



Paper laid by Hon.  
P. Mwakali on  
27/2/14  
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**PARLIAMENT OF KENYA**



**KENYA NATIONAL ASSEMBLY**

**ELEVENTH PARLIAMENT**

**SECOND SESSION**

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**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND  
LEGAL AFFAIRS**

**REPORT ON THE VICTIM PROTECTION BILL, 2013**  
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Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

**JULY, 2014**

## **1.0 PREFACE**

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the Victim Protection Bill, 2013.

### **1.1 COMMITTEE MEMBERSHIP**

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16<sup>th</sup> May, 2013 comprising of the following members:

1. The Hon. Samuel Chepkong'a, M.P. –Chairperson
2. The Hon. Priscilla Nyokabi, M.P. –Vice Chairperson
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chgec, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. Kangongo Bowen, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.
17. The Hon. Johanna Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.
23. The Hon. Ben Momanyi Orari, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop)Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of standing order 216 (5) which outline functions of the Committee as being:



- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the Programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of Law and Justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics, Integrity and anti-corruption and
- g) Human rights.

### **1.3 COMMITTEE MEETINGS**

The Committee held sittings during which the Victim Protection Bill, 2013 was considered in accordance with the standing orders of the National Assembly. The Committee also received Memoranda from interested parties.

The Victim Protection Bill, 2013 was read a first time on 1<sup>st</sup> February, 2014 and was committed to the Committee for consideration. The Committee needed sufficient time to consult stakeholders and thus did not proceed and report as expected. This Report contains two sets of Bills proposed by the Committee for consideration and approval by the House.

Finally it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to introduce this report to the House for consideration and passage.

### **THE VICTIM PROTECTION BILL, 2013**

#### **Consideration by the Committee**

Pursuant to article 118(1) (b) of the Constitution and standing Order 127(3) of the National Assembly, the Committee through the office of the Clerk of the National Assembly received Memoranda and oral presentations from Federation of Women Lawyers and the Witness Protection Agency.

#### **RECOMMENDATIONS**

That the Victim Protection Bill be amended and renamed the Protection, Rights and Welfare of Victims of Offences Bill, 2014.

All the Provisions of Victim Protection Bill, 2013 have been adequately captured and improved under the proposed Protection, Rights and Welfare of Victims of offences Bill, 2014.

**SIGNED**.....

**Hon. Samuel Chepkong'a, MP**

**(Chairperson)**

**Committee on Justice and Legal Affairs**

**DATE**..... 2<sup>ND</sup> July 2014.....

| MARGINAL NOTES.      | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.   |
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| Long title           | <p><del>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.</del></p> | <p>Amend to read<br/>A Bill for AN ACT of Parliament to give effect to Article 50(9) of the Constitution: to make provisions for the Protection, rights and welfare of victims of offences and for connected purposes.</p> | <p>The use of the word protection is likely to cause confusion with the protection envisaged under the Witness and Victim protection Act. We recommend that the Word "Protection" be deleted and the Title to be Rights and Welfare of Victims of Offences Act 2014.</p> |
| PART 1. PRELIMINARY. |   |  |  |
| Short Title.         | <p><del>Section 1. This Act may be cited as the Victim Protection Act, 2013.</del></p>  | <p><b>Section 1.</b> Title of the Bill is amended to read:-<br/>The Protection, Rights and Welfare of Victims of Offences Act, 2014.</p>   | <p>To conform to article 50 (9) of the constitution. We propose the word "Protection" be removed as indicated above</p>  |



| MARGINAL NOTES.         | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.  |
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| <p>Interpretations.</p> | <p>Section 2. (1) In this Act, unless the context otherwise requires-</p> <p>"accused" means a person who is charged with an offence under any written law;</p> <p>"Board" means the Victim Protection Board established under section 19;</p> <p>"child" means a person below the age of eighteen years and includes a child of a victim born after the death of the victim;</p> <p>a) a step-child of a victim; and</p> <p>b) a person who, although not a child of the victim by birth or adoption, is regarded as a child by the victim;</p> <p>"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to justice;</p> <p>"offence" means an act or omission that caused harm to a victim and that constitutes an offence under any written law;</p> <p>"offender" means a person convicted of an offence under any written law;</p> <p>"parent" includes-</p> <p>(a) a biological parent;</p> <p>(b) a step-parent;</p> | <p>Definition of the of the Word Board be deleted as the Board has been replaced with National Council for Victims of offences under section 38</p> <p>Delete the word Cabinet Secretary and replace with National Council for victim of offences</p> <p>"parent" means a biological or adoptive parent and includes a guardian.</p> | <p>Board has been deleted and substituted with the National Council for Victims of offences under section 38</p> <p>Due to change of roles under the Amendments To comply with the Definition under the children;s Act</p> <p>To ensure clarity</p> <p>To comply with</p> |

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| No. 8 of 2001.  | <p>(e) <del>an adoptive parent;</del></p> <p><del>"place of safety" means a place of safety as defined under the Children Act, 2001;</del></p> <p><del>"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;</del></p> <p><del>"spouse" means a person who-</del></p> <p style="margin-left: 20px;"><del>a) is married to another person, or</del></p> <p style="margin-left: 20px;"><del>b) is living and cohabiting with another person in a marriage-like relationship;</del></p> <p><del>"victim" means any natural persons who, individually or collectively, have suffered harm;</del></p> | <p>place of safety" means any institution, hospital or other suitable place the occupier of which is willing to accept the temporary care of a vulnerable victim;</p> <p>"restorative justice" includes—</p> <p>(a) 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;</p> <p>(b) a systematic legal response to victims or immediate community that emphasizes healing the injuries resulting from the offence;</p> <p>"Spouse" Delete the definition of spouse and replace it with the following definition:- Spouse means a husband or wife</p> <p>"victim" means any natural persons who suffers personal injury, loss or damage as a consequence of an offence;</p> | <p>the marriage Act</p> <p>To comply with the definition under The Marriage Act</p> |

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|                 | <p><del>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;</del></p> <p><del>"victim service" means a service that is designed to assist victims; and</del></p> <p><del>"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.</del></p> <p>(2) In this Act, a person is a victim regardless of</p> <p>(a) whether the crime perpetrated against the person has been reported to the police;</p> | <p>“victim support services” means all the services offered to the victim of offence to secure restoration of their emotional or mental or physical or economic status from any harm occasioned by the offence committed;</p> <p>The following new definition in proper alphabetical sequence have been added-</p> <p>Section 2. “compensation” means an award that a court or competent authority grants a victim who has suffered economic or emotional loss, damage of property, or physical injury or harm as a result of an offence after the victim is found to qualify for the same according to the criteria proscribed under this Act;</p> <p>“competent authority” means a court, police or a body established to handle matters criminal in nature;</p> | <p>New terms have been introduced through the proposed amendments which need definitions/interpretation.</p> |



