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# **THE BIRTHS AND DEATHS REGISTRATION BILL, 2011**

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## **A Bill for**

### **AN ACT of Parliament to provide for the notification and registration of births and deaths and for connected purposes**

**ENACTED** by the Parliament of Kenya as follows;

#### **PART 1— PRELIMINARY**

**Short title.** 1. This Act may be cited as the Births and Deaths Registration Act; 2011 and shall come into operation on the date of Publication in the Kenya Gazette.

**Interpretation.** 2. In this Act, unless the context otherwise requires ;

“Appeals tribunal” means the Kenya Citizens and Foreign Nationals Management Service Appeals Tribunal established under section 24 of the Kenya Citizens and Foreign Nationals Management Service Act

“birth” means the issuing forth from the mother after the expiration of the twenty-eighth week of pregnancy, whether alive or dead;

“birth” includes still births;

“Board” means the Board established under section 6 of the Kenya Citizens and Foreign Nationals Management Service Act

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for registration of births and deaths;

“death” means the permanent cessation of all evidence of life after a live birth; it does not include still births;

“director” includes the Director General and such other officers as provided in the Citizens and Foreign Nationals Management Service Act and the person appointed as such under section 3(1) of this Act

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“disposal” of human remains means;

- (a) burial of remains;
- (b) cremation of remains;
- (c) placing of remains in a mausoleum or other permanent resting place;
- (d) placing the remains in the custody of an educational or scientific institution for purpose of medical education or research;

“medical officer-in-charge” means a health personnel in charge of a health facility;

“medical officer of health” means a medical officer of health appointed under the Public Health Act, or any other Act, to carry out the duties of medical officer of health in any area;

“police officer” means a police officer in charge of a police station being of or above the rank of Inspector;

“Prescribed particulars” means -

- (a) As to any birth, the name, sex, date, type, nature, weight at birth, place and district of birth.
- (b) As to the mother, the name, age, marital status, usual residence, nationality, national identity card number or passport number or alien number, level of education, occupation, and previous births.
- (c) As to the father, nationality, national identity card number or passport number or alien number.
- (d) As to the informant, name, capacity and signature of informant, and date of notification
- (e) As to any death, the name, age, sex, marital status, residence, occupation and nationality of the deceased, and the date, place and cause of death;

“Registrar” means an officer appointed to register births and deaths in any area or to register births and deaths occurring outside Kenya;

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“Service” means the Kenya Citizens and Foreign Nationals Management Service established under the Kenya Citizens and Foreign Nationals Service Act

“Technical review committee” means the technical review committee established under section 23 the Kenya Citizens and Foreign Nationals Management Service Act

## **PART II – ADMINISTRATION**

### **Director of Birth and Death Registration and Functions.**

3(1). The Service shall appoint a Director to be in charge of birth and death registration.

(2). The Director of birth and death registration shall subject to this Act and such directions as may from time to time be given under the Kenya Citizens and Foreign Nationals Management Service Act perform the following functions;

- a. Register births and deaths in accordance with this Act;
- b. Issue birth and death certificates;
- c. Keep and maintain registers of births and deaths;
- d. Process births and deaths data; and
- e. perform such other functions as may be necessary for the carrying into effect the provisions of this Act.

### **Appointment of staff and registration agent**

4(1). The Service shall appoint such registrars as may be necessary for carrying out of the provisions of this Act

(2) The Service may appoint such registration agents as may be necessary for the better carrying out of the provisions of this Act.

### **Provision and maintenance of**

5(1). The Service shall provide each registrar in charge of a registration area and each registration agent with such registers and registration materials as may be

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## **registration materials.**

necessary for the registration of births and deaths under this Act.

2) Every registrar in charge of a registration area and every registration agent shall keep and maintain such registers and other registration materials as may be provided in accordance with sub-section (1).

