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CHAPTER 89

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CHAPTER 89

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CHAPTER 89

NATIONAL CORONERS SERVICE ACT

[Date of assent: 21st June, 2017.]

[Date of commencement: 7th July, 2017.]

AN ACT of Parliament to establish a National Coroners Service, to provide for its powers and functions and for connected purposes

[Act No. 18 of 2017.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the National Coroners Service Act.

2. Interpretation

In this Act, unless the context otherwise requires—

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

"Coroner" means the Coroner-General appointed under section 9 and the coroners appointed under section 15;

"custody" means detention or custody of a person in any place by the State and it includes custody of person while in transit;

"interested person" in relation to a deceased person or an investigation into a person's death, means—

- (a) a spouse, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother or half-sister;
- (b) a personal representative of the deceased;
- (c) a medical examiner exercising functions in relation to the death of the deceased;
- (d) a beneficiary under a policy of insurance issued on the life of the deceased;
- (e) the insurer who issued a policy of insurance under paragraph (d);
- (f) a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so;
- (g) in a case where the death may have been caused by an injury sustained in the course of an employment, a representative of a trade union of which the deceased was a member at the time of death;
- (h) a person appointed by, or representative of, an enforcing authority;
- (i) a person appointed by a Government department to inquire into the death or to assist in, or provide evidence for the purposes of, an investigation into the death;
- (j) a person appointed by the Coroner to represent muslims or any interest groups;

- (k) a medical practitioner who examined the deceased; and
- (l) any other person who the Coroner-General thinks has a sufficient interest as may be prescribed;

"Service" means the National Coroners Service established under section 6.

3. Objects of the Act

The objects of this Act are to—

- (a) provide for the establishment of the National Coroners Service and appointment of coronial officers;
- (b) provide for investigation of reportable deaths in order to determine the identities of the deceased persons, the times and dates of their deaths and the manner and cause of their deaths;
- (c) provide for the complementary role of forensic medical science services to the police in handling investigations involving decedent bodies and scene management;
- (d) provide for matters relating to exhumation of bodies at the order of the courts and pursuant to other written laws;
- (e) provide for the mandatory requirement to report reportable deaths;
- (f) establish the procedures for investigations, by coroners of reportable deaths;
- (g) assist in policy formulation by advising the Government, by forensic study, on possible measures to help to prevent deaths from similar causes happening; and
- (h) facilitate the participation of the Coroner at inquests to advise on matters connected with reportable deaths, including matters related to public health or safety and the administration of justice.

4. Guiding Principles

In the exercise of the powers and performance of functions under this Act, the Coroner-General, coroners or any other person charged with a responsibility under this Act shall respect and uphold the values and principles enshrined in the Constitution.

5. Relationship with other laws

(1) This Act shall not limit or otherwise affect the functions or powers of—

- (a) a police officer or any other person investigating a death under any other written law; or
- (b) a police officer in discharging his duty as a police officer other than an investigation under this Act.

(2) The operation of this Act shall be subject to the provisions of the Commissions of Inquiry Act (Cap. 102).

PART II – ESTABLISHMENT OF THE NATIONAL CORONERS SERVICE

6. Establishment and composition of the Service

(1) There is established a Service to be known as the National Coroners Service.

(2) The Service shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act or any written law, as may lawfully be done or performed by a body corporate.

(3) The Service shall comprise—

- (a) the Coroner-General appointed under section 9(1);
- (b) coroners appointed under section 9(2);
- (c) such other officers and members of the Service as may be appointed pursuant to the provisions of section 15.

7. Access to services

(1) The Headquarters of the Service shall be in Nairobi.

(2) The Service shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.

8. Independence of the Service

(1) In the discharge of its functions and exercise of the powers under this Act or any other written law, the Service shall be independent and free from any interference.

(2) A person who—

- (a) influences or attempts to influence a decision of the Coroner-General or member of the Service;
- (b) interferes with the exercise of powers or the performance of a function under this Act, commits an offence.

9. Appointment of Coroner-General and coroners

(1) There shall be a Coroner-General of the Service who shall be competitively appointed by the Cabinet Secretary, on the recommendation of the Public Service Commission.

(2) For the proper discharge of the functions of the Coroner-General under this Act, there shall be competitively recruited by the Public Service Commission such number of coroners who shall assist the Coroner-General in the performance of the functions of the Coroner-General within their areas of jurisdiction.

10. Qualifications for appointment as Coroner-General

A person is qualified for appointment as Coroner-General if that person—

- (a) is a citizen of Kenya;
- (b) has had at least five years' experience at management level;
- (c) holds a degree in medicine from a university recognized in Kenya;
- (d) has specialized in human pathology for at least five years;
- (e) has a valid practising certificate issued under the Medical Practitioners and Dentists Act (Cap. 253) and
- (f) has training in forensic pathology.