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|                 | <p>(b) whether the perpetrator of the crime has been identified, apprehended, prosecuted or convicted; and</p> <p>Not provided for –New definitions</p> | <p>“crisis intervention” means the provision of emergency psychosocial care to traumatized victims so as to help them return to an adaptive level of functioning and to prevent or mitigate the negative impact of psychological and emotional trauma;</p> <p>“Community service” refers to instances where the offender performs some community service under the Community Service Orders Act, 1998.</p> <p>“Council” means the National Council for Victims of Offences established under section 38;</p> <p>“Director” means the Director of Victim Services.</p> <p>“dependant” has the meaning assigned to it under the Law of Succession Act, 1972;</p> <p>“financial restitution” means payment of money by the offender to the actual victim of the offence;</p> <p>“financial community restitution” refers to payment of money by the offender to community programs;</p> <p>“health professional” refers to a nurse registered under section 12(1) of the Nurses Act or a clinical officer registered under section 7 of the Clinical Officers Act or a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentist Act and includes a registered counseling psychologists and recognized</p> |          |

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|                 | <p>Not provided for –New definitions</p>    | <p>physical therapist;</p> <p>“individual service restitution” refers to where the offender with the victims consent, performs a service to the actual victim which may include the repair of damage to the victim’s property through work;</p> <p>“immediate family” means the victim’s spouse, children, parent, grandparent, stepchild, stepister, stepbrother, or stepparent and, where the victim is a child, the guardian;</p> <p>“injury” means actual bodily harm, emotional distress, trauma, pregnancy resulting from sexual assault, mental or nervous shock, actual economic loss or loss of property.</p> <p>“law enforcement officer” means an officer of a law enforcement agency and includes a probation and prison officer;</p> <p>“law enforcement agency” includes—</p> <p>(a) the National Police Service;</p> <p>(b) the office of the Director of Public Prosecution;</p> <p>(c) any other department office or agency of the state or statutory body that is responsible for investigating or taking any action in relation to an offence punishable under any written law.</p> |          |

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|                 | <p>Not provided for –New definitions</p>    | <p>“rehabilitation” includes psychosocial interventions, medical treatment, legal aid and social services designed to restore, to the extent possible, the victims, to their original status;</p> <p>“restitution” means the act of restoring the victim, to the extent possible, to the status prior to the offence resulting in loss or injury;</p> <p>“rights of victims” means any rights to which a victim is entitled under the Constitution, this Act or any other written law;</p> <p>“surcharge” means a sum additional to the fine payable by the offender as provided for under this Act;</p> <p>“support person”, means an immediate family member, a social worker or victim of offences officer, or law enforcement officer or a person designated as such in this Act;</p> <p>“trauma” includes physical injury, psychological or emotional distress;</p> <p>“trial” includes a proceeding in which a person is sentenced;</p> <p>“victim impact statement” means a statement by the victim, or where incapacitated, the victim’s representative, on the psychological, emotional, physical, economic or</p> |          |



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|                 | <p>Not provided for --New definitions</p>   | <p>social impact of the offence committed against the victim and includes any recording, summary, transcript or other copy;</p> <p>“victimization” means any act or omission that renders a person or community a victim within the meaning of this Act;</p> <p>“victim’s representative” means an individual designated by a victim or appointed by the Court to act in the best interests of the victim;</p> <p>“victim officer” means a person who assists a victim through the various stages of a case;</p> <p>“Welfare services” means all the victim support services aimed at assisting the victim.</p> |          |

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| <p>PART II.<br/>GENERAL PRINCIPLES.</p> <p>Objects and purposes of the Act.</p> | <p>Section 3 The objects and purposes of this Act are to-</p> <p>a) recognize and give effect to the rights of victims of crime;</p> <p>b) protect the dignity of victims through-</p> <p>I. provision of better information, support services, reparations and compensation from the offender, in accordance with this Act;</p> <p>II. establishment of programmes to assist vulnerable victims;</p> <p>III. supporting reconciliation in appropriate cases by means of a restorative justice response;</p> <p>IV. establishment of programmes to prevent victimization at all levels of government;</p> <p>V. preventing re-victimization in the justice process; and</p> | <p>2. Delete the Section and substitute with Section 3 to read as "The object of this Act is to improve provisions for protection, treatment, rights and welfare of victims".</p> | <p>To conform with the Constitution</p> |

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|                            | <p><del>e) Promote co-operation between all governments, departments and other organizations/agencies involved in working with victims of crime.</del></p>   |  |  |
| <p>General principles.</p> | <p><del>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—</del></p> <p><del>a) the court, administrative body or person shall not discriminate against a victim on the basis of race, color, 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;</del></p> <p><del>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;</del></p> <p><del>c) the victim's dignity shall be preserved at all stages of a case</del></p> | <p>Delete and substitute with the following new sections</p> <p>4(1) A court, administrative authority, or a person performing any function under this Act, shall respect and uphold the values and principles in the Constitution and, in particular, be guided by the provisions of Article 10, 27(4), 47, 48, 49 of the Constitution.</p> <p>(2) In addition to subsection (1), a court, a competent authority or a person performing any function under this Act shall also be guided by the following principles—</p> <ul style="list-style-type: none"> <li>(a) non-discrimination against any victim;</li> <li>(b) upholding of the victim's dignity at all times;</li> <li>(c) respect for the—victim; and the victim's cultural values and beliefs; and</li> <li>(d) Protection of the victim from victimization of any sort.</li> </ul> <p>(3) Every victim has a right to justice and redress that is expeditious, efficient, lawful, reasonable, inexpensive and accessible.</p> | <p>To conform to the Constitution.</p> |



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|                 | <p>involving the victim, from the pre-trial to post-trial phase.;</p> <p>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;</p> <p>e) every victim shall be treated in a manner which takes into account his or her cultural values and beliefs;</p> <p>f) every victim shall be protected from secondary victimization in all informal, administrative and judicial proceedings relating to the victim;</p> |                                  |          |

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|                 | <p>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;</p> <p>h)vulnerable victim shall be entitled to contact with his or her family or any primary care give;</p> <p>(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</p> |                                  |          |

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|                 | <p>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.</p> <p>(3) A child victim who is held in any institution-</p> <p>a) shall be separated from adults, and boys shall be held separately from girls</p> <p>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;</p> <p>e) has the right-</p> <p>i) to adequate food and water;</p> <p>ii) to medical treatment;</p> <p>iii) to reasonable visits by parents, guardians, legal representatives, registered social workers, children officers, health workers and</p> |                                  |          |



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|                         | <p>religious counselor;</p> <p>iv) of access to reading material;</p> <p>v) to access to education and life skills as appropriate if detained for a long period;</p> <p>vi) to adequate exercise; and</p> <p>vii) to adequate clothing and sufficient blankets and bedding.</p> <p>(4) Every victim has a right to mechanisms of justice and redress that are expeditious, fair, inexpensive and accessible.</p> |  |   |
| Application of the Act. | <p>Section 5 (1) This Act applies to any person in Kenya, irrespective of nationality, country of origin or immigration status, who is</p> <p>(a) a victim of crime committed within Kenya; or</p> <p>(b) Outside Kenya, where the victim is a citizen of Kenya.</p>   | <p>Insert a new subsection after subsection (2), a new subsection</p> <p>(3) The rights or welfare of a victim under this Act shall not be denied to any victim by reason only that similar protection measures are available under any written law.</p> | To conform to the Constitution Article 48 |