## **Reciprocal administrative arrangements**

6. The Service may enter into an arrangement with the government agency responsible for the administration of corresponding law providing for -

- i. the exercise by the Service of powers and functions of the registering authority under corresponding law; and
- ii. the exercise by the registering authority under the corresponding law of powers and functions of the Service under this Act.

## **PART III – REGISTRATION OF BIRTHS AND DEATHS**

### **Compulsory registration of births and deaths.**

7. Subject to the provisions of this Act, registration of births and deaths shall be compulsory.

### **Register of births and deaths.**

8. Every registrar in charge of a registration area shall keep a register of births and a register of deaths and shall enter therein, or cause to be entered, the prescribed particulars of every birth and death notified to him, respectively.

### **Period for registration of birth.**

9. (1) Every birth shall be registered within three months of its occurrence.

(2) A birth shall not be registered after the expiration of three months from the date of such birth except upon the applicant complying with such requirements as shall be provided for in the regulations.

(3) No registration shall be undertaken under sub section 2 upon expiry of 5 years from the date of coming into effect of this Act.

Provided that the cabinet secretary may by notice in the gazette extend the period of late registration.

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## **Duty to notify a birth**

- 10.(1) Upon the birth of a child, it shall be the duty of , either;
- (a) Either the father or mother of the child; or
  - (b) the occupier of the house in which to his knowledge the child is born; or
  - (c) the person having charge of the child,

to give notice of the birth to the registrar of the registration area or to the registration agent in which the birth occurs within such time as may be from time to time prescribed.

- (2) Where a birth occurs in a prison, hospital, orphanage, barrack or quarantine station, the duty to give notice of the birth shall lie on the officer in charge of the establishment in which the birth takes place.

## **Mode of registration of births.**

11. A person notifying the birth of a child shall, to the best of his knowledge and ability, give the prescribed particulars, which shall be entered forthwith by the registrar or a registration agent in the register, and the person notifying the birth shall certify to the correctness of the entry by either signing or by affixing his mark to the register

## **Register of presumed birth**

12. (1) A register of presumed births shall be maintained under this Act in respect of every person who has been presumed a citizen under section 9 of the Kenya Citizenship and Immigration Act.
- (2) Where citizenship under section 21 of the Kenya Citizenship and Immigration Act is revoked the details of the revocation shall be entered in the register maintained under sub clause 1 of this section.

## **Registration of births occurring outside Kenya.**

13. (1) A person notifying the birth occurring outside Kenya of a child who is a citizen of Kenya shall produce to the registrar the following evidence of the birth;
- (i) A certificate of birth issued by the appropriate authority in the country abroad, with an English translation of the certificate if it is not in English; or

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(ii) If certificates of birth are not issued in the country abroad, a certificate of the birth given by the doctor, midwife or other persons who attended the birth, with an English translation of the certificate if it is not in English; or

(iii) If there is a Kenya Mission in the country abroad, a certificate of a member of the Mission that he is satisfied, from evidence produced to him and inquiries which he has made, that the particulars of the birth given in the birth certificate are correct; or

(iv) If there is no Kenya Mission in the country, such other evidence as the registrar may require;

and the person notifying the birth shall certify in writing to the registrar the correctness and authenticity of the evidence which he produces.

(2) Upon receiving the evidence required by subsection (1) of this section to be produced, the registrar shall forthwith enter the prescribed particulars of the birth in the register of births occurring outside Kenya.

## **Entry of father in register.**

14. (1) A person shall not be entered in the register as the father of any child except either-

(a) Upon the production to the registrar of such evidence as the registrar may require that the father and mother were married according to law or in accordance with some recognized custom; or

(b) At the joint request of the father and mother of such child appearing physically before the registrar.

(c) Where the father, or the mother or both the mother and father of a child are dead, upon production of an order of a court of competent jurisdiction to the effect that such a person be registered as a father.

(2) The registrar may, if the circumstance so requires, demand the

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physical presence of a child in respect of whom a person seeks to have his name entered in the register as the father in accordance with subsection (1).

