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THE HUDUMA BILL, 2020

A Bill for—

AN ACT of Parliament to establish the National Integrated Identity Management System; facilitate the assigning of the Huduma Namba and issuance of identity and travel documents; provide a primary law on civil registration and identity management; consolidate the law on registration of persons; promote efficient delivery of public services; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title. 1. This Act may be cited as the Huduma Act, 2020.

Interpretation. 2. In this Act—

“biometric data” includes fingerprints, hand geometry, earlobe geometry, retina and iris patterns, toe impression, voice waves, signatures, blood typing and photograph;

“birth” means the complete expulsion or extraction from a mother of a product of conception after the expiration of the twenty-eighth week of pregnancy, whether alive or dead;

“Cabinet Secretary” means the cabinet secretary responsible for matters relating to registration of persons, immigration and citizen services;

“Committee” means the NIIMS coordination committee established under section 68;

“death” means the permanent disappearance of all evidence of life at any time after a live birth but does not include a still birth;

“enrolment” means the process of collecting specified particulars from a resident individual for the purpose of assigning the Huduma Namba;

“foundational data” means the basic personal data of a resident individual for attesting the individual’s identity and includes biometric data and biographical data;

“functional data” means the data of a resident individual created in response to a demand of a particular service or transaction;

“Foreign national” means any person who is not a citizen of Kenya;

“New-born” means a human infant from the time of birth through the twenty eighth day of life;

“NIIMS” means the National Integrated Identity Management System established under Section 4;

No. 12 of 2011.

“NIIMS officer” means a public officer appointed to carry out duties under—

- (a) this Act;
- (b) the Kenya Citizenship and Immigration Act; and
- (c) any other law on registration of persons.

“Huduma card” means a digital multipurpose identity card issued to a resident individual who has enrolled into the NIIMS;

“Huduma Namba” means a unique identification number issued to an individual under this Act;

“Passport” means a passport issued under this Act or by any lawful authority or government recognized by the Government of Kenya to facilitate international travel;

“Personal data” means foundational and functional data collected under this Act as specified under the First Schedule;

“Place of birth” includes a health facility or an administrative location where a birth occurs;

“Principal Secretary” means the principal secretary responsible for matters relating to registration of persons, immigration and citizen services; and

“resident individual” means a—

- (a) citizen of Kenya;
- (b) foreign national who has been granted lawful residency in Kenya;
- or
- (c) refugee permitted in Kenya.

Object of the Act.

3. The object of this Act is to—

- (a) consolidate the law on registration of persons;

- (b) establish a digital national population database to be the primary source of foundational data for resident individuals;
- (c) provide mechanisms for registration of births and deaths;
- (d) facilitate the assigning of the Huduma Namba and issuance of identity and travel documents; and
- (e) maintain integrity, confidentiality and security of personal data under the NIIMS database.

PART II—THE NATIONAL INTEGRATED IDENTITY MANAGEMENT SYSTEM

Establishment of NIIMS.

- 4.** There is established the National Integrated Identity Management System (“NIIMS”), which consists of the—
- (a) NIIMS database;
 - (b) Huduma Namba; and
 - (c) Huduma card.

NIIMS database.

- 5.** (1) The NIIMS database is an integrated digital population register of resident individuals enrolled under this Act.

(2) The NIIMS database shall contain—

- (a) foundational data provided under the First Schedule; and
- (b) functional data generated and linked by any agency responsible for a function requiring the use of the Huduma Namba.

(3) The NIIMS database shall—

- (a) operate as the primary source of foundational data for every enrolled resident individual;
- (b) enable use of biometric data to identify an enrolled individual;
- (c) facilitate use of data under the NIIMS database to—
 - (i) assign the Huduma Namba;
 - (ii) issue the Huduma card
 - (iii) issue a passport; and
 - (iv) support access and issuance of electronically generated copies of identity documents.

Huduma
Namba.

6. (1) The Huduma Namba is a unique and permanent personal identification number randomly assigned to every resident individual enrolled into the NIIMS.

(2) The Huduma Namba is assigned at birth or upon enrolment under this Act.

Huduma card.

7. (1) Subject to this Act, a resident individual who enrolls into the NIIMS shall be issued with a Huduma card, which shall on its face include the detail of the individuals —

- (a) full name;
- (b) sex;
- (c) date of birth;
- (d) Huduma Namba;
- (e) nationality;
- (f) resident status, where applicable;
- (g) front facing photograph; and
- (h) data of issue.

(2) The types of Huduma card that may be issued include the—

- (a) minors' Huduma card, issued to a child who has attained the age of six years;
- (b) adults' Huduma card, issued to a citizen who has attained the age of eighteen years;
- (c) Foreign nationals' Huduma card, issued to a foreign national; and
- (d) Refugees' Huduma card, issued to a refugee.

(3) The design of the Huduma card shall continually consider advances in technology, and subject to appropriate guidelines, a non-physical digital identity may be issued.

Proof of
identity.

8. For the purpose of establishing proof of identity, the presentation of Huduma card or the Huduma Namba authenticated by biometrics constitutes sufficient proof to—

- (a) access any public service that may require an official identification; or
- (b) conduct private transactions.

Primacy of the
NIIMS
database.

9. Any government agency that requires personal particulars of a resident individual shall, at the first instance, rely on the NIIMS database to authenticate the foundational data of such individual.

PART III—ENROLMENT INTO NIIMS

Enrolment of adults. **10.** (1) An adult resident individual seeking to enrol into the NIIMS shall appear in person before a designated NIIMS officer and shall provide—
(a) particulars specified under the First Schedule; and
(b) any documentary proof as may be required.

