

*Makale Türü: Araştırma Makalesi*  
**Proof of Vital Events by Possession of Status and Its Impact on Civil  
Registration in Ethiopia**

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**ABSTRACT**

As of 2012 civil registration has become mandatory across Ethiopia. Furthermore the 2017 bill which slightly brought some changes to the 2012 bill has mandated the establishment civil registration office at the lowest administrative level (kebele). The bill also authorized the registration of all vital events that occurred before the adoption of the new law. Despite this development, the family laws of the country and the judicial system still practice by a rule which authorizes proof of vital events by possession of status as an alternative to a document issued by a civil authority. The Ethiopian federal family law and different regional family codes have included a provision that recognizes proof of vital events by possession of status. Giving such a legal option, however, makes the civil registration law less effective as people rely on the latter rather than getting a document. This short article is shading light on how proof of vital events by possession of status negatively affects civil registration turnout in Ethiopia. This article therefore argues that this rule in the family law needs to be repealed as it affects the civil registration system.

**Keywords:** Civil registration, vital events, possession of status, proof, document

**Statüye Sahip Olmaya Göre Hayati Olayların Kanıtı ve Etiyopya'daki Sivil Kayıt  
Üzerindeki Etkisi**

**ÖZET**

2012 itibariyle sivil kayıt Etiyopya'da zorunlu hale geldi. Ayrıca, 2012 yasa tasarısında bir miktar değişiklik getiren 2017 yasa tasarısı, en düşük idari düzeyde (kebele) kuruluş nüfus kayıt bürosunu zorunlu kılmıştır. Tasarı, yeni yasanın kabul edilmesinden önce meydana gelen tüm hayati olayların kayıt altına alınmasına da izin verdi. Bu gelişmeye rağmen, ülkenin aile hukuku ve yargı sistemi, bir sivil makam tarafından verilen bir belgeye alternatif olarak statü sahibi olmak suretiyle hayati olayların kanıtlanmasına izin veren bir kuralla hala uygulanmaktadır. Etiyopya federal aile yasası ve farklı bölgesel aile yasaları, statü sahibi olarak hayati olayların kanıtlarını tanıyan bir hüküm içermektedir. Bununla birlikte, böyle bir yasal seçenek sunmak, insanlar bir belge almaktan ziyade ikincisine güvendikleri için nüfus kaydı yasasını daha az etkili hale getirir. Bu kısa makale, statü sahibi olmanın hayati olayların kanıtlanmasının Etiyopya'daki nüfus kayıtlarına katılımı nasıl olumsuz etkilediğine ışık tutuyor. Bu nedenle bu makale, aile hukukundaki bu kuralın nüfus kayıt sistemini etkilediği için yürürlükten kaldırılması gerektiğini savunmaktadır.

Anahtar kelimeler: Sivil kayıt, Hayati olaylar, Statü sahibi olma, Kanıt, Belge

**Introduction**

Civil registration is a compulsory recording of vital events that are attributed to human persons (Muhumad, 2019). Vital events include but not limited to events such as birth, death, divorce, adoption and marriage (World Health Organization, 2013). Civil registration is crucial to devise a wise public policy (Guy Peters, 2016). That is where the government can determine how much effort is needed to address societal problems on education, health, security, and other important issues (International Institute for Vital Registration and

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Statistics, 1983). It also gives individuals important documents to ascertain their nationality, family status, identity and access to social services. Registration of vital events could help for the effective administration of public capital and resources. It also plays an important role in the quest for safeguarding human rights. The documentation of vital events can be a good asset for the judicial system as it could ease the process of ascertaining certain facts.

While arguing about the benefit of vital events registration, it is also important to note that civil registration is not something that every country is endowed with. It is a high-stake job which needs a lot of capital to build the infrastructure. The registration should also be made with high care and accuracy or else would lead to false information on the public record. Thus, the infrastructure development for civil registration in most developed nations is supported by a secure web system. This is not the case in most developing countries where capital is very limited to build a comprehensive and secure civil registration web system. Under-registration of vital events is commonly reported by most African countries (United Nations Economic Commission for Africa, 2017). Only four countries (South Africa, Egypt, Mauritius, and Seychelles) have managed to have a civil registration system that can meet international standards (United Nations Economic Commission for Africa, 2017).