11. Term of service of the Coroner-General

(1) The Coroner-General shall serve for a term of five years which shall be renewable once.

(2) The terms of service of the Coroner-General shall be determined by the Cabinet Secretary upon advice by the Salaries and Remuneration Commission.

12. Removal from office

(1) The Coroner-General may be removed from office for—

- (a) violation of the Constitution;
- (b) inability to perform the function of the office;
- (c) gross misconduct and misbehavior;
- (d) incompetence; or
- (e) any other justifiable cause as may be set out in the contract of employment.

(2) Where the question for removal from office of the Coroner-General arises, the Cabinet Secretary shall inform the Coroner-General in writing and authorize the Public Service Commission to investigate the matter and report to him or her with recommendations on the appropriate action to be taken.

(3) The Public Service Commission shall expeditiously hear and determine the matter and recommend the appropriate action to be taken by the Cabinet Secretary.

13. Vacancy

The office of the Coroner-General shall become vacant if the holder—

- (a) dies;
- (b) resigns from office, by notice in writing addressed to the Cabinet Secretary;
- (c) is convicted of a felony and sentenced to imprisonment;
- (d) is removed from office under any of the circumstances specified in section 12.

14. Structure of the Service

(1) The Coroner-General, in consultation with the Public Service Commission shall determine the structure of the Service.

(2) The structure of the Service referred to under subsection (1) shall recognize

- (a) the nature of services rendered by the Service;
- (b) the necessity to employ other professionals and expertise in the Service for proper discharge of the functions of the Coroner-General under the Act and other written laws.

15. Officers and other staff of the Service

(1) The Public Service Commission shall appoint such number of coroners and other staff of the Service as shall be necessary for the proper and efficient discharge of the functions of the Service.

(2) The terms and condition of service of coroners and staff of the Service shall be determined by the Cabinet Secretary on advice of the Salaries and Remuneration Commission.

16. Professional code of conduct.

(1) The Cabinet Secretary in consultation with the Coroner-General shall develop and maintain a code of conduct to regulate the affairs and conduct of the members of the Service.

(2) The Public Officer Ethics Act (Cap. 185B) and any other law regulating the conduct of public officers shall, with necessary modifications, apply to members of the Service.

(3) In developing the code of conduct referred to under subsection (1), the Cabinet Secretary and the Coroner-General shall consult other State organs and departments responsible for ethics and professional ethics relevant to the Service.

17. Scheme of Service

The Public Service Commission shall prescribe a Scheme of Service for the coroners and other members of the Service.

18. Continuous training of member of the Service

The Cabinet Secretary in consultation with the Coroner-General shall ensure continuous training of coroners and other members of the Service.

PART III – FUNCTIONS AND POWERS OF THE SERVICE**19. Functions of Coroner-General**

The functions of the Coroner-General shall be to—

- (a) co-ordinate the services throughout the country;
- (b) ensure efficient delivery of the functions and services of the Service in accordance with the Constitution, this Act and any other written law;
- (c) ensure that all deaths which the Service has jurisdiction to conduct an investigation on are properly investigated and in a timely manner;
- (d) monitor and evaluate investigations of deaths by the Service;
- (e) issue guidelines to other coroners to assist them in the exercise or performance of their functions; and
- (f) perform such other functions as are conferred or imposed by or under this Act or any other law.

20. Functions of coroners

A Coroner shall be the administrative head of coronial services in the County in respect of which he or she is appointed, and shall, subject to the control and directions of the Coroner-General, be responsible for the investigations into the reportable deaths which occur or are reported within the County.

21. Delegation by the Coroner-General

(1) The Coroner-General may delegate in writing, to any officer, member of staff or agent of the Service, the exercise of any of the powers or the performance of any of the functions or duties of the Service under this Act.

(2) A delegation under subsection (1) shall not prevent the Coroner-General from exercising the power in question.

(3) A delegation under this section—

- (a) shall be subject to any conditions as the Coroner-General may impose;

- (b) shall not divest the Coroner-General of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (c) may be withdrawn and any decision made by the person to whom the delegation is made, withdrawn or varied by the Coroner-General.

22. Powers of the Coroner

(1) Subject to any other written law and jurisdiction of the Coroner-General under this Act, the Coroner-General shall approve the issuance of—

- (a) burial permits;
- (b) cremation permits;
- (c) waivers of post-mortem;
- (d) post-mortem permits; and
- (e) authority to move dead bodies into or out of Kenya.

(2) The Cabinet Secretary shall make regulations to give full effect to this section.

(3) In making the regulations referred to under subsection (2), the Cabinet Secretary shall have due regard to other laws in force regulating the issue of registration of and issuance of permits referred to under subsection (1).