No. 24 of 2019 (2) At the time of enrolling, a resident individual shall be informed of the principles of personal data protection and the rights of a data subject as provided for in the Data Protection Act.

(3) A citizen residing out of the country may enrol into the NIIMS at the Kenyan Embassy in their country of residence or any other designated centre.

(4) The Principal Secretary shall make special arrangements, including availing mobile registration, to facilitate the enrolment persons with disabilities, marginalised communities, persons incapacitated by illness, elderly citizens, and individuals in institutional households.

Enrolment of minors. **11.** A child shall be enrolled into the NIIMS—
(a) by appearing before a designated NIIMS officer accompanied by a parent or a guardian and provide specified particulars under the First Schedule; or
(b) immediately after the registration of a birth under this Act.

Assigning a Huduma Namba **12.** (1) The Principal Secretary shall, upon examining the information provided by the applicant, —
(a) assign a Huduma Namba to the individual within thirty days of the application; and
(b) notify the individual of the successful enrolment.

(2) Where an application for enrolment is declined, the Principal Secretary shall communicate in writing to the applicant and provide—
(a) reasons for such decision; and
(b) right of review or appeal available to the applicant.

Issuance of Huduma card **13.** (1) The Huduma card shall be issued to an individual who has been assigned the Huduma Namba.

(2) Despite subsection (1), a child is only eligible to be issued with a Huduma card upon—

- (a) attaining the age of six years; and
- (b) taking of the required biometric data and updating other particulars.

(3) The initial issue of the Huduma card to a citizen is free of charge.

Transitioning minors' Huduma card. **14.** Within ninety days of attaining the age of eighteen years, an individual possessing a minors' Huduma card shall surrender it to a designated NIIMS officer who shall—

- (a) verify and update the individual's particulars under the First Schedule; and
- (b) issue the individual with relevant adults' Huduma card.

Replacement of Huduma card **15.** (1) An individual whose Huduma card is lost, worn out, tampered with or otherwise rendered unserviceable shall apply for a replacement and pay a prescribed fee.

(2) A person who finds, or comes into possession of a Huduma card not belonging to them shall, without charging any fee, return it either to the owner, the nearest NIIMS officer, or nearest police station.

Update of particulars. **16.** (1) An enrolled resident individual has a duty to notify a designated NIIMS officer of any change of a particular under the First Schedule.

(2) Upon the receipt of the notification, the designated NIIMS officer shall verify the information provided and update the NIIMS database without delay.

(3) The particulars of a child taken after registration of a birth shall, on application by a parent or a guardian, be updated under the NIIMS upon the child attaining the age of six years.

Defining functional data into NIIMS. **17.** Every government agency that relies on foundational data of resident individuals to deliver a public service may be linked to the NIIMS database in a manner that enables the agency to—

- (a) authenticate personal data in their possession with the NIIMS database; and

- (b) transmit, access or retrieve foundational data necessary for proper discharge of the agency's functions.

Cancellation of enrolment **18.** (1) The Principal Secretary shall cancel the enrolment of any individual if it was done through—
(a) fraud, bribery or deceit;
(b) concealment of material facts; or
(c) any other justifiable cause.

No. 4 of 2015 (2) The provisions of the Fair Administrative Action Act shall guide the Principal Secretary in taking any action under subsection (1).
(3) The Huduma Namba of an individual whose enrolment has been cancelled shall be deleted and their Huduma card revoked.
(4) A person aggrieved by a decision under this section may—
(a) seek redress at the High Court; or
(b) explore any internal review mechanisms as may be established.

PART IV—BIRTHS AND DEATHS

PART A—Registration of births and enrolment of new-borns

Universal registration of births. **19.** (1) Every birth occurring in the country shall be registered through NIIMS—
(a) within ninety days of its occurrence; and
(b) in a prescribed manner.
(2) Registration of a birth is compulsory and free of any charge when done within the stipulated period.

Record of birth. **20.** (1) A person giving notice of a birth shall—
(a) submit the particulars of record of birth to a NIIMS officer; and
(b) certify as to the correctness of the particulars.
(2) The particulars of record of birth include—
(a) in regard to a birth; name of the new-born, sex, date, type of delivery, any disability, weight at birth and place of birth;
(b) in regard to the mother; name, age, usual residence, marital status, nationality, Huduma Namba and previous births;
(c) in regard to the father; name, age, usual residence, nationality and Huduma Namba; and

(d) in regard to any informant; name, capacity and date of notification.

(3) A person giving notice of birth of a citizen that occurred outside Kenya shall produce documentary proof issued by appropriate authority from a country in which the birth occurred.

(4) A person qualified to give information on particulars of a birth include—

- (a) the mother or father of the new-born;
- (b) the occupier of the house in which the new-born was, to the knowledge of that occupier, born;
- (c) any person present at the birth;
- (d) any person having charge of the new-born; or
- (e) in the case of a new-born foundling, the person finding them.

(5) Where a birth occurs in a health facility or any institutional household, the duty to give notice of such birth lies on the officer in charge of the establishment a birth occurs.

Disputed or
unclear paternity

21. Where paternity of a child is disputed, or otherwise unclear, the particulars of record of birth in relation to the father shall be in accordance with any directions issued through an order of the Court.

Particulars in
surrogacy
arrangement.

22. The particulars of parents in a birth resulting from a gestational surrogacy shall be in accordance with a surrogacy agreement duly approved by the state department responsible for matters relating to health services, or any other competent authority.

