the Act;

“gender violence” has the meaning assigned to it in the Protection Against Domestic Violence Act (No. 2 of 2015);

“medical practitioner” has the meaning assigned to it in the Medical Practitioners and Dentists Act [Cap. 253];

“one stop centre” means a Gender Based Violence Recovery centre which offers medical, security, legal and psychosocial services aimed at responding victims, survivors and perpetrators of sexual and gender based violence;

“probation officer” has the meaning assigned to it in section 2 of the Probation of Offenders Act [Cap. 6];

“rehabilitation” has the meaning assigned to it in the Victim Protection Act, 2014;

“safe house” means a facility established under section 27 of the Act;

“sexual abuse” has the meaning assigned to it in the Sexual Offences Act, 2006;

“sexual violence” has the meaning assigned to it in the Sexual Offences Act, 2006;

“survivor” means a survivor of sexual and gender based violence;

“victim” means a victim of sexual and gender based violence;

“vulnerable victim” has the meaning assigned to it in the Victims Protection Act, 2014; and

“working group” means Sexual and Gender Technical Working Group established under part IV of the Act.

## **PART II—THE COUNTY SEXUAL AND GENDER VIOLENCE BOARD**

### **Establishment of the Board**

3. (1) There is established a board to be known as the County Sexual and Gender Violence Board.

(2) The Board is 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) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

### **Composition of the Board**

4. (1) The Board shall consist of—

- (a) Chairperson appointed by the Governor;

- (b) chief Officer from the Department responsible for gender issues;
- (c) chief Officer from the Department responsible for Health Services;
- (d) representative from the office of the County Commissioner;
- (e) representative from the National Police Service;
- (f) two representatives from religious organisations;
- (g) two representatives from civil society dealing with issues relating to sexual and gender based violence; and
- (h) the Chief Executive Officer appointed by the Board.

(2) To qualify for a appointment as a Chairperson of the Board, a candidate shall—

- (a) have at least 10 years experience on matters relating to gender;
- (b) demonstrate interest in community service; and
- (c) not be an employee of the national or county government.

(3) The Members under subsection (1) (f) and (g) shall hold office for a term of three years, which may be renewed for a final term of three years.

(4) The Board shall ensure that not more than two-thirds of its members are of the same gender.

(5) The Board shall ensure that youth and persons with disabilities are represented.

(6) The Secretariat shall be appointed by the Board.

(7) The Secretariat of the Board shall reside at the Department responsible for matters relating to gender.

(8) The Board shall work on part-time basis while the secretariat shall be a permanent office within the Department responsible for gender.

### **Functions of the Board**

5. The Board shall —

- (a) advise the County Executive Committee Member responsible for gender on inter-agency activities aimed at protecting victims of sexual and gender based violence and the implementation of preventive, protective and

rehabilitative programmes for the victims within the County;

- (b) implement the national and county policies relation to the sexual and gender based violence within the County;
- (c) oversight all sexual and gender based violence institutions within the County;
- (d) oversight all sexual and gender based violence protection institutions within the County;
- (e) work closely with County Executive Committee to ensure sufficient budgetary allocation to the Board and institutions involved in protection of sexual and gender based violence victims within the county;
- (f) receive reports from sub-county institutions working on sexual and gender based violence response and prevention;
- (g) develop and implement a multi-sectoral monitoring and evaluation framework towards the prevention of and response to sexual and gender based violence likely to be committed within the County for implementation by the County Government;
- (h) in consultation with other government departments, determine and prescribe training requirements for government officers expected to play a role in the implementation this Act;
- (i) support Traditional Dispute Resolution mechanisms aimed at facilitating resolution of disputes between the perpetrators and survivors of sexual and gender based violence within the county;
- (j) train the traditional dispute resolution mechanisms within the counties on the disputes that may be handled within the traditional setting and those that ought to be handled within the formal dispute resolution mechanism;
- (k) co-ordinate mechanisms between county government and traditional dispute resolution institutions aimed at creating awareness around response to and prevention of sexual and gender based violence within the County;
- (l) support the research units including through funding for purposes of collecting data and provide statistics necessary for planning and in the implementation of the Board's functions ; and

- (m) develop modalities for sexual and gender based violence victims and survivors' compensation.

