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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2013**

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**NAIROBI, 15th November, 2013**

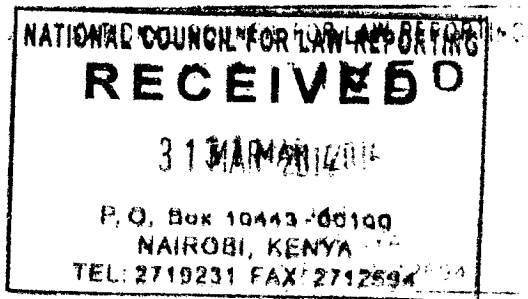
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## THE VICTIM PROTECTION BILL, 2013

### A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

### PART I—PRELIMINARY

1. This Act may be cited as the Victim Protection Act, 2013.

Short title.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

“accused” means a person who is charged with an offence under any written law;

“Board” means the Victim Protection Board established under section 19;

“child” means a person below the age of eighteen years and includes—

(a) a child of a victim born after the death of the victim;

(b) a step child of a victim; and

(c) a person who, although not a child of the victim by birth or adoption, is regarded as a child by the victim;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to justice;

“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” includes—

- (a) a biological parent;
- (b) a step parent;
- (c) an adoptive parent;

No. 8 of 2001.

“place of safety” means a place of safety as defined under the Children Act, 2001;

“restorative justice” means 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;

“spouse” means a person who—

- (a) is married to another person, or
- (b) is living and cohabiting with another person in a marriage-like relationship;

“victim” means any natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering or economic loss or violation of fundamental rights, and includes, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization;

“victim service” means a service that is designed to assist victims; and

“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.

(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. 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.

Objects and purposes of the Act.

### **4. (1) Any court or administrative body, or a person performing any function in terms of this Act, shall be guided by the following principles—**

General principles.

- (a) the court, administrative body or person shall 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 shall, as far as possible, be given an opportunity to be heard and to respond before any

decision affecting him or her is taken;

- (c) the victim's dignity shall be preserved at all stages of a case involving the victim, from the pre-trial to post-trial phase;
- (d) every victim shall be addressed in a manner appropriate to his or her age and intellectual development and should be spoken to and be allowed to speak in his or her language of choice, or through an interpreter if necessary;
- (e) every victim shall be treated in a manner which takes into account his or her cultural values and beliefs;
- (f) every victim shall be protected from secondary victimization in all informal, administrative and judicial proceedings relating to the victim;
- (g) every victim has a right to 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 shall be entitled to contact with his or her family or any primary care giver.

(2) Where it appears to any police officer or the Director of Public Prosecutions or any government 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, then the child victim shall be committed to a place of safety until the court makes a decision in relation to the matter.

(3) A child victim who is held in any institution—

- (a) shall be separated from adults, and boys shall be held separately from girls;

(b) shall be placed in conditions which shall reduce the risk of harm to that child, including the risk of harm caused by other children;

(c) has the right—

(i) to adequate food and water;

(ii) to medical treatment;

(iii) to reasonable visits by parents, guardians, legal representatives, registered social workers, children officers, health workers and religious counsellors;

(iv) of access to reading material;

(v) to access to education and life skills as appropriate if detained for a long period;

(vi) to adequate exercise; and

(vii) to adequate clothing and sufficient blankets and bedding.

(4) Every victim has a right to mechanisms of justice and redress that are expeditious, fair, inexpensive and accessible.

5. (1) This Act applies to any person in Kenya, irrespective of nationality, country of origin or immigration status, who is—

Application of Act.

(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 and the Counter-Trafficking In Persons Act, 2010 apply to any person

No. 3 of 2006.  
No. 8 of 2010.



contemplated in subsection (1), except in so far as this Act provides for different procedures in respect of such person.

### PART III—PROTECTION OF VICTIMS

Preliminary  
assessment of  
victims.

6. (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.

Victim details.

7. Details of a victim shall in appropriate cases include—

- (a) age or, if unknown, the approximate age of the victim.
- (b) the complexion of the victim;
- (c) the ethnicity or race 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. The details of the victim shall be treated as confidential and shall not be disclosed except in furtherance of action to protect the victim or to secure the rights of the victim.

Privacy.

9. (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.

Security of 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 the victim is guaranteed;
- (c) securing—
  - (i) urgent medical treatment for the victim;
  - (ii) immediate psychosocial support for the 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.

10. (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 and, unless the court orders otherwise, that statement may be considered by the court in determining the sentence of the offender.

Victim impact statements.

Cap. 75

(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.

**PART IV—VICTIM SERVICES**

Mandatory  
information to a  
victim.

**11. (1)** Any officer dealing with a victim shall provide the victim with general information relating to—

- (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 hearings 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;

- (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.

No. 10 of 1998.  
Cap. 64.