Assigning
Huduma Namba
to a new-born

23. (1) Upon receipt of the notice of birth, a designated NIIMS officer shall register the birth by entering the record of birth particulars into the NIIMS database.

(2) The Principal Secretary, upon examining the information provided, shall—

- (a) assign the new-born a Huduma Namba within thirty days of notice of birth being received; and
- (b) notify the applicant of such assignment.

(3) Where a new-born is not successfully enrolled, the Principal Secretary shall communicate in writing to the new-born's parents or guardian and provide—

- (a) reasons for the decision; and
- (b) right of review or appeal available.

Late enrolment
of a child

24. (1) An applicant seeking to enroll a child whose birth was not registered under the NIIMS within the stipulated period shall be required to pay a prescribed late birth registration penalty.

(2) The penalty under subsection (1) shall be graduated with the period of delay flowing from the expiry date of the stipulated period.

(3) After the expiry of two years from the date of birth or approximated date of birth, such birth shall not be registered unless the applicant—
(a) furnishes any relevant information as may be specified;
(b) complies with any further requirement as may be imposed; and
(c) pays a stipulated late registration penalty.

Agents for
registering
births.

25. To promote a universal registration of births, the Principal Secretary may designate and facilitate any person to be responsible for making notifications of births to a NIIMS officer in a specified region.

Registering
new-born
foundlings.

26. (1) Where any living child is found exposed, it shall be the duty of a person finding the child, or of any person in whose charge such child may be placed, to provide particulars required to register a birth of the child, as the informant may possess, which may include—

- (a) date the foundling was found;
- (b) location where the foundling was found;
- (c) sex, and approximate age of the foundling;
- (d) name and address of the person who has custody of the foundling;
- or
- (e) name given to the foundling by the person who has custody of the foundling.

(2) The NIIMS officer, upon examining the information provided, shall enter the prescribed particulars of a foundling into the NIIMS database.

Certificate
of
birth.

27. (1) On the enrolment of a new-born or any other child, a certificate of birth shall be generated and issued electronically from the NIIMS database.

(2) A certificate of birth shall include the following particulars of the child—

- (a) name;
- (b) place of birth;
- (c) date of birth;
- (d) sex;
- (e) nationality;

- (f) Huduma Namba; and
- (g) name and Huduma Namba of parents or guardians.

Update of particulars of a child.

- 28.** (1) The particulars of the child taken at birth shall be updated on continuing basis to recognise child's attainments and other specified vital events.
- (2) A parent or guardian of a child shall notify the NIIMS officer of any change or error in a particular recorded about the child in the NIIMS database.
- (3) The notification shall be given within thirty days after the change in a circumstance or when a parent or a guardian becomes aware of any error on a particular of the child.

Adoption Certificate.

(No. 8 of 2001)

- 29.** Where an adoption order is granted in relation to a child, the NIIMS officer shall —
- (a) update particulars of the child under the NIIMS in line with the adoption order; and
 - (b) ensure the adoption certificate is available under the NIIMS database in a manner making it accessible.

Biometrics of a child

- 30.** (1) On a child attaining the age of six years, a parent or a guardian shall present the child before a NIIMS officer for taking of specified biometric data of the child to update the NIIMS database.
- (2) Upon capturing of required biometric data, the child may be issued with a minors' Huduma card.

PART B— Registration of deaths and disenrollment

Universal registration of deaths

- 31.** (1) Every death occurring within the country shall be registered through the NIIMS—
- (a) within thirty days of its occurrence; and
 - (b) in a prescribed manner.
- (2) Registration of a death is compulsory and free of any charge where effected within the stipulated period.
- (3) A death shall not be registered after the expiration of thirty days except on the applicant complying with any requirements as may be prescribed.

Notification of a death

- 32.** (1) A person giving notice of death shall be required to certify in writing to the NIIMS officer as to the correctness and authenticity of the notice or any evidence produced to such effect.
- (2) Persons qualified to give information concerning a death include—
- (a) any person present at the death;
 - (b) the occupier of the house with knowledge of occurrence of the death;
 - (c) the person causing the disposal of the body.
 - (d) any relative of the deceased with knowledge of any of the particulars required to be registered concerning the death; or
 - (e) any person finding or taking charge of the body.
- (3) Where a death occurs in a health facility or institutional household, the duty to give notice of the death lies on the officer in charge of such establishment.
- (4) A person giving notice of a death of a citizen that occurred out of the country shall produce a documentary proof issued by an appropriate authority in the country in which death occurred.

Agents for notifying occurrence of death.

- 33.** The Principal Secretary may designate and facilitate other persons who shall serve as agents for notifying occurrence of death to the NIIMS officers.

Registering a death.

- 34.** A designated NIIMS officer shall, upon receipt of the notice of a death, register such death by entering the prescribed particulars of death into the NIIMS database.

Particular as to cause of death

- 35.** The particular to be recorded as the cause of death include—
- (a) cause of death as ascertained and provided by a registered medical practitioner who attended the deceased person;
 - (b) cause from a finding of a post-mortem examination of the body by a qualified medical practitioner; or
 - (c) cause as ascertained after an inquest or investigation of a reportable death by a coroner.

No. 18 of 2017

Presumed deaths

- 36.** (1) The designated NIIMS officer shall register a presumed death on any of the following condition—

No. 25 of 2012

- (a) where a death is presumed under section 118A of the Evidence Act;
- (b) where certificate of presumed death is issued by a Service Commander in accordance with section 298(3) of the Kenya Defence Forces Act; or
- (c) on an order of the High Court.

(2) A registration of a presumed death shall for all purposes serve as a proof of death in every matter requiring proof of death.