Civil registration is not a privilege but a human right given to every human being (Oakeshott, 2014). It is not even a third generation right that could be somehow justified to be less a priority. It is a right that has been recognized by most primary international human right instruments (Ziemele, 2007). For instance, registration of birth is one of the rights that is included by the convention on the right of child (Oakeshott, 2014). Registration of marriage is also included by convention on Elimination of All Forms of Discrimination against Women (Oakeshott, 2014). Thus, as most human right conventions impose a positive obligation on government for its fulfillment, civil registration is also one of those rights which needs the involvement of government for its realization. The governments in Africa thus need to work on legislation and political commitment in addition to fund raising for infrastructure development. In legislation, it means the government should review those legislations that affect the effectiveness of civil registration and also legislate new law on compulsory registration of vital events. The public commitment to abide by the rule is crucial as the process of civil registration is a coordinated action between the government and the public. Getting a commitment from the public is difficult in Africa where most of the population lives in rural areas unless the government assumes an additional role of creating awareness.

### **Registration of Vital Events in Ethiopia**

Registration of vital events was not famous in Ethiopia until recently. But its desirability was undeniable. When we see it from the legal perspective, there were provisions inside the civil code of Ethiopia detailing about civil registration (Korea Legislation Research Institute, 2017). Those provisions however shoot out by another provision in the same code by conditioning it to a notice of order for its application which never happened (Korea Legislation Research Institute, 2017). Ethiopia had been without a comprehensive civil registration legal framework for decades. The chain was broken in 2012 and Registration of Vital Events and National identity proclamation was adopted (Korea Legislation Research Institute, 2017). This proclamation was a major breakthrough as it addressed some of the core legal issues of civil registration (Gerbaba, 2017).

A new proclamation was also adopted in 2017 repealing not entirely but some of the provisions of the 2012 proclamation on civil registration. The most important change in this proclamation is the introduction of a civil registration system at the lowest administrative level which in this case is kebele. In terms of legal framework this is a big step forward for a

country which has a low civil registration number. The introduction of civil registration at kebele level could help increase the successful application of the law and also boost the number of registered vital events in the country.

### **Proof of Vital Events by Possession of Status**

Vital events are one of the disputed issues in court. The court always needs evidence to ascertain the existence and otherwise of a certain fact in dispute (Caroline, 2017). The most important evidence to prove a fact is documentary evidence (Querijero, 2012). Most importantly, documents issued by a government body have a high degree of reliability.

In most legal systems the existence and otherwise of a certain vital event should be proofed by providing documents issued by relevant authority. These are countries that have adopted laws and built institutions to deal with civil registration at the highest level. There is also moral ethics developed by the society to record vital events before an authority that is entrusted with this task. Thus, in most countries there is mandatory civil registration law which is also backed by good infrastructure and public willingness. In Ethiopia on the other hand there is a law even though adopted recently, but lacks a proper infrastructure and public willingness or in another word lack of awareness about the importance of civil registration. Other laws of the country also contribute to the low turnout in public registration.

The Ethiopian family law contains rules that are associated with most of the issues of vital events. This law specifically deals with marriage, divorce and filiation. In one of the provisions in this law, proof of marriage by possession of status has been recognized but in a controversial way. As the family law has stated clearly, the primary way of proof of marriage is marriage certificate issued by the officer of civil status. The rules apply to all forms of celebrations. So basically, the certificate of marriage is supposed to show that a marriage is celebrated in either of the three forms (religious, customary or civil).