## **Insertion and Change of name of child.**

15.(1) Where the birth of any child has been registered before it has received a name, the parent or guardian of such a child, on payment of the prescribed fee, and on providing such evidence as the registrar may deem necessary, register the name that has been given to the child provided such name registration is done only once.

(2) where the name by which a child was registered is changed, the parent or guardian of such child may within seven years of the birth, and on payment of the prescribed fee, and on providing such evidence as the registrar may deem necessary, register the name that has been given to the child provided such change is done only once.

## **Certificate of birth**

16.(1) upon registration of a birth occurring in Kenya the Director of birth and death registration shall issue a birth certificate in the prescribed form

(2) A certificate of birth issued under sub section 1 shall contain the following information:

- i. Name of child
- ii. Place of birth
- iii. Date of birth
- iv. Sex of child
- v. Name, nationality, identity card number or passport number or alien number of biological parent or parents of the child
- vi. Any other information as may be prescribed by the cabinet secretary

(3) The information contained in a certificate of birth issued under this Act shall be presumed to be correct and such information may be received in evidence in any judicial proceedings.

## **Production of certificate of birth**

17(1). Any institution, in the exercise of its lawful function, may require production of a certificate of birth and such requirement shall be lawful

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(2)The institution in section 17(1) may, notwithstanding the provisions of any other law for the time being, defer consideration of the service until the certificate of birth of the said person has been produced or other proof that the birth of the person has been registered.

## **Notification and registration of death**

18.(1) a person notifying a death shall, to the best of his knowledge and ability, give the prescribed particulars, which shall be entered forthwith by the registrar or a registration agent in the register, and the person notifying the death shall certify to the correctness of the entry by signing or by affixing his mark to the register.

(2)Every death shall be registered immediately it occurs and in any case not more than one month from the date of such death.

(3)A death shall not be registered after the expiration of one month from the date of such death except upon the applicant complying with such requirements as shall be provided for in the regulation

## **Registration of deaths occurring outside Kenya.**

19. (1) A person notifying the death of a citizen of Kenya occurring outside Kenya shall produce to the registrar the following-

(i)A certificate of death issued by the appropriate authority in the country abroad, with an English translation of the certificate, if it is not in English; or

(ii)where there is a Kenya Mission in the country abroad, a certification by an officer of the Mission that he is satisfied, from evidence produced to him and inquiries which he has made, that the particulars of the death given are correct; or

(iii)Where there is no Kenya Mission in the country, such other evidence as the registrar may require;

and the person notifying the death shall certify in writing to the registrar the correctness and authenticity of the evidence which he produces.

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(2) Upon receiving the evidence required under sub-section (1) of this section, the registrar shall enter the particulars of the death in the register in the prescribed manner.

## **Duty to notify a death**

20. Upon the death of any person, it shall be the duty of, either-
- (a) The next of kin or relative of the deceased present at the time of death of the deceased; or
  - (b) The next of kin or relative of the deceased dwelling or being in the same area as the deceased; or
  - (c) The occupier of the house in which to his knowledge the death took place; or
  - (d) Any inmate of the house in which the death took place; or
  - (e) Any person finding or taking charge of the body of the deceased person or causing the body of the deceased person to be buried or otherwise disposed of,

to give notice to the registrar or registration agent of the area in which the death took place within such time as may be prescribed.

## **Certificate of cause of death.**

21. (1) In the case of the death occurring in Kenya of any person who has been attended during his last illness by a medical officer-in-charge, that medical officer-in-charge shall sign a certificate stating to the best of his knowledge and belief the cause of death.
- (2) A certificate of cause of death signed as aforesaid shall be forwarded forthwith by the medical officer-in-charge by whom it is signed to the registrar, and the medical officer-in-charge, on signing a certificate as aforesaid, shall issue a disposal permit to a person taking charge of the body of the deceased.
- (3) Where an inquest is held on the body of a deceased person, a medical certificate of the cause of death need not be forwarded to the registrar, but the magistrate holding the inquest shall send to the registrar a copy of his finding, which shall be sufficient.
- (4) A medical officer-in-charge who refuses or fails without reasonable cause to comply with any of the provisions of this section commits an

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offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding fifty thousand shillings, or both.