Late registration of death.

- 37.** After the expiration of twelve months from the date of the death or finding of the dead body of any person, the death shall not be registered except—
- (a) with the written authority of the Principal Secretary;
 - (b) in such manner and subject to prescribed conditions; and
 - (c) the fact that authority of the Principal Secretary has been obtained has been recorded.

Huduma Namba of a deceased person.

- 38.** Immediately after registering a death or presumed death, the designated NIIMS officer shall—
- (a) retire the Huduma Namba of the deceased;
 - (b) revoke the deceased person's Huduma card; and
 - (c) revoke any passport or any other identity document issued to the deceased.

Certificate of death or presumed death

- 39.** (1) A certificate of death or a certificate of presumed death of a deceased person whose death or presumed death has been registered shall be generated electronically from the NIIMS database.
- (2) A certificate of death may include particulars of a deceased person in regard to their name, sex, age, date and place of death, Huduma Namba, nationality, and cause of death where known.
- (3) A certificate of presumed death may include particulars under subsection (2) with necessary modifications.

Failure to register death

- 40.** A person, who buries, cremates, otherwise disposes, or oversees any disposal of a body of a deceased person, whose death has not been notified to a NIIMS officer or to any agent appointed, commits an offence.

PART V— ISSUANCE OF PASSPORTS

Right to a passport

- 41.** (1) Every citizen is entitled on application to be issued with a Passport.
- (2) A design of a Passport shall contain—
- (a) features provided under any international treaty effective in Kenya; and
 - (b) any prescribed detail.
- (3) A Passport issued shall, on the face of it, serve as evidence of the citizenship or domicile of the holder, as the case may be, and of the holder's entitlement to state protection.
- (4) A passport or travel document issued under this Act is a property of the Government of Kenya.
- (5) Despite subsection (4), a passport validly issued shall remain in the possession of its holder until such time as there is lawful cause for its withdrawal, suspension or confiscation.

Issuance and replacement of a passport

- 42.** (1) An application for a Passport shall be made to a designated NIIMS officer in a prescribed manner.
- (2) The requirements for applying or replacing a Passport are—
- (a) the Huduma Namba;
 - (b) parent's or legal guardian's written consent where an applicant is a minor; and
 - (c) prescribed fee.
- (3) A designated NIIMS officer shall utilise the information under the NIIMS database to issue or replace a Passport to the applicant.
- (4) In processing an application for a passport, the NIIMS officer may—
- (a) update, or require an applicant to provide further details required to update any particular under the First Schedule; and
 - (b) make any further verification as may necessary.

Types of passports

- 43.** (1) The types of Passports that may be issued include—
- (a) Ordinary Passport, issued on application to any citizen of Kenya;
 - (b) Diplomatic Passport, issued to such persons as may be prescribed;
 - (c) East African Passport, issued to a citizen of Kenya who intends to travel within the Partner States in East African Community;
 - (d) Temporary Passport, issued to any citizen of Kenya who for special circumstances cannot travel on an ordinary passport;

No. 13 of 2006

Validity of
passports

- (e) Emergency Passport, issued to a citizen of Kenya who is stranded outside Kenya or is being deported;
 - (f) Certificate of Identity and Nationality, issued to a foreign national who cannot obtain a passport from the country of citizenship for the purpose of travelling outside Kenya;
 - (g) Temporary Permit, issued to a citizen of Kenya who intends to travel within the East African Community Partner States or to such States as may the Cabinet Secretary may prescribe; and
 - (h) Any travel document issued under the Refugee Act or any humanitarian convention.
44. (1) An Ordinary or Diplomatic Passport shall be valid for—
- (a) use in all countries in the world, except for any country specified in the passport; and
 - (b) a period not exceeding ten years from the date of issue, and in the case of children, for a period not exceeding five years.
- (2) An East African Passport shall be valid for—
- (a) use in all Partner States in the East African Community or for any other country as may be prescribed;
 - (b) a period not exceeding ten years from the date of issue, and in the case of children for a period not exceeding five years.
- (3) A temporary Passport shall be valid for—
- (a) use in all countries in the world, except for any country specified in the temporary passport; and
 - (b) a period not exceeding one year from the date of issue.
- (4) An emergency Passport shall be valid for—
- (a) travel to Kenya and other countries of transit; and
 - (b) a single journey for a stated period;
- (5) A Certificate of Identity and Nationality is valid for travel to all countries stated and shall be valid for a period not exceeding two years from the date of issue.
- (6) A Temporary Permit shall be valid for—
- (a) travel in all partner states in the East African Community or for such other countries as may be prescribed by the Cabinet Secretary; and
 - (b) a period not exceeding one year from the date of issue.

(7) A travel document issued to a refugee or for other humanitarian purposes shall be valid for travel to all countries except the country of the holder's nationality and shall be valid for a period of five years.

Lost, mutilated or damaged passport

45. (1) Where a Passport or travel document is lost or stolen, the holder shall report the loss to the NIIMS officer and the nearest police station, or if outside the country, to the nearest Kenya mission.

(2) Any person whose passport or travel document is lost, mutilated or damaged may apply for replacement in accordance with section 42.

Rejection of a passport application

46. (1) A NIIMS officer shall reject an application for a passport where the applicant—

- (a) has not updated the specified particulars under the NIIMS database;
- (b) does not qualify for the type of passport applied; or
- (c) knowingly gives false or misleading material information.

(2) Where an application for Passport or other travel document has been rejected, the NIIMS officer shall within fourteen days—

- (a) give the reasons for rejection in writing to an applicant; and
- (b) provide the right of review or appeal available.