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| <p>PART 111.<br/>PROTECTION OF VICTIMS.</p> <p>Preliminary Assessment of Victims</p>   | <p>(2) The Sexual Offences Act, 2006 and the Counter-Trafficking In Persons Act, 2010 apply to any person contemplated in subsection (1), except in so far as this Act provides for different procedures in respect of such person.</p> | <p>Delete the whole part, moved to the Witness Protection Amendment Bill under section 4,5,6,7,9,14,16, and replace with a new Part III Sections 25 as shown below to deal with Victims not under threats.</p> | <p>Protection of victims under threats to be undertaken by the Witness and Victim Protection Agency.</p> <p>Re enacted</p> |
| <p>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.</p> <p>(2) A report under subsection (1) shall provide the details of the case, including the alleged offenders, any other action taken by the victim prior to reporting the case, and details of the victim as set out in section 7.</p> <p>(3) A person making a report under subsection (1) shall classify</p> |   |  |  |

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| <p>Victim Details</p> | <p><del>the victims according to the case into general victims and vulnerable victims:</del></p> <p><del>(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 victim: set out in section 7.</del></p> <p>7. Details of a victim shall in appropriate cases include-</p> <p>(a) <del>age or, if unknown, the approximate age of the victim;</del></p> <p>(b) <del>the complexion of the victim;</del></p> <p>(c) <del>the ethnicity or race of the victim;</del></p> <p>(d) <del>height or approximate height of the victim;</del></p> <p>(e) <del>any distinguishing feature of the victim;</del></p> <p>(f) <del>in cases of deceased victims, any distinguishing item on the victim such as clothing, jewellery or other distinguishing item;</del></p> |                                  | <p>under Part III</p> |

| MARGINAL NOTES.                               | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| <p>Privacy</p> <p>Security of the Victim.</p> | <p><del>(g)</del> location at which victim was found;</p> <p><del>(h)</del> any person accompanying the victim;</p> <p><del>(i)</del> any other document of identification of the victim;</p> <p>8. <del>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.</del></p> <p>9. <del>(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.</del></p> <p><del>(2) Without prejudice to the generality of the foregoing, the action contemplated in subsection (1) shall include-</del></p> <p><del>(a) placing the victim in a place of safety, in case of a vulnerable victim;</del></p> <p><del>(b) securing food and shelter until the safety of the victim is guaranteed;</del></p> |                                  |          |



| MARGINAL NOTES.                                 | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.                   | REMARKS. |
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| <p>Victim Impact statements.</p> <p>Cap 75.</p> | <p>(e) securing—</p> <p>(i) <del>urgent medical treatment for the victim;</del></p> <p>(ii) <del>immediate psychosocial support</del></p> <p>(iii) <del>police protection for</del></p> <p>(d) <del>placing the victim with a relative where appropriate;</del></p> <p>(e) <del>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.</del></p> <p>10. (1) <del>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.</del></p> <p>(2) <del>If a victim expresses a wish to make a victim impact statement,</del></p> | <p>Re enacted under Section 16, Part III below</p> |          |

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|  | <p><del>a prosecuting agency shall refer the victim to an appropriate victims' services agency for assistance in preparing the victim impact statement.</del></p> |  |  |
| <p>PART III<br/>RIGHTS,<br/>RESPONSIBILITIES<br/>AND<br/>PROTECTION<br/>OF VICTIMS</p> | <p>Not Provided for.</p>  | <p>Insert a new Part immediately after Part II above as <b>PART III RIGHTS, RESPONSIBILITIES AND PROTECTION OF VICTIMS</b></p>   | <p>Covers the rights, responsibilities and protection of victims in more detail.</p> |
| <p>Rights of victims</p>   |   | <p>Insert a new section to read :-<br/>6. A victim is entitled to all rights and fundamental freedoms protected under the Constitution or any written law unless expressly limited in accordance with this Act</p>   | <p>Covers the rights, responsibilities and protection of victims in more detail.</p> |
| <p>Limitation of rights</p>  | <p>Not provided for</p>   | <p>Insert a new section to read :-<br/>7. (1) Subject to Article 24 of the Constitution, the rights of a victim may be limited in the manner and to the extent set out in this section.<br/>(2) A limitation of a right under this section shall be reasonable and justifiable in an open and democratic</p> | <p>To conform with the Constitution</p>  |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS. |
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|                 |   | <p>society based on human dignity, equality and freedom and shall be limited only for purposes of ensuring the —</p> <ul style="list-style-type: none"> <li>(a) enjoyment of the rights by the victim does not prejudice the rights and fundamental freedoms of others;</li> <li>(b) exercising of the right does not jeopardize due process at any stage of a hearing;</li> <li>(c) objects of welfare services are achieved; and</li> <li>(d) promotion of harmonious co-existence of a victim and ex-offenders in the community upon release.</li> </ul> <p>(3) A limitation of a right under this section shall relate to—</p> <ul style="list-style-type: none"> <li>(a) the right of access to information to the extent that— <ul style="list-style-type: none"> <li>(i) information provided shall not prejudice the maintenance of law including the prevention, investigation and detection of offences and the right to fair trial;</li> <li>(ii) the information sought is not information that is deemed confidential as a result of the requirements of the Constitution or other written law;</li> </ul> </li> </ul> |          |

| MARGINAL NOTES.                 | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.   |
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| Responsibility towards a victim | Clause 13 re enacted                        | <p>(b) the right to compensation to the extent that—</p> <p>(i) the victim does not abet in the commission of the offence or otherwise be accessory to it with the intention of benefiting from any compensation or support services available under this Act;</p> <p>(ii) the victim does not falsify information for the purpose of obtaining any benefits under this Act; and</p> <p>(iii) any compensation under this Act takes into account any awards related to the offences granted to the victim in any other compensatory process.</p> <p>(4) Subject to Article 159(2)(c) of the Constitution, a victim has the right to choose whether or not to participate in restorative justice to the extent that it does not go against the requirements of the formal justice system and is not repugnant to justice and morality.</p> <p>8. (1) The Council shall ensure the establishment of victim services in all counties and equal access to the services.</p> <p>(2) Without prejudice to the generality of the foregoing, all competent authorities shall ensure that every offence complained of is investigated and, where appropriate,</p> | Responsibility to establish county offices to be undertaken by the Council |



| MARGINAL NOTES.     | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.   |
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|                     |   | <p>prosecuted expeditiously.</p> <p>(3) In addition to subsection (1), the Council shall ensure—</p> <ul style="list-style-type: none"> <li>(a) equal access to courtrooms, prosecutors' offices and any other office that may be necessary for a victim;</li> <li>(b) availability of culturally sensitive services for persons with disability and members of ethno-cultural and religious minorities;</li> <li>(c) the provision of facilities for persons with disabilities; and</li> <li>(d) 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.</li> </ul> <p>(4) 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 Director shall immediately refer the victim to the Witness and Victim Protection Agency established under the Witness Protection Act, 2006.</p> |  |
| Right to protection | Clause 6 Re enacted                         | <p>9. A victim has a right to—</p> <ul style="list-style-type: none"> <li>(a) be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse;</li> <li>(b) have their safety and that of their family</li> </ul>   | Covers the rights, and protection of victims in more detail. |