23. General responsibility of a coroner

A coroner shall—

- (a) so far as it is consistent with justice and practicable to do so, perform or exercise his or her functions, powers, and duties without delay;
- (b) in performing or exercising a function, power, or duty, have regard to any practice rules and regulations as shall be issued from time to time by the Coroner-General.

PART IV – OBLIGATION TO REPORT, REPORTABLE DEATHS AND INVESTIGATIONS OF REPORTABLE DEATHS**24. Obligation to report certain deaths**

(1) A person who has reasons to believe that a deceased person died—

- (a) as a result of—
 - (i) violence;
 - (ii) misadventure;
 - (iii) negligence;
 - (iv) misconduct; or
 - (v) malpractice;
- (b) by unfair means;
- (c) during pregnancy or following pregnancy in circumstances that might reasonably be attributable thereto;
- (d) suddenly and unexpectedly;
- (e) from disease or sickness for which he or she was not treated by a legally qualified medical practitioner;
- (f) from any cause other than disease; or
- (g) under such circumstances as may require investigation,

shall immediately notify a coroner or a police officer of the facts and circumstances relating to the death.

(2) Where a police officer is notified under subsection (1), the police officer shall immediately notify the coroner of such facts and circumstances.

25. Report of deaths in custody

(1) 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
- (b) make such report as soon as possible but not later than six hours after the death.

(2) In exceptional circumstances and where it is not practically possible to report within the period specified in subsection (1) (b), the officer in charge of the station or the premises where the deceased was held in custody shall, in addition to reporting the death, issue a written report stating the reasons for delay in reporting the death.

(3) 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.

26. Mandatory reporting of all deaths

The Coroner-General shall undertake full medical investigations of all deaths suspected to be of criminal nature, regardless of faith or other considerations that may require immediate disposal of bodies.

27. Procedure where death is found to be due to an act amounting to an offence

Where a coroner finds that the death of the deceased person was occasioned by an act 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 Inspector-General of Police.

28. Deaths to be investigated by the Service

The 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) the death occurs during or following an assault within twenty-four hours following a surgical or invasive or surgical procedures;
- (e) the death occurs during or following administration of anaesthesia;
- (f) the death occurs twenty-four hours immediately after a person is discharged from hospital or any health facility;
- (g) a person suffers an injury and dies within one year and one day;
- (h) it is a suspected maternal death, termination of birth, cot deaths and sexual violence related deaths;

- (i) it is a case of infanticides;
- (j) the death occurs in circumstances prescribed by regulations under any written law and classified as reportable deaths;
- (k) death occurs in an institution with children facilities or mental hospital;
- (l) death occurs during or while in care of any institution or person; or
- (m) the death was a death in custody of any other person authorized in law to retain custody of a person for a specified period;
- (n) the death was as a result of child abuse; or
- (o) it is in a place and in such circumstances as may require an investigation under any other law within the jurisdiction of the Coroner-General.

29. Collection of forensic evidence, etc

For purposes of investigations under this Act, a coroner shall have the power to collect forensic and other evidence and to preserve it in such manner as the Coroner-General may from time to time specify.

PART V – INVESTIGATIONS AND EXAMINATIONS

30. Purpose of investigation and matters to be ascertained

The purpose of an investigation under this Part into a person's death is to ascertain—

- (a) particulars of the deceased;
- (b) how, when and where the deceased met his or her death;
- (c) the cause and manner of death;
- (d) the particulars required under the Births and Deaths Registration Act (Cap. 149) to register the death;
- (e) what preventive measure may be taken to prevent similar deaths; and
- (f) any other particulars as may be required under any other written law.

31. Conduct of investigations

Where a coroner—

- (a) becomes aware of the death of any person to which this Act applies; or
- (b) is notified of the existence of a body of a person in a place within his or her area of jurisdiction and believes that there is reasonable cause to suspect that the deceased may have died in any of the circumstances set out in this Act, the coroner shall as soon as practicable investigate the death of the deceased.

32. Reports by the Coroners on investigations carried out

(1) A coroner shall make a report of every investigation conducted under this Act.

(2) The report referred to under subsection (1) shall be issued to relevant authorities and interested persons as soon as the report is concluded.

(3) The Coroner shall submit the report of his or her investigations not later than seven days from the date the report was made.

(4) For purposes of criminal investigation and subsequent prosecution of an offence under any written law, the Coroner shall submit an interim report to

the National Police Service and the Director of Public Prosecutions or any other relevant Authority within twenty-four hours of notification of a death under this Act.

(5) The Coroner shall submit to the Director of Public Prosecutions or the National Police Service as the case may be, a final and conclusive report of the cause of death investigated under this Act within seven days.