(2) In this section, “officer” means any officer, employee or member, including an unpaid, part-time or temporary officer, employee or member, of any of the following—

- (a) the Government or any department, service or undertaking of the Government;
- (b) a local authority; and
- (c) any other body as may be prescribed by regulations under this Act.

- (f) 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) the due date of release of the offender from prison or other correctional institution;
- (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.

Victim services.

13. (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.

No. of 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.

14. 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—<sup>Victim restitution.</sup>

- (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.

**PART V—VICTIM PROTECTION TRUST  
FUND**

15. There is established a Fund to be known as the Victim Protection Trust Fund.

Establishment of the Fund.

16. (1) The Fund shall consist of—

Sources of funds.

- (a) monies received by the Fund as grants, donations or gifts from non-governmental or non-public sources;
- (b) the victim surcharge levy;
- (c) income generated by investments made by the Board of Trustees;
- (d) 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.

Victim surcharge  
levy.

17. (1) Without prejudice to section 14, 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 finance.

Board of Trustees.

18. (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**

**19.** (1) There is established a board to be known as the Establishment of the Board Victim Protection Board as a body unincorporate.

(2) The Board shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to justice, who shall be the Secretary;
- (c) the Principal Secretary of the Ministry for the time being responsible for correctional services;
- (d) the Principal Secretary of the Ministry for the time being responsible for matters relating to children affairs;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to health;
- (f) the Director of Public Prosecutions;
- (g) the chairperson of the Advisory Committee on the Power of Mercy;
- (h) the Inspector-General of Police;
- (i) one person nominated by the National Gender and Equality Commission;
- (j) one person nominated by the Commission on Administrative Justice;
- (k) two representatives from civil society dealing with issues relating to child and women victims protection;
- (l) one person nominated by the National Council for Persons with Disabilities.

(3) The members under subsection (2) (i), (j), (k) and (l) shall be appointed by the Cabinet Secretary, upon nomination by the respective nominating bodies, or recommendation by the organisations working in the relevant field in the case of subsection (2) (k), 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.

Functions of the Board.

**20.** (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—

- (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 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 of Kenya with respect to 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.

21. 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.

Reporting requirements.

#### **PART VII—MONITORING**

22. (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.

Monitoring of victim protection.

(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.

**PART VIII—MISCELLANEOUS PROVISIONS**

Proceedings not to be invalidated because of infringement of Act.

**23.** (1) Any proceeding in respect of an offence shall not be delayed or held to be invalid on the grounds that a right granted by this Act has been infringed or denied or that this Act has not been complied with, and that the court shall not make an order respecting the conduct of that proceeding or the validity or propriety of an order, conviction, sentence or any other thing done in that proceeding on those grounds.

(2) An order, conviction or sentence may not be appealed on the grounds that a right granted by this Act has been infringed or denied.

Employers not to penalize victims.

**24.** (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.

Regulations

**25.** (1) The Cabinet Secretary may make regulations for the better carrying into effect the provisions of this Act, or for prescribing anything which is to be prescribed under this Act.

(2) For the purposes of Article 94(6) of the Constitution—

- (a) 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 fulfillment of the objectives of this Act;

- (b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013

Cap. 2  
No. 23 of 2013

## SCHEDULE

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

1. 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.

Tenure of office.

2. (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.

Meetings.

(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. (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.

Disclosure of  
interest by Board  
members.

4. 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.

Execution of instruments.

5. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.

## **MEMORANDUM OF OBJECTS AND REASONS**

The objective of this Bill is to give effect to Article 50(9) of the Constitution. It seeks to give protection to victims of crime and abuse of power, and to avail them with better information and support services.

**Part I** contains preliminary provisions.

**Part II** lays down the general principles of the Bill.

**Part III** contains provisions relating to the protection of victims. It provides, inter alia, for the preliminary assessment of victims and requires verification of details of victims for purposes of the Act. It requires victims to be accorded security and respect of their privacy.

**Part IV** contains provisions on the provision of services to victims.

**Part V** contains provisions on the Victim Protection Trust Fund. It provides for the establishment of the Fund and defines the sources of the Fund. The Fund shall be vested in a Board of Trustees whose membership is provided for in the Bill.

**Part VI** provides for the establishment of the Victim Protection Board as a body unincorporate. The objective of the Board is to facilitate protection of victims of crime and to oversee the implementation of preventive, protective and rehabilitative programmes for victims of crime. Membership of the Board is set out under this Part.

**Part VIII** contains miscellaneous provisions.

The Bill delegates the power to make regulations to the Cabinet Secretary.

This Bill does not concern county governments and neither does it affect the powers and functions of county governments as set out in Part 2 of the Fourth Schedule to the Constitution.

The Bill shall not occasion additional expenditure of public funds.

Dated the 12th November, 2013.

MILLIE ODHIAMBO-MABONA,  
*Member of Parliament.*