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**STATE DEPARTMENT FOR INTERNAL SECURITY & NATIONAL**

 **ADMINISTRATION**

**Our Ref:** MOINA/SEC. 1/39 **Date**: 29th January, 2024

Special Rapporteur on Extrajudicial,

Summary or Arbitrary Executions

Palais Des Nations

1211Geneva 10

**Switzerland**

**RE: CALL FOR INPUTS-SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS**

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Please refer to the above matter.

1. We are in receipt of your request for inputs dated 8th December, 2023 requesting member States to send their written inputs on the protection of dead persons and their human remains.
2. Kenya has a robust system for the protection of dead persons and their human remains. This is reflected in its policy and legal framework. The protection is meant to:
	1. Show respect to the dead.
	2. Show respect to the dead’s family or relatives.
	3. Treat the dead body with dignity.
	4. Accord the dead proper burial.
	5. Ensure that no death is unreported.
	6. Ensure that there is proper disposal of dead bodies.
	7. Ensure that the wishes of the dead are respected.
	8. Preserve the body for forensic purposes.
	9. Minimize spread of diseases.
	10. Preserve cultural and religious practices.

**Legal Framework**

1. Kenya has several laws for the protection of dead persons and their human remains. These are discussed below.
2. **Penal Code, (Cap 63 of Laws of Kenya)**
3. Section 137 of the Penal Code makes it an offence for a person to unlawfully hinder the burial of a dead body or without lawful authority to exhume, dissect or harm the dead body of a person.
4. **Public Health Act, (Cap 242)**
5. Section 146 of the Public Health Act provides that it is unlawful to exhume any body or remains of any body interred in any authorized cemetery or burial ground without a permit.
6. **Health Act, 2017**
7. Section 84 of the Health Act states that a postmortem examination of the body of a deceased person may be conducted if the examination is necessary for determining the cause of death.
8. **Births and Death Act, (Cap 149)**
9. Section 21 of the Births and Deaths Act states that no person shall bury, cremate or dispose of the body of any deceased person registration of whose death is compulsory, without a permit.
10. **Human Tissue Act, (Cap 252)**
11. Section 2(1) of the Human Tissue Act States that a person has to give his or her consent for his/her dead body to be used for therapeutic purpose, medical education or research.
12. **Anatomy Act, (Cap 249)**
13. Section 5 of the Anatomy Act States that a person may give permission for his body to be anatomically examined after death in an approved school of anatomy.
14. **National Coroners Service Act, No. 18 of 2017**
15. Section 22 of the National Coroners Service Act, states that the Coroner-General shall approve the issuance of burial permits, cremation permits, post-mortem permits and authority to move dead bodies into and out of Kenya. This Act has not been operationalized.
16. **Public Health (Public Mortuary) Rules, 1991**
17. Rule 3(1) of the said rules states that no person shall keep a dead body in a public mortuary for more than 10 days. Where bodies are not collected for burial, notice is given to interested persons or relatives to collect them failure of which they will be buried in a public cemetery.

**Policies**

1. Kenya has policies on handling, transportation, burial and exhumation of dead bodies.
2. The policy for handling dead bodies during emergencies was applied during the Covid-19 Pandemic. Borrowing from the World Health Organization Guidelines on Infection, Prevention and Control for the Safe Management of a Dead Body in the context of Covid-19 Pandemic, the government through the Ministry of Health formulated its own policy for handling dead bodies. Its primary concern is the prevention of the spread of Covid-19.

**Institutional Framework**

1. In Kenya, health is generally a devolved function. Thus, many Counties have a County Referral Hospital with a mortuary that they manage. However, there are several National Referral Hospitals with mortuaries managed by the national government. There are also other mortuaries managed by private individuals.
2. Section 6 of the National Coroners Act proposes the establishment the National Coroners Service headed by the Coroner-General. Some of Its functions are stated in paragraph 10 above.
3. Kenya has a Directorate of Criminal Investigation to investigate cases of homicide and a Directorate of Public Prosecution to prosecute such offences.

**Cultural practices**

1. In pre- independence Kenya, some communities had cultural norms and practices that were offensive to morality. For example, people were afraid of dead bodies to the extent that upon death, they would be thrown in a forest to be devoured by wild animals. In other communities, a man would have sexual intercourse with the corpse of a widow to cleanse it from the spirit her husband.
2. These practices have largely been replaced with Christianity and are no longer common. They have also been criminalized and attract severe sentences.

**Religious practices**

1. The three common religions in Kenya are Christianity, Islam and Hindu. They all have burial rites. Both Christians and Muslims bury their dead while Hindus cremate. Islamic religion advocates for burial soon after death.
2. In Kenya, a practiced has emerged where even Christians cremate. This has been necessitated by the need to minimize burial expenses. It is anticipated that soon many Kenyans will adopt it.

**Conclusion**

1. As shown above, Kenya has adequate legal framework and policies for the protection of the dead persons and their human remains. What is required is strict enforcement so that the dead, their relatives and society is protected.

Kepha Onyiso

Deputy Chief State Counsel

FOR: PRINCIPAL SECRETARY,

INTERNAL SECURITY & NATIONAL ADMINISTRATION