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PROHIBITION OF FEMALE GENITAL MUTILATION ACT

CHAPTER 62B

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CHAPTER 62B

PROHIBITION OF FEMALE GENITAL MUTILATION ACT

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

CHAPTER 62B

PROHIBITION OF FEMALE GENITAL MUTILATION ACT

[*Date of assent: 30th September, 2011.*]

[*Date of commencement: 4th October, 2011.*]

An Act of Parliament to prohibit the practice of female genital mutilation, to safeguard against violation of a person's mental or physical integrity through the practice of female genital mutilation and for connected purposes

[Act No. 32 of 2011.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Prohibition of Female Genital Mutilation Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Board" means the Anti-Female Genital Mutilation Board established under section 3;

"female genital mutilation" comprises all procedures involving partial or total removal of the female genitalia or other injury to the female genital organs, or any harmful procedure to the female genitalia, for non-medical reasons, and includes—

(a) clitoridectomy, which is the partial or total removal of the clitoris or the prepuce;

(b) excision, which is the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;

(c) infibulation, which is the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris,

but does not include a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose;

"law enforcement officer" includes a police officer, a member of the provincial administration, a children's officer, a probation officer, a gender and social development officer and a cultural officer;

"medical practitioner" means a person registered as such under the Medical Practitioners and Dentists Act (Cap. 253);

"midwife" means a person registered as such under the Nurses Act (Cap. 257);

"sexual reassignment procedure" means any surgical procedure that is performed for the purposes of altering (whether wholly or partly) the genital appearance of a person to the genital appearance (as nearly as practicable) of a person of the opposite sex;

"support services" includes the provision of shelter, medical services, legal education, training of service providers and advocates against female genital mutilation, and the provision of psycho-social support.

PART II – THE ANTI-FEMALE GENITAL MUTILATION BOARD

3. Establishment of the Board

(1) There is established a board to be known as the Anti-Female Genital Mutilation 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.

4. Composition of the Board

(1) The Board shall consist of—

(a) a chairperson appointed by the President;

(b) the Principal Secretary of the Ministry for the time being responsible for matters relating to gender or a representative duly appointed in writing;

(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or a representative duly appointed in writing;

(d) the Principal Secretary of the Ministry for the time being responsible for matters relating to health or a representative duly appointed in writing;

(e) the Principal Secretary of the Ministry for the time being responsible for matters relating to education or a representative duly appointed in writing;

(f) the Principal Secretary of the Ministry for the time being responsible for matters relating to youth affairs or a representative duly appointed in writing;

(g) three other members appointed by the Cabinet Secretary; and

(h) the Chief Executive Officer.

(2) A person appointed as a member of the Board under this Act, other than an *ex officio* member, shall serve for a single term of six years and shall not be eligible for re-appointment.

5. Functions of the Board

The functions of the Board shall be to—

(a) design, supervise and co-ordinate public awareness programmes against the practice of female genital mutilation;

(b) generally advise the Government on matters relating to female genital mutilation and the implementation of this Act;

(c) design and formulate a policy on the planning, financing and co-ordinating of all activities relating to female genital mutilation;

(d) provide technical and other support to institutions, agencies and other bodies engaged in the programmes aimed at eradication of female genital mutilation;

(e) design programmes aimed at eradication of female genital mutilation;

(f) facilitate resource mobilization for the programmes and activities aimed at eradicating female genital mutilation; and

(g) perform such other functions as may be assigned by any written law.

6. Powers of the Board

The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, 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 therefrom;

(e) enter into association with such other bodies or organizations within or outside Kenya 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) invest any funds of the Board not immediately required for its purposes; and

(h) undertake any activity necessary for the fulfilment of any of its functions.

7. Conduct of business and affairs of the Board

(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.

8. Delegation by the Board

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.

9. Chief Executive Officer

(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 not more than five years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment.

(3) The Chief Executive Officer shall be an *ex officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Chief Executive Officer shall—

(a) subject to the direction of the Board, be responsible for the day to day management 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.

10. Staff

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.

11. The common seal of the Board

(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.

12. Protection from personal liability

(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 him in any court, in respect of any act which is done or purported to be done by him 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 him in such suit or prosecution.

13. Liability for damages

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

14. Funds of the Board

The funds and assets of the Board shall consist of—

(a) such gifts as may be given to the Board; and

(b) all moneys from any other lawful source provided, donated or lent to the Board.