PART VI –DATA PROTECTION SAFEGUARDS

Application of No. 24 of 2019.

47. The provisions of the Data Protection Act shall apply to the processing of personal data under this Act.

Access to information

48. (1) Every enrolled individual has a right to obtain a copy of particulars of their personal data under the NIIMS database.

(2) The Principal Secretary shall avail technologically efficient means to promote proactive access to personal data under the NIIMS database to an enrolled individual.

Restriction on data sharing

49. (1) Personal data collected under this Act shall be used solely to facilitate the object of this Act.

(2) The Huduma Namba and any biometric data collected under shall not be published, displayed or publicly posted.

- (3) Foundational data of an individual may be shared with a private entity only for the purpose of carrying out verification and with approval of the Principal Secretary.
- (4) The Principal Secretary may approve any data sharing where satisfied that the requesting entity—
- (a) is seeking verification to offer services under provisions of a written law;
 - (b) complies with the Data Protection Act, 2019.
- No. 24 of 2019
- Technical security measures.
- 50.** The Principal Secretary shall implement reasonable and appropriate organisational, technical and physical security measures to ensure that data under the NIIMS database is protected against –
- (a) unauthorised access, use, disclosure; and
 - (b) accidental or intentional loss, destruction or damage.
- Right of rectification
- 51.** (1) Every enrolled individual has a right to verify their personal data under the NIIMS database and to request for rectification upon finding any error.
- (2) A NIIMS officer shall rectify an entry of a foundational data in the NIIMS database on the basis of appropriate verification.
- (3) Where erroneous functional data is linked to the NIIMS database, the NIIMS officer shall cause relevant agency to rectify and submit a rectified particular without delay.
- Duty of confidentiality.
- 52.** A NIIMS officer or any person who processes any information under this Act shall treat any information that comes to their knowledge as confidential.
- Location of data servers.
- 53.** Any data server or a data centre employed for processing of data, or any other operation, under this Act shall be located in Kenya.
- Designation of data protection officer.
- 54.** (1) The Principal Secretary shall designate a qualified public officer as a data protection officer for the NIIMS.
- (2) A person is qualified to be designated as a data protection officer where they possess relevant experience and technical skills in matters relating to data protection.
- (3) A data protection officer shall—
- (a) advise on and facilitate compliance with the provisions of the Data Protection Act; and

(b) perform any other task assigned by the Principal Secretary.

PART VII—OFFENCES AND PENALTIES

Offences under
No. 5 of 2018

55. (1) The NIIMS is designated as a protected computer system within the meaning of section 20 (2) of the Computer Misuse and Cybercrimes Act.

(2) A penalty for an offence relating to a protected computer system provided for under section 20, read with sections 14, 15, 16, 17 of No.5 of 2018, apply under this Act.

Enrolment
offences.

56. A person commits an offence where the person—

- (a) knowingly gives false information or makes a false declaration for an entry into the NIIMS database;
- (b) forges a document to facilitate enrolling into the NIIMS;
- (c) impersonates or attempts to impersonate another person, by providing any false demographic information or biometric information; or
- (d) illegally influences or attempts to influence the decision of a NIIMS officer.

Offences
relating
Huduma card

57. A person commits an offence where the person—

- (a) unlawfully alters or modifies any information available on a Huduma card;
- (b) unlawfully makes, produces, prints, designs, or distributes a Huduma card; or
- (c) permits unauthorised use of their Huduma card by another person.

Unauthorised
disclosure

58. A person, who without lawful authority, intentionally discloses, transmits, disseminates any foundational data collected under this Act to any other unauthorised person commits an offence.

Interference
with the NIIMS
database

59. (1) A person not duly authorised, who intentionally—

- (a) accesses or secures access to the NIIMS database;
- (b) damages or causes to be damaged data in the NIIMS database;
- (c) disrupts or causes disruption of the access to the NIIMS database;
- (d) denies or causes a denial of access to any person who is authorised to access the NIIMS database, commits an offence.

(2) Any person convicted of an offence under this section is liable on conviction to a penalty imposed under section 20 of the Computer Misuse and Cybercrimes Act.

Penalties for failure to give information, etc.

- 60.** A person commits an offence, where a person —
- (a) if being required to give information required for a registration of a birth or death, wilfully refuses to provide such particulars;
 - (b) refuses or fails without reasonable excuse to give, deliver or send any information which a person is required by this Act to give, deliver or send;
 - (c) if, being a parent and save as provided under this Act, fails to give information concerning the birth of a child; or
 - (d) if, being a person upon whom a duty to give information concerning a death is imposed, fails to give that information and that information is not given.

Schedule of Penalties and fines

61. A person convicted of an offence created under this Act is liable to a term of imprisonment specified in the second row, or an alternative fine specified in the third row, or to both such term of imprisonment and fine, as specified under the Second Schedule.

PART VIII—ADMINISTRATION

Mandate of the Principal Secretary

62. The Principal Secretary is responsible for the efficient administration of this Act, subject to the directions of the Cabinet Secretary.

Measures to ensure inclusion

63. (1) The Cabinet Secretary shall develop and implement measures to mitigate on any legal procedural and social barriers that may limit the enrolment of any individual.

(2) A measure initiated under subsection (1) shall pay a special attention to facilitate enrolment inclusion to any group of persons at risk of exclusion for cultural, political or any other reason.

Appointment of the NIIMS officers.

64. The Public Service Commission shall appoint such number of NIIMS officers as may be necessary for the effective implementation of this Act.