### **Powers of the Board**

6. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, the Board shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which the Board is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (e) enter into association with such other bodies or organizations within or outside county as it may consider desirable or appropriate and in furtherance of the purposes for which the Board is established;
- (f) open such banking accounts for its funds as may be necessary;
- (g) work with other relevant agencies to provide technical and other support services aimed at implementing this Act;
- (h) invest any funds of the Board not immediately required for its purposes; and
- (i) undertake any activity necessary for the fulfilment of any of its functions.

### **Meetings of the Board**

7. (1) The Board shall meet at least every two months and report to the County Executive Committee Member every six months on the progress made in response to the elimination of victimisation in accordance to this Act.

- (2) The Board may regulate its own procedure.

### **Delegation by the Board**

8. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or

the performance of any of the functions or duties of the Board under this Act or under any other written law.

#### **Chief Executive Officer**

9. (1) There shall be a Chief Executive of the Board who shall be appointed by the Board.

(2) The Chief Executive Officer shall hold office for a period of five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further term.

(3) The Chief Executive Officer shall be an *ex officio* member of the Board.

(4) The Chief Executive Officer shall—

- (a) subject to the direction of the Board, be responsible for the day to day functions of the Board;
- (b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Board; and
- (c) be the secretary of the Board.

#### **Staff**

10. The Board may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act, upon such terms and conditions of service as the Board may determine.

#### **The common seal of the Board**

11. (1) The common seal of the Board shall be kept in the custody of the Chief Executive Officer or of such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Board, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Board shall be authenticated by the signature of the chairperson of the Board and the Chief Executive Officer.

(4) The Board shall, in the absence of either the chairperson or the Chief Executive Officer, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the chairperson or the Chief Executive Officer.

#### **Protection from personal liability**

12. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

(2) Any expenses incurred by any person in any suit or prosecution brought against them in any court, in respect of any act which is done or purported to be done by them under the direction of the Board, shall, if the court holds that such act was done *bona fide*, be paid out of the general funds of the Board, unless such expenses are recovered by them in such suit or prosecution.

#### **Liability for damages**

13. The provisions of section 12 shall not relieve the Board of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

### **PART III—FINANCIAL PROVISIONS**

#### **Funds of the Board**

14. The funds and assets of the Board shall consist of—

- (a) monies appropriated by the County Government;
- (b) monies received by the Fund as grants, donations or gifts from non-governmental or non-public sources; and
- (c) all moneys from any other lawful source provided, donated or lent to the Board.

#### **Financial year**

15. The financial year of the Board shall be the period of twelve months ending on the thirteenth June in each year.

**Annual estimates**

**16.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for the—

- (a) allocation to and establish and sustain other institutions provided within the act;
- (b) payment of the salaries, allowances and other charges in respect of members and staff of the Board; and
- (c) proper maintenance of the buildings and grounds of the Board; maintenance, repair and replacement of the equipment and other property of the Board.

(3) 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 Cabinet Secretary for approval.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary.

**Accounts and audit**

**17.** (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure and assets of the Board.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Board together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a balance sheet of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act (Cap. 412B).

### **Investment of funds**

**18.** (1) The Board may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

(2) The Board may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Board.

## **PART IV—SEXUAL AND GENDER TECHNICAL WORKING GROUPS**

### **Established the Sexual and Gender Technical Working Groups**

**19.** (1) There are established the Sexual and Gender Technical Working Groups to be based within the sub-county levels.

(2) The Technical Working Groups shall be based within the sub-county levels.