33. Particulars of an investigation report

(1) Every investigation report shall be signed by the Coroner with his name and style of office, and shall set forth the following particulars—

- (a) where, when and by whom the investigation was conducted;
- (b) who the deceased person was;
- (c) where the body of the deceased lies;
- (d) where, when and by what means the deceased person met his death;
- (e) identification of issues in relation to preventive measures that can be undertaken by the authorities;
- (f) any other matter that the Coroner deems necessary.

(2) If the name of the deceased is unknown, the body may be described based on the bodily features.

(3) No investigation report shall be quashed for any technical defect or for want of form.

34. Report *prima facie* evidence

(1) For purposes of investigation, prosecution and hearing of a matter before court, a report made by the Coroner under this Act with regard to cause of death shall be deemed as *prima facie* evidence and recognizable as such.

(2) Subsection (1) does not preclude a person who is dissatisfied with the findings of the Coroner under this Act from seeking second or other opinion on the cause of death.

35. Second opinion

(1) Any person dissatisfied or who disagrees with the report or finding of the Coroner under this Act may, at his or her own cost, seek second or other opinion from other qualified officers.

(2) Where a second or other opinions are sought under subsection (1), the Coroner may attend or send his or her representative to be present during the investigation.

(3) The Cabinet Secretary in consultation with the Coroner-General may make regulations generally to give full effect to this section and in particular provide for—

- (a) a framework within which repeat post-mortems may be called;
- (b) the implications of the second or other opinions sought;
- (c) the process to challenge the decision of the Coroner with regard to his or her decision on reportable deaths;
- (d) the person who may be present during the examination; and
- (e) the format and process of lodging a complaint in relation to a complaint arising from a report of and conduct of investigations by the Coroner.

36. Power to hold investigation on a body within local limits

Whenever an investigation ought to be conducted on any dead body lying within the local limits of the jurisdiction of any Coroner, the Coroner shall conduct such investigation, whether or not the cause of death arose within that jurisdiction.

37. Place of investigation

Upon the notice to the Coroner of the death or discovery of a dead body, an investigation may be conducted either in the territory of the Coroner in whose jurisdiction the body was found or where the death took place.

38. Coroner to be sent for when prisoner dies

(1) Whenever a person dies in a prison or in police custody—

- (a) the officer in charge of the prison; or
- (b) the Officer Commanding a police station,

shall inform the Coroner within whose jurisdiction the prison or police station is situate.

(2) A Coroner who is informed of the death under subsection (1) shall investigate into the death and prepare an investigation report.

39. Preservation and management of scene of crime

(1) A police officer or any person who is present at the time of death or who finds a dead body, shall in addition to reporting the death under this Act or any other written law, preserve the scene of crime until the Coroner or a member of the Service presents himself or herself at the scene.

(2) In addition to securing and preserving the scene under subsection (1), a police officer shall collect evidence necessary and relevant for purposes of investigation of an offence and prosecution of the matter.

(3) A person who interferes with or tampers with evidence or the scene of crime, commits an offence.

40. Preservation and movement of dead bodies

(1) The Cabinet Secretary in consultation with the Coroner-General shall make regulations generally to regulate and provide for rules and procedures for preservation of bodies and movement of bodies.

(2) The regulations made under subsection (1) shall recognize the dignity of dead body and cultural beliefs of the deceased where the same is known by the Coroner or member of the Service.

41. Transferring body to mortuary

(1) This section shall apply if a body is to be taken to a mortuary at the direction of—

- (a) a coroner; or
- (b) a police officer.

(2) A person who is involved in taking the body to the mortuary must comply with—

- (a) any direction of the Coroner or police officer; or
- (b) the guidelines issued by the Coroner-General about—

- (i) the dignity and respect to be accorded to persons who are at a place from which a body is to be taken, and their cultural traditions or spiritual beliefs; and
- (ii) the way in which bodies are to be taken to a mortuary.

42. Designation of temporary holding of the body

(1) In compelling or exceptional circumstances, the Coroner may designate the temporary holding of the body.

(2) The Cabinet Secretary in consultation with the Coroner-General shall make regulations to give full effect to this section.

43. Power to conduct post-mortem

(1) If a coroner is of the opinion that it is appropriate and essential to ascertain the circumstances and the nature of death, the coroner may conduct a post-mortem on the body.

(2) A coroner may hire a suitably qualified practitioner, qualified medical practitioner, medical provider or any other expert to conduct a post-mortem examination of a body.

(3) The services of a suitably qualified person referred to under subsection (2) shall be in accordance with prescribed procedures and the public procurement laws.