Delegation by the Principal Secretary

65. Any power or function of the Principal Secretary under this Act may be exercised—

- (a) in person by the Principal Secretary; or

(b) by a subordinate officer specifically designated with general or special instructions.

Complaints resolution mechanisms.

66. The Principal Secretary shall establish administrative mechanisms to facilitate expeditious handling of a complaint by any person aggrieved by a decision made under this Act.

The NIIMS coordination Committee.

67. (1) There is established the NIIMS coordination Committee.

(2) The Committee comprise of the—

(a) Principal Secretary, who shall be the chairperson;

(b) Principal Secretary responsible for information, communication and technology;

(c) Principal Secretary for the National Treasury;

(d) Principal Secretary responsible for basic education;

(e) Principal Secretary responsible for matters relating to health;

(f) Chairperson of the Independent Electoral and Boundaries Commission;

(g) Inspector General of Police;

(h) Commissioner General of the Kenya Revenue Authority; and

(i) Director General of National Intelligence Service.

Functions of the Committee

68. (1) The functions of the Committee are to—

(a) ensure effective coordination and implementation of the NIIMS;

(b) set standards for data collection and dissemination;

(c) establish a framework for ensuring compatibility of technology infrastructure of different government agencies to comply with requirements of the NIIMS;

(d) formulate a framework for coordinating agencies accessing the NIIMS database; and

(e) any other function as may be assigned to the Committee.

(2) The Committee shall submit a report to the Cabinet at the end of every quarter of the year in respect of its activities and operations.

Sub-Committees of the Committee

69. (1) The Committee may, from time to time, establish sub-committees and such other inter-agency units, as it may consider necessary, for the better carrying out of its functions under this Act.

- (2) The Committee may co-opt into the sub-committees established under subsection (1) any person whose participation is necessary for the proper performance of the functions of the Committee.

PART VIII—PROVISIONS ON DELEGATED POWERS

- Regulations
- 70.** (1) The Cabinet Secretary may make regulations generally for giving effect to this Act or prescribing anything required or necessary to be prescribed by or under this Act.
- (2) The regulations made under this section may provide for —
- (a) procedure for registration of births and deaths;
 - (b) issuance of Huduma card, Passport, or any other identity document;
 - (c) data security of the NIIMS;
 - (d) Other information that may be recorded under the NIIMS database and on the Huduma card; and
 - (e) imposition of fees.

PART IX – GENERAL PROVISIONS

- Financial provisions.
- 71.** The implementation of this Act shall be funded by funds appropriated by Parliament in the annual estimates.
- NIIMS general design.
- 72.** The Cabinet Secretary shall ensure the structure and design of NIIMS is—
- (a) output oriented, technology neutral and flexible; and
 - (b) not encumbered by any technology lock ins by any vendor.
- Verification of selected databases
- 73.** Upon the commencement of this Act, agencies responsible for matters outlined shall validate personal data of individuals in their functional databases with the NIIMS database—
- (a) registration of adoptions;
 - (b) registration of marriages;
 - (c) public pension;
 - (d) registration of tax payers;
 - (e) registration of voters;
 - (f) licensing of drivers;
 - (g) national health insurance;

- (h) national social security;
- (i) refugees and asylum seekers;
- (j) public labour records; and
- (k) any other database the Cabinet Secretary may specify.

Repeals.

74. The following Acts of Parliament are repealed—

- (a) The Births and Deaths Registration Act (CAP 149);
- (b) The Registration of persons Act (CAP 107); and
- (c) The Kenya Citizens and Foreign Nationals Management Service Act (No 31 of 2011).

Savings and transitional provisions

75. (1) Subject to this Act, any action validly taken under any of the repealed Acts is deemed to have been validly carried out under this Act and more specifically in relation to—

- (a) validity of any identity document issued; and
- (b) the mass enrolment of resident individuals into the NIIMS conducted in terms of Section 9A of the Registration of Persons Act.

(2) An identity card issued under the Registration of Persons Act, shall continue to be valid up to such time as the Cabinet Secretary may by a notice in the *Gazette* declare, and upon such declaration, such identity card shall cease to have validity.

(3) A Passport or any travel document issued under the Kenya Citizenship and Immigration Act prior to the commencement of this Act is deemed to have been validly issued under this Act.

(4) A public officer, who immediately before the commencement of this Act, was a member of staff of entities commonly known as the National Registration Bureau, the Civil Registration Services, the Department of Immigration and the Integrated Population Registration Services, shall be transitioned as NIIMS officers to carry out duties of implementing—

- (a) this Act; and
- (b) the Kenya Citizenship and Immigration Act, 2011.

(5) The Principal Secretary shall take charge of the assets, liabilities, and any contracts belonging to or under possession of the agencies referred to under subsection (4) and may deploy such assets for the performance of activities under this Act.

Consequential
amendments.

76. The laws specified in the first column of the Third Schedule are amended, in the provisions specified in the second column, in the manner respectively specified in the third column.

Cabinet Draft

FIRST SCHEDULE

(Sec. 5)

NIIMS DATABASE ENTRIES

The following particulars of a resident individual may be recorded in the NIIMS database—

1. Foundational data

- (a) full name;
- (b) date of birth;
- (c) place of birth;
- (d) sex;
- (e) photograph of prescribed size;
- (f) required biometric data; and
- (g) nationality.

