

NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

INTERNAL MEMO

From: Dr. Francisca E. Nlerum

To: Director-General

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PROPOSED ROAD ACCIDENT VICTIMS COMPENSATION BILL

We are pleased to forward a draft copy of the proposed Road Accident Victims Compensation Bill.

Submitted for your kind review

Dr. Francisca E. Nlerum

A BILL

FOR

AN ACT TO PROVIDE FOR COMPENSATION OF VICTIMS OF ROAD ACCIDENT AND TO ESTABLISH THE ROAD ACCIDENT VICTIMS COMPENSATION COMMISSION AND FOR RELATED MATTERS

Sponsors:

The Nigerian Institute of Advanced Legal Studies

Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

PART 1 – DUTY OF USERS OF MOTOR VEHICLE

1. A person using a motor vehicle (hereinafter called “the driver”) must ensure that the motor vehicle is insured in accordance with the Insurance Act Cap I Laws of the Federation 2004
2. – (1) The driver of the motor vehicle shall be a fit and proper person with no physical impairment and mentally fit to drive a motor vehicle
(2) driver has a duty to ensure that the motor vehicle is in proper condition in accordance with the Road Traffic Act
(3) the driver shall use the motor vehicle in a proper manner to avoid dangerous driving
(4) The driver shall obey the speed limits prescribed under the Road Traffic Act
(5) the driver shall ensure that in the use of the motor vehicle, no bodily damage is done to any person

PART 11 - LIABILITY TO COMPENSATE VICTIMS OF ROAD ACCIDENTS

3. -(1) A driver using a motor vehicle in which bodily damage is done to a person shall be guilty of an offence of causing bodily damage and liable to compensate the victim
(2) the driver shall compensate the victim for bodily damage caused him in a road accident in which the vehicle was involved
(3) the driver of the motor vehicle shall compensate the victim for bodily damage caused him in a road accident in which the vehicle was involved if the accident occurred in Nigeria

4. In determining whether bodily harm has been done to a victim, the liability of a driver using a motor vehicle in which bodily damage is done to a person is absolute and it is immaterial whether or not there was fault on the part of the driver
5. Where the motor vehicle was used with the permission of the owner or possessor, liability will also be incurred by the person who permitted its use
6. In the case of a road accident in which several vehicles were involved, each driver will incur the liability for bodily damages caused to a person travelling in his motor vehicle
7. –(1) Where the person is injured outside the motor vehicle in a road accident in which several motor vehicles were involved, the drivers will be jointly and severally liable towards him, amongst each other, they will bear the liability in equal shares
(2) for the purpose of distributing the liability amongst the drivers under this section, a motor vehicle is deemed to be involved in a road accident if at the time of the accident there was contact between it and any other vehicle or between it and the injured person
8. Compensation to the victim shall be paid in monetary terms and in assessing compensation, calculation is made in respect of loss earnings and loss of earning capacity. The amount to be paid as compensation shall be triple the earnings of the injured person for the first five years
9. The compensation shall include:
 - (1) expenses for the purpose of recovery, including hospitalisation fees incurred by the victim
 - (2) where there is a dispute as to amount of compensation, adequate weekly payments shall be made pending the final determination of the matter
 - (3) the weekly payments for the victim shall include his welfare costs and upkeep or the upkeep of his family members who depend on him for their upkeep or upkeep of his dependants. Such up keep costs will be determined having considered the income of the injured prior to the road accident provided that where the income exceeded the maximum cost, only the maximum income will be taken into account
 - (4) the said compensation shall be exempt from tax
10. A person who is entitled to receive compensation shall have a right to lodge a written complaint to the Commission within 7 days of the occurrence of the accident stating the details of his compensation
11. (1) Upon receipt of such complaint, the Commission shall within 3 days write to the driver concerned informing him of the compensation due to the victim and inviting a response to be made by the driver within a period of 7 days.

- (2) the Commission shall also convene a meeting inviting the driver and the victim with a view to concluding the compensation payment due to the victim
- (3) the compensation shall be paid to the Commission and deposited in the Fund for payment to the victim
- (4) where the Commission is unable to conclude the compensation payment due to the victim and in the opinion of the Commission, the victim is entitled to compensation, the victim is entitled to institute an action in a Court for the purpose of enforcing his right to compensation
- (5) the victim is entitled to institute an action on his behalf or through the Commission for enforcing his right to compensation within 7days after the Commission is unable to conclude the compensation payment due to him
- (6) the Court before which an action is instituted is entitled to make a decision on such action within 21 days of the institution of the action. The amount decided by the Court will cover litigation expenses of the victim and the amount payable will attract an additional 10% from the date of the decision until the date on which payment is made
- (7) the Court's decision in the action for payment will not constitute a bar for action in respect of a claim for bodily injury
- (8) where the user of motor vehicle is found guilty of causing bodily injury, he is guilty of an offence and in addition to payment of compensation liable to three months imprisonment or fine of ₦1million