(4) For the purposes of subsection (2), a person is a suitably qualified medical practitioner if the person—

- (a) is a registered medical practitioner with relevant qualification and experience in human pathology; or
- (b) in a case where a particular kind of examination is requested, a practitioner of a description designated by the Coroner-General as suitable to make examinations of that kind.

(5) Where a person informs a coroner that, in the informant's opinion, death was caused wholly or partly by the improper or negligent treatment of a registered medical practitioner or other person, that practitioner or other person—

- (a) must not make, or assist at, an examination of the body under this section; and
- (b) is entitled to be represented at such an examination.

(6) A person who conducts a post-mortem examination under this section must as soon as practicable report the result of the examination to the Coroner in the prescribed form.

44. Exhuming body or recovering cremated remains

(1) This section applies if, after a body is buried or cremated, the Coroner-General forms the belief that the death was a reportable death.

(2) To enable an autopsy of a body to be conducted, the Coroner-General may make an application to court for an order—

- (a) if the body was buried, to be exhumed; or
- (b) if the body was cremated and the cremated remains may be recovered, the cremated remains to be recovered.

(3) The Coroner must give at least two days' notice of the Coroner's intention to apply for the order under subsection (1) to—

- (a) the person in charge of the place where the body is, or the cremated remains are; and
- (b) any person who the Coroner considers has a sufficient interest in the autopsy.

(4) Subsection (3) does not apply if—

- (a) after taking all reasonable steps, the Coroner cannot contact a person mentioned in subsection (3); or
- (b) the Coroner considers it is not, in the circumstances, in the public interest to notify a person mentioned in subsection (3).

(5) If a person has raised a concern in relation to the order being made but after discussing the matter with the person, the Coroner considers it is in the public interest for the order to be made, the court shall make the order and give a copy of it to the person.

(6) The order authorizes a police officer to enter the place stated in the order and stay there for as long as reasonably necessary to exhume the body or recover the cremated remains.

(7) The police officer shall arrange for the body or cremated remains to be taken, in accordance with the directions in the order, to a place stated in the order.

(8) The Coroner shall, as soon as reasonably practicable after the autopsy, order the body or cremated remains to be returned to the place from where they were taken.

45. Observing an autopsy

(1) The Coroner, or a police officer who is investigating a death under this or another Act, is entitled to observe and participate in the autopsy.

(2) If the Coroner considers it appropriate, a person may observe and participate in an autopsy for his or her vocational or clinical education or training with the consent of the doctor who is conducting the autopsy.

(3) The Coroner may allow a person, or the person's representative, to observe the autopsy if the Coroner considers—

- (a) the person has a sufficient interest in the autopsy;
- (b) the attendance of the person, or the person's representative, at the autopsy would not compromise the integrity of the coronial investigation or any other investigation into the death; and
- (c) the attendance of the person, or the person's representative, at the autopsy is otherwise appropriate.

(4) Before allowing a person to observe an autopsy under subsection (3), the Coroner—

- (a) must, whenever practicable, consult with and consider the views of—
 - (i) a family member of the deceased person;
 - (ii) the doctor who is to conduct the autopsy; and
- (b) may consult with, and consider the views of, anyone else the Coroner considers appropriate.

(5) If the Coroner allows a person to observe an autopsy under subsection (3), the Coroner must give the person notice of the time and place of the autopsy before it is conducted.

46. Autopsy reports

(1) As soon as practicable and within the timelines in this Act or regulations made under this Act, after completing an autopsy, the Coroner or doctor who conducted the autopsy must—

- (a) prepare an autopsy report; and
- (b) give the report to the Coroner.

(2) If an investigating police officer asks for a copy of the autopsy report, or a copy of a test report, the doctor who conducted the autopsy or the person who did the test must give a copy of the report to the police officer.

47. Removing tissue for autopsy testing

(1) This section applies if during an autopsy of a body, the doctor conducting the autopsy removes tissue from the body for testing.

(2) If prescribed tissue is removed, the doctor must inform the Coroner before the Coroner orders the body's release.

(3) The Coroner, knowing that the tissue has been removed, may nevertheless order the release of the body.

(4) If prescribed tissue has been removed, the Coroner shall not order the release of the body unless satisfied that—

- (a) if practicable, a family member of the deceased person has been informed of the removal of the prescribed tissue; and
- (b) the retention of the prescribed tissue is necessary for the investigation of the death, despite any concerns raised with the Coroner about the retention of the prescribed tissue.

(5) If the Coroner is not satisfied as mentioned in subsection (4), the Coroner must order the doctor to return the prescribed tissue to the body before the body is released.

(6) If tissue kept for testing is prescribed tissue, the Coroner must, at not more than six-month intervals after the date of the order for the autopsy, decide whether the tissue—

- (a) still needs to be kept for—
 - (i) the investigation of the death; or
 - (ii) proceedings for an offence relating to the death; or
- (b) may be disposed of.