2. Contacts details

- (a) Primary phone number;
- (b) email address; and
- (c) address of usual place of residence

3. Personal reference numbers

- (a) Huduma Namba;
- (b) birth entry number;
- (c) Kenyan Passport number, if any;
- (d) tax payer PIN details;
- (e) Number of a driving license issued, if any;
- (f) National Hospital Insurance Fund number, if any;
- (g) National Social Security Fund number, if any;
- (h) National Education Management Information System number, where applicable;
- (i) Number of any immigration document issued to an individual;
- (j) Number of any identity detail issued by any authority outside Kenya;

4. Record history

- (a) particulars of changes affecting that information and of changes made to the individual's entry in the database;
- (b) date of the individual's death, where death occurs.

5. Registration history

- (a) date of every application made;
- (b) date of every application by the individual for a modification of any individual's entry;

- (c) date of every application by the individual confirming the contents of the entry or entries made in the database;
- (d) reason for any omission from the information recorded in the individual's entry;
- (e) particulars of every Huduma card issued;
- (f) Any revocation of Huduma card; and
- (g) particulars of every person who has countersigned an application by the individual so far as those particulars were included on the application; and

6. Validation information

- (a) a password or other code to be used for that purpose or particulars of a method of generating such password or code;
- (b) questions and answers to be used for identifying a person seeking to make such an application or to apply for or to make a modification of that entry.

SECOND SCHEDULE

(Sec. 63)

PENALTIES FOR OFFENCES

Narration	Section	(Maximum)Period of imprisonment	(Maximum) Monetary fine (in Kenya shillings)
Offence for failure to register a death	40	Six months	50,000
Enrolment offences	58	One year	100,000
Offences relating to Huduma Card	59	Three years	3 million
Unauthorised disclosure of data	60	Five years	5 million
Failure to give information	62	Non-custodial	10,000

THIRD SCHEDULE (S. 77)

CONSEQUENTIAL AMENDMENTS

Written law	Section	Amendment
Interpretation and General Provisions Act (cap 2)	2	Insert the following new definition in proper alphabetical sequence— “sex” means male, female and intersex;”
Tax Procedures Act (No. 29 of 2015)	8	Insert the following new subsections immediately after subsection (9) – (10) Every resident individual who has enrolled into the NIIMS established under the Huduma Act shall by default be registered as a taxpayer upon attaining the age of eighteen years. (11) On completion of initial enrolment of resident individuals under the Huduma Act, the Commissioner shall activate tax obligation of every resident individual above the age of eighteen years not registered as a taxpayer.
	11	Renumber the section as subsection (1) Insert the following new subsection immediately after subsection (1)— (2) The Huduma Namba assigned to an individual under the Huduma Act 2019 shall serve as PIN for the purpose of tax law.
Kenya citizenship and Immigration Act (No 12 of 2011)	2 (1)	(1) Delete the definitions of the following words— (a) “Board”; (b) “Director”; (c) “Immigration officer”; (d) “Passport”; and (e) “Service”.

		<p>(2) Insert the following new definitions in proper alphabetical sequence—</p> <p>“NIIMS officer” has the meaning assigned to it under the Huduma Act, 2020;</p> <p>“Passport” has the meaning assigned to it under the Huduma Act, 2020; and</p> <p>“Principal Secretary” means the principal secretary responsible for matters relating to registration of persons, immigration and citizen services”.</p>		
	2(2)	Delete		
	No. 12 of 2011	<p>(1) Delete the words “immigration officer” wherever they appear and substitute therefor the words “NIIMS officer”; and</p> <p>(2) Delete the word “Director” wherever it appears and substitute therefor the words “Principal Secretary”.</p>		
	4(1)	Delete the words “The Service shall appoint a Director to” and substitute therefor the words “The Principal Secretary shall”		
	4 (2)	<p>(1) Delete and substitute therefor the words “The Principal Secretary shall be responsible for”</p> <p>(2) Delete the word “Service” appearing in paragraphs (h) and (j) and substituting therefor the words “Cabinet Secretary”</p>		
	5	<p>Delete and substitute therefor the following new section—</p> <table border="1" data-bbox="730 1659 1429 1827"> <tr> <td>Appointment of NIIMS officers</td> <td>5. The Public Service Commission shall appoint such NIIMS officers as may be necessary for the carrying out of the provisions of this Act.</td> </tr> </table>	Appointment of NIIMS officers	5. The Public Service Commission shall appoint such NIIMS officers as may be necessary for the carrying out of the provisions of this Act.
Appointment of NIIMS officers	5. The Public Service Commission shall appoint such NIIMS officers as may be necessary for the carrying out of the provisions of this Act.			
	24	Repeal		

	25	Repeal
	26	Repeal
	27	Repeal
	28	Repeal
	29	Repeal
	30	Repeal
	32	Repeal
Refugees Act (No 13 of 2006)	14(a)	Delete and substitute therefor the following paragraph— (f) be eligible to be assigned with a Huduma Namba and be issued with a Huduma card.
	15 (1) (a)	Delete and substitute therefor the following paragraph— (a) be eligible to be assigned with a Huduma Namba and be issued with a Huduma card
	15 (1) (b)	Delete
National Hospital Insurance Fund Act (No 9 of 1988)	21(1)	Delete and substitute therefor the following subsection— (1) The Huduma Namba issued to an individual under the Huduma Act shall be used to access any service under the fund.
	21(2)	Delete
Elections Act (No 24 of 2011)	4	Insert the following new subsection immediately after subsection (3)— (4) The Commission may use the information contained under the NIIMS database to compile, maintain, revise and update the voters' register.