### **Composition of the Sexual and Gender Technical Working Group**

**20.** (1) The Technical Working Group shall comprise—

- (a) sub-county Administrators;
- (b) members of the County Assembly;
- (c) head of the Judiciary within the sub-county;
- (d) probation officers;
- (e) representatives from the education sector;
- (f) representative from the Office of the Director of Public prosecutions;
- (g) representative from the Children Department;
- (h) representative from Health Department;
- (i) security agencies within the sub-county;
- (j) community leaders and elders;
- (k) religious leaders;
- (l) members of the civil society organisation working within the sub-county on matters of gender violence;
- (m) the Technical Working Group may co-opt any other relevant stakeholders as may be deemed necessary in response to and prevention of gender violence.

(2) The Chairperson of the Group shall be elected from the Members and shall serve for a period of two years.

(3) The Working Group shall ensure that not more than two-thirds of its members are of the same gender.

(4) The Working Group shall ensure that youth and persons with disabilities are represented.

#### **Decentralized services**

21. The Technical Working Group shall progressively decentralise its operations to the ward and village levels by appointing members of the society as representatives to facilitate access to protective mechanism by all victims of domestic violence regardless of their location in the county.

#### **Functions of the Technical Working group**

22. The Working Group shall—

- (a) co-ordinate response to and prevention of victimization such as sexual and Gender based violence;
- (b) implement the policies of the Board;
- (c) be in charge of and support the Sexual and Gender based Violence Recovery Centre;
- (d) prepare a semi-annual report for presentation to the Board on the progress made in the implementation of its mandate;
- (e) act as the first point of reference for victims and potential victims of abuse;
- (f) act as a link between victims and the justice system;
- (g) advice the Board on suitability of victims to be declared vulnerable victims in need of special care and protection; and
- (h) conduct advocacy and encourage victims to come out and fight for justice.

#### **Funding to the Technical Working group**

23. Technical Working Group shall receive funding from—

- (a) monies appropriated by the the Board; and
- (b) monies received by the Fund as grants, donations or gifts from non-governmental or non-public sources.

**PART V—SEXUAL AND GENDER BASED VIOLENCE  
RECOVERY CENTRES**

**Sexual and Gender Based Violence Recovery Centres**

24. (1) The Board in conjunction with the National Government's Ministry responsible for Health, shall establish Centres to be known as Sexual and Gender Based Violence Recovery Centres.

(2) The Centres shall be established in all County and sub-county referral Hospitals within the County.

(3) In addition to clause (1) above, the Board shall in co-ordination with the management of private hospitals within the sub counties, establish the centres within their hospitals.

**Functions of the Gender Based Violence Recovery Centre**

25. The Centres shall—

- (a) be a one-stop centre which offers medical, security, legal and psychosocial services;
- (b) offer specialized free and comprehensive gender based violence medical treatment;
- (c) offer psychosocial support to survivors of gender based violence within the county;
- (d) engage the public in advocacy issues and primary prevention of abuse;
- (e) create awareness on the existence of free gender based violence services and the 72 hour campaign through Community Health Workers;
- (f) create awareness through community, male engagement and School Outreach programs to facilitate behavior change, equipping diverse stakeholders with skill and knowledge;
- (g) offer mandatory community-friendly complaint and feedback platform to enable accountability in health care service provision;
- (h) equipping diverse stakeholders with skill and knowledge; and
- (i) have a working referral system for specialized cases that need further management.

**Management of sexual and Gender Based Violence Recovery Centre**

26. The Centres shall be managed by trained clinical and mental health practitioners with special expertise on dealing with victims of gender based violence prevalent within the region.

**PART VI—SAFE HOUSES****Establishment of safe houses**

**27.** (1) The Board shall facilitate the establishment by the County Government at least one safe house per sub-county.

(2) The safe houses may be provided in any form including but not limited to—

- (a) designated premises;
- (b) temporary locations;
- (c) adapted community facilities; and
- (d) mobile facilities.