(7) Specimen tissue must be kept indefinitely by the entity that turned the tissue into specimen tissue.

(8) A person must not dispose of any other tissue kept for testing, except under the order of a coroner.

(9) If a coroner orders the disposal of the tissue, the entity that has the tissue must—

- (a) if a family member of the deceased person has told the Coroner that he or she wishes to test, or use, the tissue for a lawful purpose or to bury the tissue, release the tissue to the family member, or the family member's representative, for the test, use or burial; or
- (b) otherwise arrange for the tissue to be buried.

(10) Subject to any relevant local laws, a statement by the entity, in the approved form, to the effect that the Coroner has ordered the disposal of the tissue is sufficient authority for the burial of the tissue.

(11) In this section, "Coroner" means—

- (a) the Coroner who ordered the autopsy; or
- (b) if that coroner is not available, any other coroner.

48. Permit for disposal

When the investigations are closed, or before, if it be necessary, the Coroner shall give a permit for the disposal of the body on which the investigation has been conducted.

49. Authorizing burial of body, etc

(1) A person shall not—

- (a) prepare a human body for burial; or
- (b) bury a human body; or
- (c) take a human body out of Kenya,

unless the person is authorised to do so under subsection (2).

(2) A person is authorised if—

- (a) for a death investigated by a coroner—
 - (i) a certificate of the cause of death under the Births and Deaths Registration Act (Cap. 149) has been issued with the Coroner's consent; or
 - (ii) the Coroner has ordered the release of the body under this Act; or
- (b) for a death investigated outside Kenya by a non- Kenyan coroner, a non-Kenyan coroner's release certificate has been issued; or
- (c) otherwise, a cause of death certificate has been issued.

(3) This section does not apply to—

- (a) part of a human body taken during an autopsy under section 47;
- (b) part of a human body taken during a medical procedure;
- (c) part of a human body taken during a medical procedure;
- (d) indigenous burial remains; or
- (e) the taking of a human body to any type of mortuary.

50. Notifying registrar when body is released and investigation ends

(1) When a coroner orders the release of a deceased person's body for burial, or to another jurisdiction, under this Act, the Coroner shall give a copy of the order to the registrar under the Births and Deaths Registration Act (Cap. 149).

(2) On completion of an investigation into a death, a coroner shall give the registrar of births and deaths a written notice, in the prescribed form, that states—

- (a) who the deceased person was;
- (b) when the person died;
- (c) where the person died, and in particular whether the person died in Kenya;
- (d) what caused the person to die;

- (e) the date of the Coroner's findings; and
- (f) whether or not an inquest has been held into the death, and if an inquest has been held, the date and place of the inquest.

51. Control of deceased's body

(1) Unless a person's death is reported to the Coroner after burial, the Coroner starts having control of the deceased person's body when the coroner starts investigating the deceased person's death.

(2) The Coroner stops having control of the body if he or she—

- (a) stops investigating the death and orders the release of the body in accordance with this Act or any other written law;
- (b) stops investigating the death and authorises a doctor to issue a cause of death certificate for the deceased person;
- (c) stops investigating the death and orders the release of the body for burial;
- (d) stops investigating the death and orders the release of the body to the other jurisdiction;
- (e) transfers control of the body to another coroner; or
- (f) decides that it is not necessary for the Coroner's investigation to keep the body after an autopsy and the Coroner orders the release of the body for burial.

(3) For purposes of subsection (2)(f), the Coroner shall order the release of the body for burial as soon as reasonably practicable after the autopsy.

(4) However, the Coroner must not order the release of a body for burial if it is not known whose body it is, unless the coroner believes it is necessary to bury the body in the particular circumstances.

(5) A doctor shall not issue a cause of death certificate for a person if –

- (a) the death appears to the doctor to be a reportable death, unless a coroner advises the doctor that the death is not a reportable death; or
- (b) a coroner is investigating the death, unless the Coroner authorizes the issue of the certificate.

(6) For purposes of subsection (2)(a), (c), (d) and (f), a reference to the Coroner, in relation to an order for the release of a body, includes, if the Coroner investigating the death is not available, another coroner.

52. Direction for other coroner to conduct investigation

(1) The Coroner-General may require a coroner to conduct an investigation into a person's death notwithstanding that the death occurred in a County other than the County in respect of which the Coroner is appointed.

(2) A coroner required to undertake investigations under subsection (1) shall conduct the investigation as soon as practicable.

(3) A coroner shall give to the Coroner-General notice in writing stating any reasons why the coroner might be unable to investigate a death occurring within an area in respect of which the coroner is appointed.

(4) Subject to this Act, a coroner may take over and continue investigations into a person's death from another coroner.