PART III - EXCLUSION OF LIABILITY

- 12.** The following victims will not be entitled to compensation under this law
- (1) a person who intentionally caused the road accident
 - (2) a person who was driving the motor vehicle in contravention of the Road Traffic Law or who was using the motor vehicle knowing that it was being so driven
 - (3) a person who was driving the motor vehicle without having license to drive it
 - (4) a person who was using or was helped by the motor vehicle to commit felony
 - (5) a person who was driving the motor vehicle without insurance in accordance with the Insurance Act
 - (6) a person whose insurance did not cover the use for which the motor vehicle was employed
 - (7) an owner of a motor vehicle who allowed another to use the motor vehicle while he held no insurance in accordance with the Insurance Act, and who was injured in a road accident which occurred while driving whether he was in the motor vehicle or outside. However, a person who could not have reasonably known that the motor vehicle is not covered by insurance will be entitled to claim from the fund. Also dependants of the victim shall be entitled to claim from the fund though the victim is not

PART IV – ESTABLISHMENT OF A ROAD ACCIDENT VICTIMS COMPENSATION COMMISSION

- 13.** For the purpose of giving effect to the provisions of this Act, there shall be established a body to be known as the Road Accident Victims Compensation Commission (referred to in this Act as “the Commission”)
- 14.** The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name
- 15.** The Commission shall have power to acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act
- 16.** The Commission shall have its head office in a location which is by law designated as the Capital of the Federal Republic of Nigeria and shall establish offices in every State of Nigeria in accordance with the decision of the Board of the Commission
- 17.** – (1) There shall be established for the Commission a Board which shall consist of:
- (a) a part-time Chairman
 - (b) the Director-General and Chief-Executive
 - (c) two full-time Commissioners
 - (d) a Representative of the Road Safety Commission
 - (e) a Representative of the Federal Ministry of Health
 - (f) a Representative of the Central Bank of Nigeria
 - (g) one Part-time Commissioner who shall be a legal practitioner qualified to practice in Nigeria with ten years post call experience
- (2) a person shall be qualified for appointment to the Board if he is a fit and proper person and if he is a holder of a university degree or its equivalent
- (a) in the case of the Chairman or Director-General, he is a holder of such degree or its equivalent with not less than 15 years experience in compensation payment operations
- 18.** -(1) The Board shall be responsible for the general administration of the Commission and in particular shall:
- (a) investigate complaints in relation to victims compensation;
 - (b) ensure adequate payment of compensation to victims;
 - (c) formulate general policies for the administration and regulation of the fund and the achievement and exercise of the functions of the Commission;
 - (d) institute actions in relation to non-payment of victims compensation;
 - (e) approve the audited and manage accounts of the Commission;

- (f) appoint Auditors for the Commission;
- (g) consider and approve annual budgets of the Commission as may be presented to it by management;
- (h) establish State offices and;
- (i) carry out such other activities as are necessary and expedient for the purposes of achieving the objectives of the Commission

19. The Board shall on the recommendation of the Director-General appoint and approve the duties of the part-time and other members of the Board

20. –(1) The Director-General, the Chairman and full-time Commissioners shall be appointed by the President upon the recommendation of the Minister and confirmation by the Senate

(2) The Director-General shall hold office for a period of 5 years one term and no more

(3) The Chairman, full time Commissioners and part-time Commissioners shall hold office for a period of 4 years one term and no more

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, the President may extend the tenure of office of the Director-General and any other Commissioners whose term of office has expired until a successor to such Director-General or Commissioner is appointed

21. The Director-General and the full-time Commissioners shall devote their full time to the service of the Commission and while holding office shall not hold any other office or employment except where appointed by virtue of their office in the Commission into the membership of the Board of any agency of the government in Nigeria or any international organisation to which the Commission is a member or an affiliate

22.- (1) A member of the Board shall cease to hold office if he:

- (a) becomes of unsound mind;
- (b) becomes bankrupt or makes a compromise with the debtors;
- (c) is convicted of a felony or any offence involving dishonesty;
- (d) is guilty of serious misconduct in relation to his duties; or
- (e) is a person who has a professional qualification, and is disqualified or suspended from practising his profession in any part of Nigeria by the order of a competent authority made in respect of him personally

23. –(1) The Director-General, the Chairman and the full time Commissioners shall be paid such remuneration and allowances as may be determined by the Board