**Functions of the safe Houses**

**28.** The safe Houses shall—

- (a) offer temporary stay to victims of sexual and gender based violence;
- (b) offer psychosocial support to survivors to enhance rehabilitation and reintegration back into the community;
- (c) provide post-trauma care facilities for survivors of Sexual and gender based violence who qualify to be declared as vulnerable victims in accordance to Section 17 of the Victims Protection Act;
- (d) provide immediate response after violence has occurred to address the short term consequences of violence;
- (e) decrease prevalence of early signs of violence upon victims and survivors of sexual and gender based violence;
- (f) offer long term responses after violence has occurred to enable victims and survivors deal with consequences of violence; and
- (g) have a working referral system database containing all partners within the county in the gender based violence sector within the county for specialized cases that need further management.

**PART IV—MISCELLANEOUS PROVISIONS****Provision on delegated powers**

**29.** (1) The County Executive Committee Member for the time being responsible for gender shall make rules to regulate any matter of practice or procedure under this Act.

(2) Without prejudice to the generality of subsection (1), such rules may.

prescribe—

- (a) the procedure to be followed and the forms to be used under this Act;
- (b) the time within which documents are to be filed and served under this Act; and
- (c) the contents of orders to be issued under this Act.

### **Savings**

**30.** (1) Notwithstanding provisions of the Act—

- (a) any Sexual and Gender Based Recovery Centres and safe houses already established by County Governments shall continue to operate upon coming into force of this Act;
- (b) any function carried out by the the institutions under subsection (1) during the transition period shall be deemed to have been carried out under this Act;
- (c) all assets and liabilities which immediately before the commencement of this Act were vested within the Sexual and Gender Based Recovery Centres and safe houses under subsection (1) or the County Government shall vest in the Board;
- (d) all rights, powers and duties, whether arising under any written law or otherwise which immediately before the coming into operation of this Act were vested in any Institution equivalent to an institution created under this Act shall be transferred to, vested, imposed on, or be enforceable by or against the Board; and
- (e) all actions, suits or legal proceedings by or against any Institution equivalent to an Institution created under this Act shall be carried out on, prosecuted by or against the Board and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(2) Notwithstanding section 20, the persons who were members of the Working Group operating before the commencement of this Act, shall become members of the Working Group upon the commencement of this Act for their unexpired term.

**MEMORANDUM OF OBJECTS AND REASONS**

The objective of the Bill is to provide legal framework for the protection of victims of Sexual and Gender based violence within the County and for connected purposes, create the County Sexual and Gender Violence Board, the Sexual and Gender Technical Working Groups, and Gender Based Violence Recovery Centres.

This Bill is premised on Article 189 of the Constitution of Kenya which emphasizes on co-operation between county and national governments to the implementation of national and county legislations, procedures and policies

This Bill recognizes;

- (a) National Institutions including National Gender and Equality Commission (NGEC) and State Department of Gender Affairs (SDGA) whose core mandates are promoting gender equality and freedom from discrimination among: women, youth, children, the elderly, persons with disabilities, minorities and marginalized groups;
- (b) That the National Government has already taken legislative, policy and other institutional initiatives to ensure prevention and response to cases of sexual and gender-based violence as well to ensure protection of women, girls, men and boys from sexual and gender-based violence; and
- (c) The devolved governments and institutions offers a unique opportunity for the implementation of the national laws, policies, strategies and frameworks through coordination among key stakeholders at the community level.

This Bill therefore, intends to:

- (1) Provide a framework for co-ordination among key national, county and community actors to advance the prevention and response to sexual and gender-based violence.
- (2) Enhance service delivery and justice to victims of sexual and gender-based violence
- (3) Ensure awareness among community members and other stakeholders to enhance sustainable response, prevention and protection of victims.

Dated the 24th September, 2018.

TERESIA B. MUOKI,

*Chairperson, Gender and Special Interests Committee.*