53. Discontinuance where cause of death is revealed

(1) A coroner who is responsible for conducting an investigation into a person's death may discontinue the investigation if—

- (a) the cause of death becomes apparent; and
- (b) the Coroner is of the opinion that it is not necessary to continue with the investigation.

(2) An interested person may object to the decision to discontinue any investigation under subsection (1).

(3) Where an application has been made to a court of competent jurisdiction may order the Coroner to discontinue investigation under this Act for a period not exceeding ten days.

(4) Subsection (1) does not apply if the Coroner has reason to suspect that the deceased—

- (a) died a violent or unnatural death; or
- (b) died while in custody.

(5) Nothing in this section prevents a fresh investigation under this Part from being conducted into the death.

(6) A coroner who discontinues an investigation into a death under this section must, on his or her own motion or upon request in writing by an interested person, give a report as soon as practicable and a written explanation as to why the investigation was discontinued.

54. Investigations lasting more than a year

(1) A coroner who is conducting an investigation into a person's death that has not been completed or discontinued within a year—

- (a) must notify the Coroner-General of that fact;
- (b) must notify the Coroner-General of the date on which the investigation is completed or discontinued.

(2) In subsection (1), "within a year" means within the period of twelve months beginning with the day on which the Coroner was made aware that the person's body was within the Coroner's area of jurisdiction.

PART VI – APPEALS AND COMPLAINTS**55. Right to make a complaint**

(1) Any person may make a complaint to the complaints committee about a coroner, a pathologist or a person, other than a coroner or pathologist, with powers or duties under this Act.

(2) The complaint must be in writing and shall state the nature of complaint.

56. Appeals to the Coroner-General

(1) An interested person may appeal to the Coroner-General against a decision made by a coroner that falls within subsection (2).

(2) The decisions that fall within this subsection are—

- (a) a decision whether to discontinue an investigation;
- (b) a decision whether to resume or suspend an investigation;
- (c) a decision not to request for a post-mortem examination; and

- (d) a decision to request a post-mortem examination of a body that has already been the subject of a post-mortem examination, unless the decision is to request an examination of a different kind from the one already carried out.

(3) On an appeal under this section the Coroner-General may, if the appeal is allowed, do one or more of the following—

- (a) substitute the decision; or
- (b) quash the decision and remit the matter for a fresh decision.

(4) A party to an appeal under this section may appeal on a question of fact to a court of competent jurisdiction.

PART VII – FINANCIAL PROVISIONS

57. Funds of the Service

(1) The funds of the Service shall consist of—

- (a) monies allocated by Parliament for purposes of the Service;
- (b) such fees as may be charged in accordance with this Act or regulations made thereunder;
- (c) any grants, gifts, donations or other endowments given to the Service;
- (d) such funds as may vest in or accrue to the Service in the performance of its functions under this Act or under any other written law.

(2) Any funds donated or lent to, or gift made to the Service shall be disclosed to the Cabinet Secretary and National Assembly and made public before use.

58. Annual estimates

(1) At least three months before the commencement of each financial year, the Service shall cause to be prepared estimates of the revenue and expenditure of the Service for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Service for the financial year concerned and in particular, shall provide for the—

- (a) payment of remuneration in respect of the members and staff of the Service;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Service;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development of activities of the Service; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Service may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

59. Financial year of the Service

The financial year of the Service shall be—

- (a) the period begin on the day on which this Act comes into operation and ending on the following thirtieth June;
- (b) the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

60. Accounts and audit

(1) The Service shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) The annual accounts of the Service shall be prepared, audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

61. Reports

(1) The Service shall, at the end of each financial year cause an annual report to be prepared.

(2) The Service shall submit the annual report to the President and the National Assembly three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Service;
- (b) a description of the activities of the Service;
- (c) such other statistical information as the Service may consider appropriate relating to the Service's functions;
- (d) any recommendations made by the Service to State departments or any person and the action taken;
- (e) the impact of the exercise of any of its mandate or function;
- (f) any impediments to the achievements of the objects and functions under this Act or any written law; and
- (g) any other information relating to its functions that the Service considers necessary.

(4) The Service shall cause the annual report to be published and the report shall be publicized in such manner as the Commission may determine.

PART VIII – MISCELLANEOUS PROVISIONS**62. Cost of undertaking postmortem and autopsy**

The cost of undertaking postmortem or autopsy on reportable deaths under this Act shall be borne by the State.

63. Conflict of interest

A coroner shall not conduct investigation or participate in any matter where he or she has an interest.

64. Protection from personal liability

Nothing done by a member of the Service or by any person working under the instructions of the Service shall, if done in good faith for the purpose of executing the powers, functions or duties of the Service under this Act or any other written law, render such member or officer personally liable for any action, claim or demand.