## **Registrar to issue disposal permit**

22. (1) where a registrar receives a report in prescribed form in respect of a death occurring in Kenya and in that report a magistrate or a police officer has certified that the death is not one to which section 386 or 387 of the criminal procedure code applies he shall issue a written permit authorizing the interment or other disposal of the body of the deceased person.

(2) Where a person notifying a death does not produce to the registrar a death report as provided for under sub-section (1), the registrar or registration agent shall forthwith fill up, so far as the particulars thereby required are ascertainable by him, a death report and forward the same to the nearest magistrate or police officer, who shall, if after making the inquiries required by section 22 (1) of this Act and he is satisfied that the case is not one to which section 386 or 387 of the Criminal Procedure Code applies, make in the prescribed form the report required by section 22 (2) of this Act.

## **Inquiries as to cause of death**

23. (1) Upon receipt of a death report from a registrar or registration agent under section 22(2) of this Act, the magistrate or police officer, or any person specially empowered by the Service in that behalf, shall cause such inquiries to be made as to the cause of the death as he may think fit or as may be prescribed.

(2) If the case does not appear from such inquiries to be one to which section 386 or 387 of the Criminal Procedure Code applies, the magistrate or police officer or other person as aforesaid shall report accordingly to the registrar or registration agent, who shall issue a permit for the interment or other disposal of the body.

## **Presumption of death**

24. (1) Where it is proved that a person has not been seen and has not been heard of for seven years by those who might be expected to have seen or heard of him if he were alive, there shall be a rebuttable presumption that he is dead.

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(2)Where a person is presumed dead in accordance with sub-section (1), any person who would have been under a duty under section 21 of this Act to notify the death of the person being presumed dead may apply for an order of a presumption of death in a court of competent jurisdiction, and such an order, once issued, shall be served upon the Director of birth and death registration and shall have the same effect as a certificate of death issued under this Act.

(3)The Director of birth and death registration shall maintain a register of presumed deaths and shall enter therein all orders issued by the court and served upon him in respect of presumed deaths

## **Certificate of Death**

25.(1)upon registration of a death occurring in Kenya the Director of birth and death registration shall issue a death certificate in the prescribed form

(2). A certificate of death issued under sub section 1 shall contain the following information:

- i. Name of deceased
- ii. Place of death
- iii. Date of death
- iv. Sex of deceased
- v. Cause of death
- vi. Age of the deceased
- vii. Nationality, identity card number or passport number or alien number of the deceased
- viii. Any other information as may be prescribed by the cabinet secretary

(3). The information contained in a certificate of death issued under this Act shall be presumed to be correct and such information may be received in evidence in any judicial proceedings.

## **No disposal without permit**

26. A person shall not bury, cremate or otherwise dispose of the body of a deceased person without a permit issued in accordance with sections 21(2), 22(1) or 23(2) of this Act.

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## **Review and Appeal**

27. (i). Any person aggrieved by a decision of a public officer made under this Act may subject to the provisions of section 23(4) of the Kenya Citizens and Foreign Nationals Management Service Act, apply to the technical review committee for a review of the decision
- (ii). An appeal against a decision made by the Cabinet Secretary or by the Service under this Act may be made to the Appeals tribunal

## **Offences and penalties**

28. (1) A person who is under legal duty to give notice of birth or death and who, without reasonable cause, fails to do so within the appropriate period provided in this Act commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding fifty thousand shillings, or both.

(2) Any person who commits an offence under this Act for which no other penalty has been provided shall be liable, upon conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding twenty thousand shillings, or both.