15. Financial year

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

16. Annual estimates

(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) payment of the salaries, allowances and other charges in respect of members and staff of the Board;

(b) payment of pensions, gratuities and other charges in respect of members and staff of the Board;

(c) proper maintenance of the buildings and grounds of the Board;

(d) maintenance, repair and replacement of the equipment and other property of the Board; and

(e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(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.

17. Accounts and audit

(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).

18. Investment of funds

(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 – OFFENCES

19. Offence of female genital mutilation

(1) A person, including a person undergoing a course of training while under supervision by a medical practitioner or midwife with a view to becoming a medical practitioner or midwife, who performs female genital mutilation on another person commits an offence.

(2) If in the process of committing an offence under subsection (1) a person causes the death of another, that person shall, on conviction, be liable to imprisonment for life.

(3) No offence under subsection (1) is committed by an approved person who performs—

(a) a surgical operation on another person which is necessary for that other person's physical or mental health; or

(b) a surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.

(4) The following are, for the purposes of this Act, approved persons—

(a) in relation to an operation falling within paragraph (a) of subsection (3), a medical practitioner;

(b) in relation to an operation falling within paragraph (b) of subsection (3), a medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming a medical practitioner or midwife.

(5) In determining, for purposes of subsection (3)(a), whether or not any surgical procedure is performed on any person for the benefit of that person's physical or mental health, a person's culture, religion or other custom or practice shall be of no effect.

(6) It is no defence to a charge under this section that the person on whom the act involving female genital mutilation was performed consented to that act, or that the person charged believed that such consent had been given.

20. Aiding and abetting female genital mutilation

A person who aids, abets, counsels or procures—

(a) a person to commit an offence under section 19; or

(b) another person to perform female genital mutilation on that other person,

commits an offence.

21. Procuring a person to perform female genital mutilation in another country

A person commits an offence if the person takes another person from Kenya to another country, or arranges for another person to be brought into Kenya from another country, with the intention of having that other person subjected to female genital mutilation.

22. Use of premises to perform female genital mutilation

A person who knowingly allows any premises, for which that person is in control of, or responsible for, to be used for purposes of performing female genital mutilation commits an offence.

23. Possession of tools or equipment

A person who is found in possession of a tool or equipment for a purpose connected with the performance of female genital mutilation, commits an offence.

24. Failure to report commission of offence

A person commits an offence if the person, being aware that an offence of female genital mutilation has been, is in the process of being, or intends to be, committed, fails to report accordingly to a law enforcement officer.

25. Use of derogatory or abusive language

Any person who uses derogatory or abusive language that is intended to ridicule, embarrass or otherwise harm a woman for having not undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation, commits an offence and shall be liable, upon conviction, to imprisonment for a term not less than six months, or to a fine of not less than fifty thousand shillings, or both.

PART V – MISCELLANEOUS

26. Entry into premises

A law enforcement officer may, without a warrant, enter any premises for the purposes of ascertaining whether there is or has been, on or in connection with such premises any contravention of this Act.

27. Measures by Government

The Government shall take necessary steps within its available resources to—

(a) protect women and girls from female genital mutilation;

(b) provide support services to victims of female genital mutilation; and

(c) undertake public education and sensitise the people of Kenya on the dangers and adverse effects of female genital mutilation.

28. Extra-territorial jurisdiction

(1) A person who, while being a citizen of, or permanently residing in, Kenya, commits an act outside Kenya which act would constitute an offence under section 19 had it been committed in Kenya, is guilty of such an offence under this Act.

(2) A person may not be convicted of an offence contemplated in subsection (1) if such a person has been acquitted or convicted in the country where that offence was committed.

29. Penalty for offences

A person who commits an offence under this Act is liable, on conviction, to imprisonment for a term of not less than three years, or to a fine of not less than two hundred thousand shillings, or both.

SCHEDULE

[Section 7(1).]

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 six years, on such terms and conditions as may be specified in the instrument of appointment, and shall not be eligible for reappointment.

2. Vacation of office

A member of the Board, other than an *ex officio* member, may—

(a) at any time resign from office by notice in writing to—

(i) in the case of the chairperson, the President; and

(ii) in any other case, the Cabinet Secretary; or

(b) be removed from office by the Cabinet Secretary if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iii) is convicted of an offence involving dishonesty or fraud, or an offence under the Anti-Corruption and Economic Crimes Act;

(iv) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board; or

(vi) fails to comply with the provisions of this Act relating to disclosure.

3. 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 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.

4. 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 six months, or to a fine not exceeding one hundred thousand shillings, or both.

5. 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.

6. 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.