| MARGINAL NOTES.                 | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.                                       |
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| Rights during the trial process | Clause 4<br>Re enacted                      | <p>protection from discrimination in the justice processes and welfare services.</p> <p>10. (1) A victim has a right to—</p> <ul style="list-style-type: none"> <li>a) be present at their trial either in person or through a representative of their choice;</li> <li>b) have the trial begin and conclude without unreasonable delay;</li> <li>c) give their views in any plea bargaining;</li> <li>d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent</li> </ul> <p>(c) have their property protected;</p> <p>(d) the prevention of the disclosure of confidential information to the offender or the offender's advocate or any other person acting on the offender's behalf which can be used to locate, harass the victim or the victim's family or which disclose confidential communication made in the course of medical treatment or other support services which are otherwise privileged or confidential by law; and</p> | Covers the right to fair trial in great detail |

| MARGINAL NOTES.      | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.                        |
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| Right to information | Clause 11                                   | <p>and impartial tribunal or body established by law;</p> <p>e) be informed in advance of the evidence the prosecution and defence intends to rely on, and to have reasonable access to that evidence;</p> <p>f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and</p> <p>g) be informed of the charge which the offender is facing in sufficient details.</p> <p>(2) Where the personal interests of a victim have been affected, the Court shall—</p> <p>a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and</p> <p>b) ensure that the victim's views and concerns are presented in a manner which is not—</p> <p>i) prejudicial to the rights of the accused; or</p> <p>ii) inconsistent with a fair and impartial trial.</p> <p>(3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.</p> | Covers the right to information |
|                      |   | 11. (1) A victim has the right to information under Article 35   |                                 |





| MARGINAL NOTES.       | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.   |
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|                       |   | <p>to the Court;</p> <p>(b) victim shall ensure that any information that the victim gives is true; and</p> <p>(c) information may be recorded and signed by the victim;</p> <p>(3). The collection of any views from a victim under this section shall not prejudice or delay any proceedings relating to the offence complained of.</p>   |  |
| Right to compensation | Clause 14 re enacted                        | <p>13. (1) A victim has a right to compensation which involves restitution or compensation from the offender and the enforcement thereof in accordance with applicable laws.</p> <p>(2) Subject to any limitations and conditions set out in this Act, the victim has a right to compensation by the offender for—</p> <p>(a) economic loss occasioned by the offence;</p> <p>(b) loss of or damage to property;</p> <p>(c) loss of user over the property;</p> <p>(d) personal injury;</p> <p>(e) costs of any medical or psychological treatment;</p> | Covers the right to compensation and the procedure in great detail |

| MARGINAL NOTES.                      | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.  |
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| Right to privacy and confidentiality | Clauses 7 Right to privacy Re enacted       | <p>and</p> <p>(f) costs of necessary transportation and accommodation suffered or incurred as a result of an offence</p> <p>(3) A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in this Act.</p> <p>(4) Where reasonably practicable, the victim shall be required to present receipts or other evidence to substantiate the actual loss suffered either by the victim or through their representative or the victims officer.</p> <p>(5) The presentation referred to under subsection (1) may be made in the criminal proceedings and the order for restitution be enforced in the same manner as a judgment in the civil proceedings.</p> <p>14. (1) A victim has a right to privacy—</p> <p>(a) from the media, whether print, electronic or other types;</p> <p>(b) from unreasonable intrusion from health professionals;</p> <p>(c) of confidentiality of their communication with</p> | Covers the right to privacy and confidentiality in great detail |

| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|   |   | <p>victim support service providers; or</p> <p>(d) from any other person.</p> <p>(2) Where a victim requests confidentiality, the head of the law enforcement agency investigating the offence shall ensure that the residential address, telephone number, cell phone number, email, fax and place of employment of the victim and members of the victim's family are not disclosed by the agency except to the extent required—</p> <p>(a) by law, or for the purpose of law enforcement or prosecution or other legal proceedings;</p> <p>(b) to ensure the safety and security of any person.</p> <p>(3) The right to privacy protected under subsection (1) shall be deemed to have been waived where the victim publicizes or consents to publication of matters relating to their case.</p> |          |
| Right to choose whether to participate in restorative justice |   | <p>15. (1) A victim has a right to restorative justice.</p> <p>(2) If the victim elects to participate in any process towards restorative justice, the process shall proceed on condition that—</p> <p>(a) the participation of the offender shall not prejudice any of the offender's rights under any law or be deemed as evidence of admission or proof of guilt in respect of the offence complained of;</p> <p>(b) any of the parties may withdraw their participation</p>  |          |

| MARGINAL NOTES.                                | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.                         |
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| Right to present the victim's impact statement | Clause 10<br>Re enacted                     | <p>to the process at any time;</p> <p>(c) where a process for restorative justice fails, the criminal trial of the offender shall proceed to final determination, but without prejudice to the right of the victim to seek appropriate relief in civil proceedings.</p> <p>(d) The process towards restorative justice does not violate the provisions of Article 159(3) of the Constitution.</p> <p>(3) Any agreement for restoration or other redress agreed between the victim and the offender shall be recorded and enforced as an order of the Court and may be enforced as a decree of the Court.</p> <p>16. (1) A victim has a right to present a victim impact statement in all cases where the court is to consider victim protection and welfare.</p> <p>(2) The statement referred to under subsection (1) shall also include information on the impact of the offence on the victim's life and any concerns the victim may have about their safety.</p> <p>(3) Despite any other provision set out in this Act, the victim impact statement shall be prepared by the investigating officer in consultation with other agencies in the manner prescribed in this Act.</p> <p>(4) The victim impact statement shall be presented to court at any</p> | Covers the right in great detail |



| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.                         |
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| Right to prompt release of victim's property held as exhibits | Clause 10 Re enacted                        | <p>time of proceedings or during sentence.</p> <p>17. Where a law enforcement agency is in possession of a victim's property and the victim requests its return, the head of the law enforcement agency shall ensure that the property is returned to the victim promptly when the Agency is satisfied that the property is no longer needed as evidence for an investigation or prosecution.</p>  | Covers the right in great detail |
| Rights of vulnerable victims                                  | Clause 4 (h) Re enacted                     | <p>18. (1) A court or competent authority may, on its own motion or at the request of the prosecution or the victim officer declare a victim a vulnerable victim, where in the opinion of the court or competent authority, the victim is likely to be vulnerable on account of—</p> <ul style="list-style-type: none"> <li>(a) physical, intellectual, or psychological impairment;</li> <li>(b) age;</li> <li>(c) dependency on the accused;</li> <li>(d) trauma;</li> <li>(e) disability;</li> <li>(f) cultural differences;</li> <li>(g) religious differences;</li> <li>(h) gender;</li> <li>(i) language; race;</li> </ul> | Covers the right in great detail |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|                 |   | <p>(j) the nature of the offence committed against them;<br/>or<br/>(k) health status;</p> <p>(2) Where the court or competent authority doubts whether a victim should be declared a vulnerable victim in terms of this Act, the court may summon an expert to appear before it and advise it on the vulnerability of such a victim.</p> <p>(3) Upon the declaration that a victim is a vulnerable victim for the purposes of this Act, the court or competent authority shall direct that a representative be appointed in respect of such a victim.</p> <p>(4) A representative so appointed under this section shall be summoned to appear before the court or competent authority on a specified date and time to act as a representative and shall upon failure to appear as directed, appear before the court or competent authority to advance reasons for such failure upon which the court or competent authority may act as it deems fit.</p> <p>(5) A victim who is a person considered to be vulnerable as defined under this Act, shall be accorded all the rights conferred to them in the Constitution and shall—</p> <p>(a) receive special consideration from the criminal justice agencies and victim support service providers in matters related to victim protection</p> |          |