The rule of proof of marriage by possession of status has an inherent problem as it caused a lot of legal discourses in its practical applicability. The issue here is what is the witness going to testify of knowing; let's say in dispute as to the existence of marriage. There are two things that the witness is able to establish. The first one is a testimony that he knows of the celebration of the marriage in the three forms legally recognized or that he believes from the circumstance that they can be considered as a husband and wife. It is important here to refer to the wording of the law. The law mentioned that the witness shall establish that they consider themselves as a husband and wife and considered the same by the family of the spouses including by the community, they live in. The law nowhere says the witness shall establish the celebration of the marriage in any of the forms recognized by the law. There is an argument that this particular provision impliedly mandates the witness to testify on the celebration. The more plausible argument however is the wording of the law in this case is clear to understand and it does not refer to celebration in any way.

If that is the case, the law is paving ways for establishing marriage other than the forms legally recognized by the family law. If the law recognized a certificate of marriage as a sole proof of marriage, this confusion would not be materialized. Most importantly this would increase people's motivation to register marriage as they could not rely on other legal options to prove their case.

### **The Impact of Proof of Vital Events by Possession of Status on The Practical Application of Civil Registration in Ethiopia**

An effective civil registration is a result of common effort by the government and the people. The government by employing mandatory rules of civil registration and also by building proper infrastructure can fulfill its obligation in the process. This also includes evaluating other policies and laws that interfere in the proper application of civil registration. In Ethiopia the government has given little attention to civil registration even though it seems the trend is changing in the meantime. Registration of vital events in Ethiopia has never been understood as a mandatory legal obligation. It is up to the individual person to register the event that just happened. On top of that there are legal rules recognizing proof of vital events using other options than by a document registered by government authority.

The legal deadlock on civil registration is a result of lack of proper infrastructure to register important events. The family law for instance mandated the government to establish a civil registration office at the lowest administrative level. It seems that the legislature would not adopt a rule in the family law that permit proof of vital events by possession of status had civil registration offices established at kebele level. In 2012 the legislature enacted a working civil registration law for the first time. This legislation has improved in 2017 by adding some additional important rules including the establishment of civil registration at the lowest administrative unit throughout the country. This is a big step taken by the legislature from the legal point of view even though the practical organization of the office at the lowest administrative unit is challenging but never impossible.

The other important element for the effectiveness of civil registration is public willingness to register vital events. The willingness either comes from mandatory rules or from understanding the importance of civil registration. The mandatory aspect of it will be addressed later but for the meantime the discussion will be on individual motivation. As a society understands the importance of civil registration for individual benefit, it is easy to achieve a great deal of success in civil registration. A Document containing information about the existence of vital events issued by public authority can easily solve a legal discourse on the issue that would otherwise take a lot of resources and court time to ascertain the fact. Understanding this simple fact by the public can increase the turnout in civil registration. People would like to do it once they started to understand its importance. In western world for instance civil registration is accepted as a norm whenever the event happens. Apart from that the legal system also obliges the community to adhere to the civil registration law by making recording of vital events mandatory before a civil authority.

In Ethiopia however the society does not get the chance to appreciate the importance of civil registration and as a result there are no norms of that. The statistics about civil registration in Ethiopia is one of the lowest in Africa. There is a small fraction of children who got a birth certificate as they were born or with in the legally stipulated time frame. Registration of marriage is not different as most people do not care about it. There are a lot of legal issues on whether couples were living in a marriage in disputes related with divorce, partition of property or succession sometimes. If the society had the habit of civil registration and the infrastructure were provided, it would not be a problem at all as the event can easily be proved using a document issued by public authority. Norms of civil registration cannot be developed from nothing. It needs a highly or relatively literate majority of the society who are pro civil registration. In a country whose population is highly populated in rural areas and relatively less literate, it is difficult to have a norm of civil registration from public willingness.

Another way of maintaining high civil registration is adopting mandatory rules with sanction and also supported by a good infrastructure. The 2012 proclamation on civil registration and the addition in 2017 has recognized mandatory civil registration. The bill

goes further and recognizes the establishment of a civil registration office at kebele level or as per the wording of the bill at the lowest administrative level. In terms of legal framework this can be a great breakthrough. The infrastructure development is not as difficult as most of the registration process can be done using paper work instead of web systems even though the web system is highly recommended. Registration using a central web system is highly unlikely at least for now given the fact that most kebeles in rural areas do not have access to electricity and internet. The paper-based registration is the most widely used registration system even in countries with a comprehensive internet-based registration.