65. Duty to co-operate

(1) A public officer, State Organ or State office shall at all times co-operate with the Coroner in ensuring the successful performance of the functions of the coroner under this Act 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 under the Act and any other written law.

(2) 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 two hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

66. Gainful employment

A person employed by the Service shall not undertake any other gainful employment.

67. Protection from liability for giving information and other things to coroner

(1) A person is not liable, civilly, criminally or under an administrative process, for giving a coroner any of the following—

- (a) information, a document or anything else in compliance with a requirement made under this Act or any other written law; or
- (b) confidential information.

(2) Where a person gives the Coroner an item required in the course of undertaking the functions of the coroner under this Act or confidential information, that person shall not be held to have—

- (a) breached any code of professional etiquette or ethics; or
- (b) departed from accepted standards of professional conduct.

(3) Without limiting subsections (1) and (2)—

- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the required item or confidential information; and
- (b) if the person would otherwise be required to maintain confidentiality about the required item or confidential information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the required item or confidential information; and
 - (ii) is not liable to disciplinary action for giving the required item or confidential information.

68. The National Coroners Council

(1) There is established a Council to be known as the National Coroners Council which shall consist of—

- (a) the Principal Secretary responsible for coronial services, who shall be the Chairperson and preside at the meetings of the Council;
- (b) the Principal Secretary for the time being responsible for matters relating to Justice;
- (c) the Principal Secretary Treasury;

- (d) the Inspector-General;
- (e) the Director of public prosecutions;
- (f) the Principal Secretary for the time being responsible for matters relating to health services; and
- (g) two representatives of the medical and dental profession nominated by the Kenya Medical Practitioners and Dentists Board and the Clinical Officers Council, one female and one male.

(2) The Coroner-General shall be the Secretary to the Council and shall facilitate the conduct of business and affairs of the Council by offering secretariat services to the Council.

(3) The functions of the Council shall be—

- (a) to formulate and review policy relating to coronial services;
- (b) to advise the Service generally on all matters pertaining to—
 - (i) national coronial services policies;
 - (ii) the administration of the Service;
 - (iii) the expenditure of the Service.
- (c) to perform such other functions as are conferred on it by this Act or by any other written law.

(4) For the better carrying out of its functions under this Act, the Council may establish such functional committees of the Council as it may deem necessary.

(5) The Council shall once every year prepare and submit to the President and Parliament a report on the activities of the Service specifying—

- (a) the activities of the Service;
- (b) all the measures taken and the progress achieved in the realization of each of the functions of the Service;
- (c) such other statistical information as the Council considers appropriate relating to the its functions;
- (d) the financial statements of the Service; and
- (e) any other information relating to its functions that the Service considers necessary.

(6) The Council shall cause the annual report to be published and publicized in a manner as Council may determine.

69. Offence of obstruction

Any person who obstructs a coroner in due execution of his functions under this Act commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one month.

70. Failure to supply information, etc

A person who, without reasonable excuse, fails to comply with a written notice by the Coroner requiring that person to supply information or documents or other things to the extent that the person is capable of complying with it, commits an offence.

71. False or misleading statements and omissions in certain documents

(1) A person who makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular, commits an offence.

(2) This section applies to the following documents—

- (a) a doctor's report required under this Act;
- (b) any other report required under this Act to supply information for purposes of discharge of the functions of the Service under this Act.

72. Non-compliance with direction about removal of body

A person who—

- (a) fails or refuses to comply with a direction about the removal of a body or any other lawful direction by the Coroner under this Act; or
- (b) hinders or prevents any person from complying with a direction about the removal of a body or any other lawful direction under this Act,

commits an offence.

73. General penalty

Any person who commits an offence under this Act to which no other penalty is provided for shall be liable on conviction to—

- (a) in case of a natural person, a fine not exceeding five hundred thousand or imprisonment for a term not exceeding two years or to both;
- (b) in case of a health facility or any other person, a fine of two million shilling and the director or person in charge of the health facility shall be liable to the penalty provided for under paragraph (a).

74. Regulations

(1) The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to subsection (1), the regulations may prescribe—

- (a) any matter of procedure or practice under this Act;
- (b) circumstances when a medical practitioner shall be required to notify a coroner of a death of a person whom the practitioner was attending;
- (c) other categories of reportable deaths;
- (d) requirement for a registered medical practitioner who attended the deceased before his or her death—
 - (i) to prepare a certificate stating the cause of death to the best of the practitioner's knowledge and belief; or
 - (ii) where the practitioner is unable to establish the cause of death, to refer the case to a coroner.

(3) The power to make regulations under this Act shall be—

- (a) for the purpose and objective of giving effect to the Constitution and this Act;
- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act.