- (3) Any person who, without lawful excuse—
- (a) willfully gives any false information for the purposes of the registration of a birth or death;
  - (b) falsifies or counterfeits or causes to be falsified or counterfeited any register or certified copy of an entry therein or any part thereof;
  - (c) inserts or causes to be inserted in any register or certified copy of an entry therein or any part thereof any false entry;
  - (d) issues, gives or utters any false certificate or certifies any writing to be a copy of or extract from a register or any entry therein, knowing such copy of extract to be false in any material particular;
  - (e) Forges the signature, seal, impression or stamp of the Director of Birth and death registration or any registrar;
  - (f) knowingly registers a birth or death which has previously been

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registered; or

(g) knowingly permits any act referred to in paragraph (a) to (g) to be committed in relation to any register of which he has the custody or care or in relation to any certified copy of an entry in such register or any part thereof,

Commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding seven years, or to a fine not exceeding two hundred thousand shillings, or both.

## **Annual returns**

29. It shall be the duty of every registrar in charge of a registration area, on or before such date as the Director of Birth and death registration may appoint, to forward to the Director of birth and death registration a return in the prescribed form showing the births and deaths registered in his registration area during the preceding year.

## **Monthly returns**

30. Every registrar in charge of a registration area shall, at the close of each month, forward to Director of birth and death registration, a statement of the births and deaths registered by him during such month.

## **Preparation of indexes**

31. The Director of birth and death registration shall cause to be prepared from the returns made to him indexes of the births and deaths registered, in such form as he may deem necessary.

## **Inspection of registers and provision of copies and certificates.**

32. (1) Any register, return or index in the custody of the Director of birth and death registration shall, subject to the rules, be open to inspection on payment of the prescribed fee.

(2) The Director of birth and death registration shall, upon application and on payment of the prescribed fee, furnish a certified copy of any entry in any register or in any return in his custody to an applicant.

(3) Upon receipt of the application in the prescribed form and upon payment of the prescribed fee, the Director of birth and death registration shall furnish a certificate in the prescribed form of the birth or death of any person compiled in the prescribed manner from the

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records and registers in his custody.

- (4). A certified copy of any entry in any register or return purporting to be sealed or stamped with the seal of the Director of birth and death registration shall be received as evidence of the dates and facts therein contained without any or other proof of such entry.

## **Compilation of annual summary and report**

33. Within three months after the close of the calendar year the Director of birth and death registration shall compile a report of the births and deaths of such year, and a report on the increase or decrease of the population of Kenya and on any special causes appearing to affect the same and present it to the Service.

## **Correction of errors in register.**

34. (1) The Director of birth and death registration or registrar may, subject to the provisions of this Act, correct any error in any register, whether it is a clerical error or an error of fact.
- (2) Any person having a legitimate interest in the records held by the Director of birth and death registration may, upon payment of the prescribed fee apply to the Director of birth and death registration or registrar for a correction to be made under sub-section (1).
- (3). Corrections shall be made without erasing the original entry, and shall be authenticated by the signature of the Director of birth and death registration or a registrar.

## **Cancellation of the register**

35. The Director may cancel the registration of birth or death where a double or multiple registrations has taken place or where registration was done through Misrepresentation of material facts.

## **Examination of registers by public officers**

36. The Director of birth and death registration shall on application by a public officer where it is necessary or expedient for the discharge of the duties of such public office and upon production of a written request, allow the officer to examine any register kept and maintained in terms of this Act and to obtain a certified copy of any entry therein, without the payment of a fee

## **Rules**

37. The Cabinet Secretary may make rules for the better administration of this Act

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## **Repeal of Cap. 149**

38. The Births and Deaths Registration Act is hereby repealed.

## **Savings and transition**

39. (1) Any register kept, registration effected, notice given, rules made or other thing done or deemed to have been done under the Births and Deaths Registration Act (now repealed) shall be deemed to have effect and be given effect as if it had been kept, effected, issued, made or done, as the case may be, under the provisions of this Act, and this Act shall apply thereto accordingly.

(2) For purposes of late registration, the dates set out in the Schedule to this Act shall be deemed to be the dates on which compulsory registration of births and deaths took effect in the respective areas set out against such dates.