| MARGINAL NOTES.          | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.                         |
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|                          |   | <p>and welfare services;</p> <p>(b) be provided by the Director with programs designed to ensure their enjoyment of the benefits provided for victims under this Act;</p> <p>(c) in the case of a child, ensure that the best interest of the child is of paramount consideration and all the rights accorded in the Children's Act are observed.</p> <p>(6) Despite the above provisions, where a victim who is a person considered as a vulnerable victim is not able to act under this Act in person, the victim shall—</p> <p>(a) appoint a representative to act on their behalf;</p> <p>(b) request the victim officer to act on their behalf; or</p> <p>(l) in the case of a child, have the parent, guardian or legal representative acting on their behalf.</p> |                                  |
| Rights of a child victim | Clause 4(h)<br>Re enacted                   | 19. (1) Where it appears to any police officer or the Director of Public Prosecutions or any public 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, the child victim shall be committed to a place of safety until the  | Covers the right in great detail |

| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.  |
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| No. 8 of 2001  |   | <p>court makes a decision in relation to the matter.</p> <p>(2) A child victim who is held in any institution shall be accorded treatment in accordance with the Children's Act.</p> <p>20(1) The court or competent authority may, acting on its own motion or after considering a request of the prosecution, revoke or vary its decision to declare a victim vulnerable.</p>  |   |
| Revocation of a declaration on the vulnerability of a victim | Not provided for                            | <p>(2) The court or competent authority shall, if such revocation or variation has been made on its own motion, furnish reasons at the time of revocation or variation.</p> <p>21 (1) The employer of a person who is a victim shall grant the victim sufficient time off work to attend the trial of the offender for purposes of—</p> <p>(a) testifying;</p> <p>(b) presenting a victim impact statement;</p> <p>(c) attending a meeting with the law enforcement agency personnel at their request in order to assist in investigations; and</p> <p>(d) observing the sentencing of the offender.</p> | To enhance the penalty for an employer who contravenes subsection 3 |
| Rights of a victim who is an employee                        | Clause 24<br>Re enacted                     | <p>(2) An employer shall not dismiss, suspend, intimidate, coerce, impose any financial or other penalty on or otherwise discriminate against an employee who is a victim because the employee is absent from work to appear in court.</p>   |   |



| MARGINAL NOTES.                                     | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|   |   | <p>(3) An employer who contravenes this section commits an offence and is liable to a fine of not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or both.</p>   |          |
| Responsibility for exercising rights under this Act | Not provided for                            | <p>22. A victim may exercise their rights pursuant to this Act only where the victim—</p> <p>(a) reports the criminal offence to a police station within seven days of its occurrence or discovery unless the victim provides reasonable adequate reason for failing to do so;</p> <p>(b) provides the Director with current and updated information regarding the victims names address and telephone number;</p> <p>(c) cooperates with and fully responds to reasonable requests made by law enforcement agencies and court prosecutors;</p> <p>(d) requests for the information.</p> |          |
| Enforcement of rights                               |   | <p>23 (1) Where a victim enjoys a right under this Act, a victim may complain to the Director whenever such right is denied.</p> <p>(2) The Director shall investigate each complaint and take or recommend any step that the Director considers necessary to resolve the complaint.</p> <p>(3) The Director shall deal with every complaint expeditiously and notify the victim of the action taken</p>   |          |

| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.  |
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| <p><b>PART IV.<br/>VICTIM SERVICES.</b><br/>Mandatory information to a victim.</p> | <p><del>Section 11 (1) Any officer dealing with a victim shall provide the victim with general information relating to</del></p> <ul style="list-style-type: none"> <li><del>(a) the structure and operation of the justice system;</del></li> <li><del>(b) the rights of victims in the justice system;</del></li> <li><del>(c) the rights of the accused in the justice system;</del></li> <li><del>(d) the role of lawyers and other officers of the court in the case;</del></li> <li><del>(e) victim services;</del></li> </ul> | <p>(5) The report referred to in subsection (3) shall include any step taken or recommended to address the complaint.</p> <p>(4) If any complaint is not resolved within thirty days, the Director shall notify the victim of the reasons for such delay and the estimated period needed to resolve the complaint.</p> <p>Delete the whole section and replaced by part II above.</p> | <p>Part II Covers the rights information in great detail.</p> |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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|                 | <p><del>(f) the status of the police investigations;</del></p> <p><del>(g) the specific offences the accused is charged with as relate to the victim and the reason is therefore;</del></p> <p><del>(h) the name or names of the accused;</del></p> <p><del>(i) the dates and locations for hearings of the case;</del></p> <p><del>(j) any interim or final decisions as relate to the case including decisions on bail or any final judgment;</del></p> <p><del>(k) where the accused is in custody, information as to where he or she is detained;</del></p> <p><del>(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;</del></p> <p><del>(m) the means for the victim to report any threat by the accused before, during or after the finalization of the</del></p> |                                  |          |

| MARGINAL NOTES.                  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| <p>No 10 of 1998<br/>Cap 64.</p> | <p><del>(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;</del></p> <p>(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;</p> <p>(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-</p> <p>(a) the Government or any department, service or undertaking of the</p> |                                  |          |



| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| <p>Information to be given in appropriate circumstances.</p> | <p>Government;</p> <p><del>(b) a local authority; and</del></p> <p><del>(c) any other body as may be prescribed by regulations;</del></p> <p><del>(d) The Cabinet Secretary for the time being responsible for matters relating to prisons and correctional, 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;</del></p> <p><del>(e) where the offender is serving a custodial sentence, the name and address of the institution where the sentence is being served;</del></p> <p><del>(f) the due date of release of the offender from prison or other correctional institution;</del></p> |                                  |          |

| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.  |
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|                  | <p><del>(c) any conditions attached to the release of the offender;</del><br/> <del>(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.</del></p>   |   |   |
| Victim Services. | <p>3. (1) <del>The Cabinet Secretary for the time being responsible for matters relating to justice shall establish victim services in all countries and ensure equal access to the services, and without prejudice to the generality of the foregoing, ensure-</del></p> <p style="padding-left: 40px;"><del>(a) that all cases shall be investigated _____ and prosecuted timely;</del></p> <p style="padding-left: 40px;"><del>(b) equal _____ access _____ to courtrooms, prosecutors' offices and any other office that may be</del></p> | Delete the whole section and replace with a new part as PART IV. WELFARE, SUPPORT SERVICES FOR VICTIMS. | Covers welfare support services in great detail |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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|                 | <p>necessary for a victim;</p> <p>(e) availability of culturally sensitive services for persons and members of ethno-cultural and religious minorities;</p> <p>(d) the provision of facilities for persons with disabilities;</p> <p>(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;</p> <p>(f) the provision of adequate and effective medical services to victims.</p> <p>(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</p> |                                  |          |

| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.  |
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| PART IV.<br>WELFARE,<br>SUPPORT<br>SERVICES FOR<br>VICTIMS. | <p><del>matters relating to justice shall immediately place the victim under a witness protection program in accordance with the Witness Protection Act, 2008.</del></p> <p><del>(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.</del></p> <p><del>(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.</del></p> |   | Deals with welfare, support services in detail. |
| Purpose of support and welfare services                     | Clause 9<br>Re enacted  | 24(1) In addition to the enforcement of rights provided under section 23, the Director shall provide support services as may be | Deals with welfare, support services in detail. |



| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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| <p>Criteria for determining eligibility for support services</p> | <p>Clause 9<br/>Re enacted</p>              | <p>appropriate.</p> <p>(2) The services to be accorded to the victims under this Act shall be accorded so as to assist victims.</p> <p>(a) deal with physical injury and emotional trauma;</p> <p>(b) access and participate in the criminal justice process;</p> <p>(c) participate in restorative justice to obtain reparations; Or</p> <p>(d) cope with problems associated with victimization.</p> <p>25. In determining whether or not to accord welfare and support services, the Director shall, where practicable, consider.</p> <p>a) whether the victim reported the offence complained of within a reasonable time;</p> <p>b) the victim's willingness to cooperate in the investigation and prosecution of the case;</p> <p>c) whether the application for welfare and support services was made within a reasonable time;</p> <p>d) evidence of loss or injury that makes support necessary;</p> <p>e) the impact of the crime on the victim as stated in</p> |          |

| MARGINAL NOTES.                     | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.  |
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|                                     |   | <p>the victim impact statement;</p> <p>f) the availability of resources required for the service sought;</p> <p>g) where compensation is ordered or reparation is offered the economic status of the offender or of the estate of deceased offender in relation to the possibility of compensation or reparation to the victim;</p> <p>h) the period during which the service sought by the victim shall be required;</p> <p>i) in the event of a trial of the offender, the period the court takes to conclude the trial;</p> <p>j) in the event of conviction and sentence of the offender, the sentence or term of imprisonment imposed by the court;</p> <p>k) the health status of the victim; or</p> <p>l) any other information that would influence the outcome of the application.</p> |   |
| General provisions on compensation. | Not provided for                            | <p>Insert a new section immediately after above to 26(1) A victim shall seek compensation in the first instance by instituting proceedings personally against the offender or, in the case of a deceased offender, against the deceased's estate.</p>   | To provide procedure on applications for compensation |

| MARGINAL NOTES.                        | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.   |
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|  |   | (2). A victim is entitled to receive interest on compensation awards from the date of the crime to the date of payment in full.  |  |
| Award of Compensation by court.        | Not provided for                            | Insert a new section immediately after above to 27.The court may award compensation under this Act and such compensation may include financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of.  |  |
| Award of compensation by the offender. | Clause 14<br>Re enacted                     | <p>Insert a new section immediately after above to 28.(1) A victim may apply to the court before which the offender is convicted for an order that the convicted offender pay compensation to the victim for the loss or injury suffered by the victim as a result of the offence.</p> <p>(2) The court may make a compensation order for an amount to be paid by the convicted offender as a result of the loss or injury.</p> <p>(3)The compensation referred to in subsection (2) may include—</p> <p>(a) financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of; or</p> <p>(b) general damages for pain, suffering and loss of amenities.</p> <p>(4)Where compensation is payable to a dependant of a</p> | Covers the right of compensation in great detail |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS. |
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|                 |   | <p>deceased victim, such compensation may include—</p> <p>(a) expenses incurred as a result of the victim death;</p> <p>(b) loss of earnings of the deceased; and</p> <p>(c) provision for the victim's dependants.</p> <p>(5) In determining the amount payable in compensation under this Act, the court shall consider the degree, if any, to which the victim contributed to the loss or injury in relation to which the compensation is sought.</p> <p>(6) Where a compensation order is made against more than one convicted offender, the order may provide for—</p> <p>(a) separate liability according to the offenders' direct and material contribution to the injury; or</p> <p>(b) joint liability of more than one convicted offender for an amount payable under the order.</p> <p>(7) Before an application to a court for compensation order against a convicted offender is determined, the offender shall be notified of the application and award.</p> <p>(8) Where money belonging to the convicted offender has been deposited with the court or a competent authority during the investigation or proceedings for the relevant offence, the court may order it to be applied towards the payment of an amount owing under the compensation</p> |          |



| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|   |   | <p>order.</p> <p>(9) A compensation order made against a convicted offender may be enforced as a judgment in civil proceedings.</p> <p>(10) An agreement between the offender and the victim may be lodged in court whereupon the court may issue a decree for enforcement as an order of the court.</p>   |          |
| <p>Reports from professionals and institution attending to victims.</p> | <p>Not provided for</p>                     | <p>Insert a new section immediately after above.</p> <p>29. The following persons shall provide reports to the director in respect of any injury, care or treatment of a victim in the form required by the director-</p> <ul style="list-style-type: none"> <li>(a) health practitioner who attends to or consults on a victim's injury;</li> <li>(b) hospital providing care or treatment to a victim; or</li> <li>(c) company dealing with insurance that has insured a victim</li> </ul> <p>shall provide reports in respect of the injury, care, or treatment of the victim in the form required by the Director.</p> |          |
| <p>Application for compensation against a convicted offender.</p>       | <p>Not provided for</p>                     | <p>Insert a new section immediately after the above.</p> <p>30. An application for compensation by a victim under this Act against a convicted offender shall be made to a court of competent jurisdiction—</p>  |          |

| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.    | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS.         |
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| Compensation or restitution orders not part of a sentence. | Not provided for                               | <p>Insert a new section immediately the above.</p> <p>31. A compensation or restitution order made by a court against a convicted offender—</p> <ul style="list-style-type: none"> <li>(a) is in addition to any other sentence or order the court may make against a person; and</li> <li>(b) is not, for any purpose, to be taken to be part of a sentence passed against the person.</li> </ul> |                  |
| Application for compensation or restoration                | Clause 14<br>Re enacted                        | <p>32.(1) A victim may apply for restitution of property by the offender in the manner prescribed by regulations made under this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), the right to restitution protected under this Act includes the—</p>  |                  |
| Victim Restitution   | Section 14. Where a person is convicted of an- | Delete the section and substitute with a new section.  | Covers the right |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.                              |
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|                 | <p><del>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—</del></p> <p><del>a) the cost of any damage to the property of the victim</del></p> <p><del>b) the costs of any medical or psychological treatment incurred by the victim</del></p> <p><del>c) the costs of necessary transportation, accommodation and other living expenses relating to the court proceedings leading to the conviction; or</del></p> <p><del>d) any other relief that the court may consider necessary</del></p> | <p>33.(1) A victim may apply for restitution of property by the offender in the manner prescribed by regulations made under this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), the right to restitution protected under this Act includes the—</p> <p>(a) return of moveable to immoveable property; and</p> <p>(b) repair of damaged property;</p> <p>3) In addition to restitution under this section, the court may order any or all of the following—</p> <p>(a) financial compensation;</p> <p>(b) payment of money to the community service orders programme;</p> <p>(c) performance of any service by the offender under any community service programme; and</p> <p>(d) payment of fines imposed and collected for the purpose of deposit in a fund for victim compensation and support services.</p> <p>4) All monies paid or property collected as compensation or restitution under this Act shall first be applied to pay the amount ordered as restitution or compensation to the victim.</p> <p>34.(1) The Court shall where applicable, impose compensation order as both a fine and restitution.</p> | <p>to restitution in great detail</p> |

