

# THE NATIONAL CORONERS SERVICE BILL 2015

## FREQUENTLY ASKED QUESTIONS

### WHY IS THE ENACTMENT OF THE NATIONAL CORONERS SERVICE BILL IMPORTANT TO KENYANS?

There is currently no comprehensive formal death investigation system in Kenya. This responsibility has been in the ambit of the National Police Service since independence. While noting the need to set up an independent Coroners Service in Kenya, the 2009 National Taskforce on Police Reforms popularly known as the Phillip Ransley Task Force noted that the practice of using serving police officers as forensic scientists within the field of criminal investigations has more challenges than benefits.



To promote public confidence in the police service and to conform to the accepted standards of human rights the taskforce noted that many governments have reviewed the practice of police officers making

arrests, securing evidence, examining the same evidence and prosecuting the case at courts. Phillip Alston, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in his 2009 report noted that "Police investigations of murders in Kenya are generally inadequate, due in large part to resource, training, and capacity constraints. But investigations are especially poor when the police themselves are implicated in a death". He was categorical that Police service in Kenya lack the will to institute the reforms that would improve transparency and accountability required in death investigations.

As such, the National Coroners Service Bill, when enacted into law, will provide a legal framework for reporting, investigating and documenting unnatural deaths in Kenya. The bill further provides for an independent and accountable system that promotes cooperation between different stakeholders: The National Police Service, investigative agencies, the courts, professional and regulatory bodies, other government bodies and authorities and the public in promoting effective death inquiries.

## WHO IS A CORONER AND WHAT WILL BE THE MANDATE OF NATIONAL CORONERS SERVICE?

A coroner is a public official responsible for the investigation of violent, sudden, suspicious or unnatural deaths. Once this Bill is enacted into law, Kenya will have an independent National Coroners Service whose role will be to:

- a) Ensure that all unnatural or suspicious deaths are properly investigated and resolved;
- b) Monitor and evaluate investigations into such deaths and develop strategies for continuous improvement;
- c) Conduct research and adapt international best practices on death investigations, crime scene management, reporting and documentation etc;
- d) Issue :
  - ★ Burial permits;
  - ★ Cremation permits;
  - ★ Waivers of post-mortem;
  - ★ Post-mortem reports;
  - ★ Authority to move dead bodies into or out of Kenya;
  - ★ Exhumation orders in uncontested circumstances.

## IS THE INDEPENDENCE OF THE NATIONAL CORONERS SERVICE GUARANTEED?

To safeguard its independence in the discharge of its functions and exercise of powers the National Coroners Service shall be free from interference. Further, a person who influences or attempts to influence a decision or interferes with the exercise of powers or the performance of a function of a National Coroners Service officer commits an offence, and shall be liable on conviction, to a fine not exceeding five hundred thousand or imprisonment for a term not exceeding two years or both.

## WHAT ARE REPORTABLE DEATHS?

Every person has an obligation to report to the National Coroners Service for investigations if he/she has reasons to believe that a deceased person died:

- As a result of:-
  - (I) Violence
  - (ii) Medical misadventure
  - (iii) Medical negligence
  - (iv) Medical misconduct, or
  - (v) Medical malpractice;
- By unfair means;
- During pregnancy or following pregnancy in circumstances that might reasonably be attributable thereto;
- Suddenly and unexpectedly;
- From disease or sickness for which he or she was not treated by a legally qualified medical practitioner;
- Infanticide

- From any cause other than disease; or
- Death at the workplace
- Accidents
- Suicide
- Homicide
- Death arising out of organized crime
- Child abuse
- Vulnerable people in custody of other persons and institutions.

In summary, The National Coroners Service shall have jurisdiction to investigate the cause of death where:

- (a) The deceased person is reported to have died of a violent or an unnatural death;
- (b) The deceased person is reported to have died of a sudden death of which the cause is unknown;
- (c) The deceased person is reported to have died in police custody or military custody;
- (d) Death occurs during or within 24 hours
- (e) Death occurs during or following administration of anesthesia;
- (f) Death that occurs 24 hours immediately after discharge from hospital or any health facility;
- (g) A person who suffers an injury or assault and dies within one year and one day;
- (h) Suspicious maternal deaths, termination of birth, cot deaths and sexual violence related deaths;
- (i) Infanticides;
- (j) Death that occurs in circumstances prescribed by regulations under any written law and classified and reportable deaths;
- (k) Death that occurs in an institution with children facilities or in a mental hospital;
- (l) Death occurs during or while in care of any institution or person; or
- (m) The death in custody of any other person authorized in law to retain custody of a person for a specified period;
- (n) Death as a result of child abuse; or in such a place and in such circumstances as may require an investigation.

## HOW WILL DEATHS IN CUSTODY BE INVESTIGATED?

Where death occurs in police custody or military custody or any other form of custody, the officer in charge or any officer in the area shall:

- (a) Immediately report the death to the Coroner and the next of kin; and
- (b) Make the report as soon as possible but not later than six hours after the death.

Where a coroner investigates a death occurring in police custody or prison custody, the coroner shall furnish a copy of the report to the Independent Policing Oversight Authority or any other relevant authority for further action.

## WHAT HAPPENS AFTER INVESTIGATIONS?

The Coroner General shall undertake full medical investigations of all deaths suspected to be of criminal nature. When a coroner finds that the death of the deceased person was occasioned by an act or omission which amounts to an offence under any law in force in Kenya, the Coroner shall immediately after the investigation, and in accordance with this Act, forward a copy of the investigation report, together with the names and addresses of any witnesses, to the Director of Public Prosecutions and the Inspector General of Police for necessary legal interventions.

## WILL STATE OFFICERS WILLINGLY COOPERATE WITH THE NATIONAL CORONERS SERVICE?

A public officer, State organ or State office or such other person shall at all times co-operate with the Coroner in ensuring the successful performance of the functions of the coroner and shall in particular:

- (a) Respond to any inquiry relevant to the investigation on the cause of death made by the Service; and
- (b) Provide any other information that the Service may require in the performance of its functions.

Any State officer or public officer who breaches any of the provisions of this Act shall be deemed to be in contempt of Parliament and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or a jail term of six months or both.

## WHO BEARS THE COST OF POST-MORTEMS AND AUTOPSIES?

The cost of undertaking post-mortem or autopsy on reportable deaths Act shall be borne by the State.



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INDEPENDENT MEDICO-LEGAL UNIT

David Osieli Rd, off Old Waiyaki Way, Westlands

P.O. Box 1271- 00606 Sarit Centre Nairobi, Kenya, Tel: +254-20-4450598, Mobile: +254-724 256 800

Email: [medico@imlu.org](mailto:medico@imlu.org) ,Website: [www.imlu.org](http://www.imlu.org), Twitter: @IMLU\_org

Facebook page: Independent Medico-Legal Unit