Lack of a web registration system does not affect civil registration as most countries used paper-based registration for centuries and achieved a great turn out. It is thus possible to say that Ethiopia can perform better in civil registration if public motivation is enhanced through awareness and possible sanction.

The other possible scenario for low turnout in overall civil registration is the existence of legal loopholes to escape the consequence of failing to register. The family law adopted the principle of proof of vital events by possession of statues. In addition to the inherent problem of the rule during its application, it is also affecting public motivation towards civil registration by giving legal protection for those who failed to abide by their legal obligation. Civil registration is a mandatory obligation. This rule on the other hand is a safe haven for those who are reckless enough to appreciate the obligation they owe. It is giving a sense of confidence to avoid any effort to register birth, marriage and other vital events. The family law was adopted during the time when Ethiopia was without a mandatory civil registration law. It would be arbitrary for the law if it opted for just only documents to justify the existence of a certain vital event. But after 2012 the trend has changed and civil registration becomes mandatory. Besides kebeles are now in charge of processing civil registration as per 2017 bill which has brought some changes to the 2012 bill. Furthermore, the law also recognized the registration of all events that happened before the adoption of the law to be registered as well.

For that, the provisions which opted for proof of vital events by possession of status should be repealed on substantive and procedural ground. Substantively the rules on this specific matter are confusing to the judicial body and mostly leads to wrong appreciation of facts. In case of proof of marriage for instance, it is unclear whether the witnesses are testifying on celebration or just on presumption of husband and wife by a certain group. The law is clear on formation of marriage and it is depending on three forms of celebrations. There is no other way of establishing marriage than religious, customary and civil. Allowing a witness to testify on presumption not on celebration is against the overall spirit of the law. Therefore, avoiding this provision can solve this confusion. The other issue to consider here is what if the document has been lost after issuance by the civil authority. This is one of the instances by which proof of vital events by possession of statues is meant to be used.

This is not necessary as the person who lost the document can file a notice to the civil authority for reissuance. This is true in case of all other important documents like identification card, passport, and academic documents. The civil authority has its own procedural process to follow before issuing a replacement.

Procedurally this specific law is affecting civil registration by giving individuals a legal option rather than a document issued by public authority to prove vital events in dispute. Civil registration development in Ethiopia is under subsistence level that needs reinforcement. No one doubts the benefit of civil registration for the country in addressing public issues in

greater precision. A compressive civil registration not only benefits the individual but also is a great input for policy making.

Avoiding rules that have negative impact on civil registration should be one of the things that need to be addressed along with proper infrastructure development. In my view, allowing proof of vital events by possession of status is negatively affecting the effectiveness of the civil registration law adopted in 2012 and slightly changed in 2017. By minimizing the legal option of proofing vital events to a document issued by a civil authority, the legislature can enhance public enthusiasm towards civil registration. The public in this case can understand the legal obligation of civil registration as individuals cannot rely on other legal options for the purpose of proof.

### **Conclusion and Suggestions**

A Strong civil registration system has many advantages starting from individuals to policy makers. For it to be successful it surely needs a combined effort of the government and the community. The government in its part can play a role of building infrastructure and avoid barriers whether legal or other for it to be successful. The community can contribute highly by following the rules of civil registration and by documenting vital events before the appropriate organ within the time legally defined. In Ethiopia, civil registration is not something that most people are familiar with. It needs a lot of effort to develop the norm in society. One of the efforts should be adjusting those rules that negatively affect civil registration turnout by giving legal options rather than a document issued by civil authority. The rule of proof of vital events by possession of status inside the family law is giving a way out for reckless individuals to willfully evade the mandatory obligation of registering vital events as adopted by 2012 and 2017 civil registration bills by providing them with a legal option. In order to maintain high turnout in civil registration, this provision should be reconsidered so that individuals would not rely on other options than a document registered before a civil authority to prove a fact in dispute.

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