| MARGINAL NOTES.                                    | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.   |
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| PART V VICTIM PROTECTION TRUST FUND.               |   | (2) Where the Court orders payment of both a fine and compensation, the enforcement of the compensation order shall rank in priority.<br><br>(3). In every case, the enforcement of an order for compensation, restitution or restoration shall be governed by the Civil Procedure Rules. | To provide for the Appointment of the Director and the functions of the Director |
| Establishment of the Fund.<br><br>Sources of funds | 15. There is established a Fund to be known as the Victim Protection Trust Fund:<br><br>16(1) The Fund shall consist of<br>a) monies received by the Fund as grants, donations or gifts from non-governmental or non-public sources;<br>b) the victim surcharge levy;<br>c) income generated by investments made by the Board of Trustees;<br>d) interest accruing from the fund. | The whole part to be deleted and substituted by PART V Namely The Administration and management, structures for the Protection Rights and Welfare of Victims of Offences under the management of the Director in consultation with the National Council.                                  |  |



| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| <p>p</p> <p>Victim surcharge levy.</p> <p>Board of Trustees</p> | <p>(2) The Board of Trustees may make payments out of the Fund for—</p> <p>a) the expenses arising out of assistance to victims of crime;</p> <p>b) balances that may accrue to the Fund;</p> <p>c) expenses arising out of administering the fund;</p> <p>d) such other purposes as the Board may recommend.</p> <p>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.</p> <p>18. (1) The Fund shall be administered by a Board of Trustees which shall consist of:</p> <p>(a) the Secretary of the Board;</p> <p>(b) two persons appointed by the Cabinet Secretary of whom—</p> <p>1) one shall be a person with experience in financial management; and</p> <p>2) the other shall be a person conversant with issues relating to victim protection.</p> |                                  |          |

| MARGINAL NOTES.                                 | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| PART V.<br>ADMINISTRATIO<br>N AND<br>MANAGEMENT | <p><del>(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:</del></p> <p><del>(3) Not more than two thirds of the Board members shall be of the same gender:</del></p> <p><del>(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:</del></p> |                                  |          |

| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.                              |
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| STRUCTURES FOR THE PROTECTION RIGHTS AND WELFARE OF VICTIMS. |   |   |                                       |
| Responsibility of the Council                                | Not provided for                            | <p>35. The Council shall be responsible for the</p> <ul style="list-style-type: none"> <li>a) overall management and general implementation of programs, plans and actions designed for the protection of rights and welfare services for victims;</li> <li>b) establishment of the County Victim Council or Committee at any other levels upon recommendation of the National Victim Council.</li> </ul>   | New Section to replace the Trust Fund |
| Appointment, qualifications and removal of the Director      | Not provided for                            | <p>Insert a new section immediately after the above.</p> <p>36.(1) There shall be a Director of Victims Rights and Welfare Services who shall be competitively recruited.</p> <p>(2) A person is qualified for appointment as the Director if the person-</p> <ul style="list-style-type: none"> <li>(a) is a citizen of Kenya;</li> <li>(b) is an advocate of the High Court of Kenya with at least ten years post-admission experience in law;</li> <li>(c) has at least five years experience at management</li> </ul> |                                       |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS. |
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|                 |   | <p>level; and</p> <p>(d) meets the requirements of leadership and integrity set out in chapter six of the Constitution.</p> <p>(3)The Director holds office for a term of three years and is eligible for re-appointment for one further term of three years based on satisfactory performance.</p> <p>(4)The Director may be removed from office on the recommendation of the Board on any of the following grounds—</p> <ol style="list-style-type: none"> <li>a. inability to perform the functions of the office arising out of physical or mental incapacity;</li> <li>b. gross misconduct or misbehaviour; or</li> <li>c. Incompetence or negligence of duty.</li> </ol> <p>(5) Before the Director is removed under subsection (4), the Director shall be given—</p> <ol style="list-style-type: none"> <li>(a) sufficient notice of the allegations made against them; and</li> <li>(b) an opportunity to present their case against the allegations, either in person or by a legal representative.</li> </ol> |          |



| MARGINAL NOTES.                  | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS. |
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| <p>Functions of the Director</p> | <p>Not provided for</p>                     | <p>Insert a new section immediately after above 37. The Director shall-</p> <ul style="list-style-type: none"> <li>(a) direct the management and general implementation of issues relating to the rights, welfare and support services for victims;</li> <li>(b) prepare budgetary estimates in respect of rights, welfare and support services for victims;</li> <li>(c) maintain up-to-date data on victims accorded support services;</li> <li>(d) undertake research and propose policy and legal amendments to conform with current trends;</li> <li>(e) supervise, monitor and evaluate victim support programme;</li> <li>(f) prepare and present reports to the Principal Secretary;</li> <li>(g) receive from any person, organization or institution submissions relating to needs and concerns of victims;</li> <li>(h) provide victims and their families with general information respecting programs and services for victims, the structure and operations of the criminal justice system and this Act;</li> </ul> |          |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013. | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|                 |   | <p>(j) provide information to the public about this Act using pamphlets, notices, electronic distribution or any other medium that in the opinion of the Director, will effectively communicate the information to the public;</p> <p>(j) to assist with the preparation and filing of victim impact statement;</p> <p>(k) to facilitate players in the criminal justice system and non state actors in providing services to the victims to promote the implementation of this Act;</p> <p>(l) establish administrative structures to efficiently facilitate successful operationalization of this Act;</p> <p>(m) to monitor and evaluate programmes aimed at victim support services;</p> <p>(n) establish and maintain a database of welfare support services; and</p> <p>(o) to perform such other functions as may be specified under any written law; and</p> <p>(2) The Director shall at the end of each financial year submit a report to the Cabinet Secretary that includes a summary of the following—</p> <p>a) the complaints received from victims in that</p> |          |

| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS.  |
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| PART VI VICTIM PROTECTION BOARD.<br>Establishment of the Board. | <p><del>19. (1) There is established a board to be known as the Victim Protection Board as a body unincorporated</del></p> <p><del>(2) The Board shall consist of—</del></p> <p><del>(a) a chairperson appointed by the Cabinet Secretary;</del></p> <p><del>(b) the Principal Secretary of the Ministry for the time being responsible for matters relating to justice, who shall be the Secretary;</del></p> <p><del>(c) the Principal Secretary of the Ministry for the time being responsible for correctional services;</del></p> <p><del>(d) the Principal Secretary of the Ministry for the time being responsible for children affairs;</del></p> <p><del>(e) the Principal Secretary of the Ministry for the time being responsible for matters</del></p> | <p>financial year;</p> <p>b) how the complaints were addressed; and</p> <p>c) any comments received from victims.</p> <p>Delete the whole PART and substitute with.</p> <p>38. (1). There is established the National Council for Victims of Offences.</p> <p>(2) The Council shall comprise of—</p> <p>(a) Attorney-General;</p> <p>(c) Chief Registrar of the Judiciary;</p> <p>(d) Director of Probation Service;</p> <p>(e) Director of Children Services;</p> <p>(f) Director of the Witness and Victim Protection Agency;</p> <p>(g) Kenya National Commission on Human Rights;</p> <p>(h) Gender and Equality Commission;</p> <p>(i) Law Society of Kenya; and</p> <p>(j) Medical Practitioners and Dentist Board.</p> | National Council for Victims of Offences replaces the Board . |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|                 | <p>relating to health;</p> <p><del>(f) the Director of Public Prosecutions;</del></p> <p><del>(g) the chairperson of the Advisory Committee on the Power of Mercy;</del></p> <p><del>(h) the Inspector-General of Police;</del></p> <p><del>(i) one person nominated by the National Gender and Equality Commission;</del></p> <p><del>(j) one person nominated by the Commission on Administrative Justice;</del></p> <p><del>(k) two representatives from civil society dealing with issues relating to child and women victims protection;</del></p> <p><del>(l) One person nominated by the National Council for Persons with Disabilities;</del></p> <p><del>(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 organizations working in the relevant field in the case of subsection (2) (k), and shall hold office for</del></p> | <p>(3) The members of the Council shall elect a chairperson and a vice-chairperson from among themselves—</p> <p>(a) at the first sitting of the Council; and</p> <p>(b) Whenever it is necessary to fill a vacancy of a chairperson or a vice-chairperson.</p> <p>(4) The chairperson and vice-chairperson of the Council shall not be of the same gender.</p> <p>(5) The members of the Council referred to under subsection (2) may attend meetings of the Council or attend to any matter of the Council in person or through a representative whom they have appointed in writing.</p> <p>(6) The Director shall be the Secretary to the Council.</p> <p>39. (1) The Council shall conduct its affairs in accordance with the regulations prescribed by the Council in consultation with the Cabinet Secretary.</p> <p>(2) The Council shall have at least four meetings 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.</p> |          |



| MARGINAL NOTES.                | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| <p>Functions of the Board.</p> | <p>a term of three years, which may be renewed for a further and final term of three years;</p> <p>(4) Not more than two-thirds of the members of the Board shall be of the same gender.</p> <p>(5) The Secretariat of the Board shall reside at the Ministry responsible for matters relating to justice;</p> <p>(6) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule;</p> <p>(7) Except as provided in the Schedule, the Board may regulate its own procedure.</p> <p>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.</p> <p>(2) Without prejudice to the generality of subsection (1), the Board shall advise the Cabinet Secretary on—</p> <p>(a) formulation of a comprehensive and integrated program to protect victims of crime;</p> |                                  |          |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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|                 | <p>(b) <del>coordination of activities relating to protection of victims of crime;</del></p> <p>(e) <del>dissemination of information on the law and the issues relating to victim protection through concerned agencies and non-governmental organizations;</del></p> <p>(d) <del>development of a charter for victims of crime;</del></p> <p>(e) <del>formulating and coordinating training programs for law enforcement agents on victim protection;</del></p> <p>(f) <del>monitoring and evaluation of the progress of Kenya with respect to protection of victims of crime;</del></p> <p>(g) <del>consultation and advocacy with Government departments and agencies and non-governmental organizations, to advance the purposes of this Act;</del></p> |                                  |          |

| MARGINAL NOTES.                | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL. | REMARKS. |
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| <p>Reporting requirements.</p> | <p>(h) <del>compilation and documentation of segregated data annually, by age, County and gender, of victims of crime for purposes of policy formulation and programme direction;</del></p> <p>(i) <del>development of mechanisms to ensure the timely, coordinated, and effective response to cases of victim protection;</del></p> <p>(j) <del>undertake measures necessary to rehabilitate victims of crime and in particular</del></p> <p style="padding-left: 40px;">(i) <del>implementation of rehabilitative programmes including education and protective programmes for victims of crime;</del></p> <p style="padding-left: 40px;">(ii) <del>the provision of shelter and psychosocial support to vulnerable victims;</del></p> <p>(k) <del>measures to reduce re-victimization in the justice system.</del></p> <p>(21) <del>The Board shall, in every year, submit to</del></p> | <hr style="width: 100%;"/>       |          |

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| MARGINAL NOTES.                  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.   | PROPOSED AMENDMENTS TO THE BILL.                                | REMARKS.                  |
| PART VII.<br>MONITORING.         | <p>22. (1) The Council may make regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act.</p> <p>(2) The regulations contemplated in subsection (1) may</p> <p>(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;</p> <p>(b) be made after consultation with the Cabinet Secretary for the time being responsible for matters relating to women and children.</p> |   | Retain the whole section. |
| Monitoring of Victim Protection. |   | No change Re-number the sections to be 40 with the sub-section. |                           |
| PART VIII.<br>MISCELLANEOUS      |   |   |                           |



| MARGINAL NOTES.   | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS. |
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| <p>PROVISIONS.</p> <p>Proceedings not to be invalidated due to infringement of the Act.</p> | <p>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.</p> <p>(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.</p> | <p>No Changes Retain the whole part but re-number to section 41 with the sub-section.</p> |          |
| <p>Employers not to penalize victims.</p>   | <p>24(1) An employer shall not discharge, suspend, intimidate, coerce, impose financial or other penalty on or otherwise discriminate against or otherwise act in a manner prejudicial to an employee on the grounds that person is absent from work—</p> <p>(a) to appear in court as a witness in a proceeding respecting an</p>   | <p>No Changes Retain the whole part but re-number to section 42 with the sub-section.</p> |          |

| MARGINAL NOTES. | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.   | REMARKS. |
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|                 | <p>offence;</p> <p>(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.</p> <p>(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term exceeding twelve months, or to both.</p> |  |          |
| Regulations     | <p>25(1) The Council shall make regulations generally for the better carrying into effect the provisions of this Act, or for prescribing anything which is to be prescribed under this Act.</p> <p>(2) For the purposes of Article 94(6) of the Constitution—</p> <p>(a) the authority of the Council to make regulations under this Act</p>   | <p>No Changes Retain the whole part but re-number to section 43 with the sub-sections.</p> |          |

| MARGINAL NOTES.  | CLAUSES IN THE VICTIM PROTECTION BILL 2013.  | PROPOSED AMENDMENTS TO THE BILL.  | REMARKS. |
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|                  | <p>shall be limited to bringing into effect the provisions of this Act and for the fulfilment of the object of this Act; and</p> <p>(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.</p> |   |          |
| Code of Conduct. |  | Add a new section as 44 immediately after section 43. The Council shall within one year after the coming into force of this Act prescribe a code of conduct for persons discharging functions under this Act.   |          |
| General penalty  |  | Immediately after the above section add a new section as section 45. A person who contravenes any provision of this Act for which no penalty has been specified shall be liable, upon conviction, to imprisonment for a term not exceeding ten years. |          |