	5(3)	<p>Delete and substitute therefor the following subsection –</p> <p>(3) The Commission shall by default register as a voter every citizen who has attained the age of eighteen years and has enrolled under the NIIMS.</p> <p>Insert the following new subsection immediately after subsection (3)—</p> <p>(3A) A citizen who has been registered as a voter by default shall be required to update any other detail as may be required under this Act or any other election law.</p>
	8	<p>Insert the following new subsection immediately after subsection (3)—</p> <p>(4) For purposes of paragraph 2(b), the Commission shall utilise the NIIMS database as established under the Huduma Act</p>
	8A (2)	<p>Delete and substitute therefor the following subsection—</p> <p>(2) The Commission shall utilise the information under in the NIIMS database for the purpose of conducting an audit under subsection (1).</p>
Marriage Act, 2014	New provision	<p>Insert the following new section immediately after section 93—</p>
		<p>Defining a marriage into NIIMS database</p> <p>93A. (1) The Registrar shall cause the following actions to be defined into the National Integrated Identity System database—</p> <p>(b) registration of a marriage; and</p> <p>(c) annulment of a marriage.</p> <p>(2) Upon receipt of information under subsection (1), a NIIMS officer shall –</p>

			<p>(a) update the particulars of parties under the NIIMS database to reflect the new status; and</p> <p>(b) cause the certificate of marriage or decree of annulment of marriage to be accessible by parties under the NIIMS database.</p>
Children Act, No 8 of 2001	170	<p>Insert the following new subsection immediately after subsection (5)</p> <p>“(6) The Registrar shall communicate to a designated NIIMS officer a successful completion of adoption and cause the particulars of the parties to be updated in accordance with the Huduma Act, 2020.”</p>	
The Traffic Act, CAP 403	34	<p>Insert the following new subsection immediately after subsection (1)</p> <p>“(1A) A licensing officer shall utilise the NIIMS database for personal data of an applicant for the purpose of issuing a licence under subsection (1).”</p>	

MEMORANDUM OF REASONS AND OBJECTS

BACKGROUND

One of the observed shortcomings on Kenya's identity ecosystem is the fact that the two identity modes—the foundational and functional systems—have little interoperability. Foundational systems are civil registrations meant to provide general identification for official purposes, such as a national ID, birth certificate and refugee registrations while functional systems are registrations for a particular service or transaction such as health cards, passports and driving licences, each relating to a particular agency.

The national Identity card, despite having all the personal data details, including biometrics, has very little utility in functional areas. The failure to have linkage between foundational and functional systems has led to duplication in registrations of persons, wastage of resources and diminution of trust in the identity ecosystem

This Bill seeks to reform the identity ecosystem. It adopts the foundational Identity system model. It establishes the National Integrated Identity Management System (NIIMS) that will be a primary database for both foundational and functional data, from which every other database with personal data of residents in Kenya, such as databases of voters, taxes, and social services, will be built. This will create an efficient identity system that will present opportunities for fiscal savings, development of the digital economy and enhanced public and private sector service delivery.

OVERVIEW

PART I contains preliminaries and sets out the objects of the Act.

PART II establishes NIIMS, which will operate as a single source of personal data for all citizens and resident individuals in Kenya. The set up of NIIMS is guided by the principles of Digital Object Architecture. It includes three components namely: NIIMS database, Huduma Namba, and Huduma Card.

PART III sets out procedure on the enrolment into NIIMS of the stock population. The first enrolment is for mass registration of resident individual, with the other being continuous enrolment. The part further offers guidance on continuous update of personal data, assignment of Huduma Namba and issuance of Huduma card.

PART IV provides for registration of births and enrollment of newborns where the Huduma Namba shall be issued at birth. Upon death, the Huduma Namba of a deceased person is retired and Huduma card revoked.

PART V contains provisions on issuance of passports. The part consolidates and restates the law on issuance of passports and provides that only Huduma Namba and data contained under the NIIMS database would be utilized to issue a passport and consequently scraps other onerous requirements.

PART VI sets out data protection safeguards accorded to NIIMS. The part adopts international best principles of data protections. The Principal Secretary is designated as the data controller for the NIIMS, with a mandate to ensure data privacy rights of enrolled persons is observed. The part specifically incorporates the Data Protection Act to apply for data protection under the Act.

PART VII outlines offences for various acts of contravening the Act. The part designates NIIMS as a protected computer system within the meaning of section 20(2) of the Computer Misuse and Cybercrimes Act, 2018. For clarity, the penalties for offences are provided for under the schedule.

PART VIII provides for the administration of the Act. It designates the constitutional office of the Principal Secretary to be responsible for proper administration of the Act. It further establishes a coordination committee to provide a seamless collaboration between various government agencies.

PART IX has provisions empowering the Cabinet Secretary to further make regulations to implement the Act.

PART X contain general provisions, which include repeal of various laws dealing with activities collapsed under NIIMS and transition of staff conducting activities under those laws.

SCHEDULES. The First Schedule of foundational and functional data to be contained under the NIIMS database. The Second Schedule enumerates penalties for offences. The Third Schedule sets out consequential amendments on various laws to align them with this Act.

Statement on the delegation of legislative powers

The Bill delegates legislative powers. It confers on the Cabinet Secretary the powers to make regulations under the Act in order to implement its objectives.

Statement on limitation of fundamental rights and freedoms

The Bill does not limit any fundamental right or freedoms.

Statement on whether the Bill concerns County Governments

The Bill does not deal with a matter concerning the County Governments in terms of Article 110(1) (a) and does not contain any matter affecting any function of county governments as outlined under the Fourth Schedule to the Constitution.

Statement on whether the Bill is a money bill

The enactment of this Bill may occasion additional expenditure of public funds. It is a money bill within the meaning of Article 114 of the Constitution.

Dated.....2020

Amos Kimunya

Leader of Majority

Cabinet Draft