(2) The allowances for the part-time members shall be in accordance with the prevailing guidelines on remuneration for part-time members of public bodies issued by the appropriate agency of the Federal Government

24. –(1) Meetings of the Board of the Commission shall take place as may be required but not less than four times in any financial year

(2) The Chairman shall preside at every meeting of the Commission and in his absence, the members present at such meeting shall appoint one of their members to preside

(3) Four members of the Board shall form a quorum at any meeting

(4) The supplementary provisions set out in the schedule to this Act shall have effect with respect to the proceedings of the Board of the Commission and the matters contained therein

25. –(1) A member of the Board of the Commission who is directly or indirectly in any compensation matter handled by the Commission shall disclose such interest immediately becoming aware of its existence

(2) Such a member shall not participate or continue to participate in any deliberation or decision of the Board of the Commission with regard to the subject matter in respect of which his interest is so disclosed; and shall be excluded for the purpose of constituting a quorum of the Board of the Commission from any deliberation or decision on the subject matter

PART V – FUNCTIONS AND POWERS OF THE COMMISSION

26. The Commission shall carry out the functions and exercise all the powers prescribed in this Act and in particular, shall:

(a) establish and maintain the fund which shall be applied towards the discharge of its functions under the Act

(b) register and regulate all monies paid into the fund

(c) register and regulate all complaints lodged by victims

(d) regulate all offers and render assistance as may be deemed necessary to all drivers

(e) prepare adequate guidelines and organise training programmes and disseminate information necessary for the payment of compensation to victims of road accidents

(f) facilitate the establishment of a nationwide system for compensation payment

(g) pay compensation to victims

27. The Commission may accept any grant of money or contributions on such terms and conditions consistent with the functions and objectives of the Commission

PART VI – ESTABLISHMENT OF A ROAD ACCIDENT VICTIMS COMPENSATION FUND

28. The Commission shall establish a Road Accident Victims Compensation Fund (referred to in this Act as “the Fund”)

29. – (1) There shall be paid and credited into the Fund

- (a) compensation monies from any driver who causes bodily damage to a victim
- (b) annual subventions from the Federal and State Governments with respect to recurrent and capital expenditures
- (c) such other sums of money as may be provided by the Federal and State Governments

30. The Commission may from time to time apply the proceeds of the Fund established under section 28 in pursuance of this Act to:

- (a) the cost of administration of the Commission
- (b) reimbursing members of the Commission for such expenses as may be expressly authorised by the Commission
- (c) payment of salaries, fees or other remuneration or allowances and gratuities payable to the officers of the Commission
- (d) the maintenance of any property vested in the Commission

31. The Commission shall keep proper accounts of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified Auditor appointed from a list of Auditors and in accordance with the guidelines supplied by the Accountant-General of the Federation

PART VII – INTERPRETATION AND CITATION

32. In this Act:

“auditor” means a member of body of accountants, from time to time recognised by an Act or any other enactment and appointed as auditor

“board” means the board in relation to the Commission

“bodily damage” means death, illness, injury or a physical, mental or intellectual defect on a person.

“commission” means the Road Accident Victims Commission established under section 13 of this Act

“court” means the Magistrate or High Court

“dependants” means a child or blood relation of the victim

“minister” means the Minister of Health

“motor vehicle” is a vehicle propelled by mechanical power over land and its main objective is to be used for land transportation including train, tractor or any mobile vehicle capable of moving by mechanical power on a road, a towed motor vehicle supported by a motor vehicle. It is a registered motor vehicle or a motor vehicle which need to have been registered in Nigeria according to the Motor vehicle Licensing Registration Act or a motor vehicle whose owner is a Nigerian

“road accident” is an occurrence in which bodily damage is caused to a person as a result of the use of a motor vehicle.

“use of motor vehicle” is the driving of a motor vehicle, entering or exiting thereof, parking, pushing or towing thereof, road side treatment or road side repair including the rolling down or turning over of the motor vehicle, disengagement or falling of a part of the motor vehicle or its cargo while in transit as well as disengagement or falling of from a standstill or parked motor vehicle.

“victim” means a person to whom bodily damage has been caused in a road accident

33. This Bill may be cited as the Road Accident Victims Compensation Bill

SCHEDULE

Section 24 (4)

PROCEEDINGS OF THE BOARD OF THE COMMISSION

1. Subject to this Act, the Commission may make standing orders regulating its proceedings
2. Where the Commission desires to obtain the advice of any person on a particular matter, the Commission may co-opt him as a member for such period as it thinks fit; but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Commission and shall not count towards a quorum
3. The Chairman shall have a casting vote