

① Approved for tabling in the House.

② Paper Laid by
the Hon. Peter Mwangi
Chairperson, Committee
on Administration and
National Security

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

Lemuna

6/4/2022

TWELFTH PARLIAMENT - SIXTH SESSION

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL
SECURITY

REPORT ON THE HUDUMA BILL, 2021 (NATIONAL ASSEMBLY BILL NO.
57 OF 2021)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 APR 2022	
DAY: Wednesday	
TABLED BY:	CHAIR, DC - ADMINISTRATION AND NATIONAL SECURITY HON. PETER MWANGI, CBS, MP
CLERK-AT THE-TABLE:	Moses Lemuna

DIRECTORATE OF DEPARTMENTAL COMMITTEES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2022

CONTENTS	2
APPENDICES	3
CHAIRPERSON'S FOREWARD.....	5
1.0 PREFACE.....	6
2.0 COMMITTEE MEMBERS	12
3.0 A COMPARATIVE ANALYSIS OF POPULATION INFORMATION MANAGEMENT IN SELECT JURISDICTIONS RELATIVE TO THE PROPOSAL CONTAINED IN THE HUDUMA BILL, 2021.....	19
5.0 PUBLIC PARTICIPATION	20
81. Short title - Update the title of the bill to "Registration of Persons Bill"	55
6.0 COMMITTEE OBSERVATIONS	61
8.0 SCHEDULE OF PROPOSED AMENDMENTS.....	

APPENDICES

- Annex 1- Signed list of Members who attended the sitting that considered and adopted the report
- Annex 2- Minutes of the Committee sittings on consideration of the Bill
- Annex 3- Print media advertisement on public participation
- Annex 4 – Stakeholder and public memoranda on the Bill.

CHAIRPERSON'S FOREWARD

The Huduma Bill, 2021 (*National Assembly Bill No. 57 of 2021*) was read a First time on Tuesday, 21st December 2021 and immediately committed to the Departmental Committee on Administration and National Security for reporting to the House pursuant to the provisions of Standing Order 127.

The Bill seeks to establish an Act of Parliament (*Huduma Act*) to provide a primary law on civil registration and legal identification management; establish the National Integrated Identity Management System (NIIMS); provide for enrolment into the NIIMS, assigning of the Huduma Namba and issuance of legal identity documents; facilitate the registration of births and deaths; and promote efficient delivery of public services.

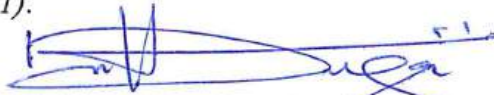
In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Orders 127(3), the Committee, through local daily newspapers of Thursday, 23rd December, 2021 published advertisements inviting the public to submit memoranda on the Bill. Further, the Committee held consultative meetings with the State Department for Interior, Ministry of Information, Communication and Technology, Department for Immigration, Office of the Data Commissioner, United Nations in Kenya (UN), Department for Registrar of Marriages, Department for Civil Registration Services, Ministry of Health, National Health Insurance Fund, Department for National Registration Bureau, Refugee Consortium of Kenya, National Security Social Fund (NSSF), Kenya Revenue Authority (KRA), National Transport and Safety Authority (NTSA), Estonia Embassy and various civil society organization. The meetings were held in Mombasa, Naivasha and Nairobi. On Wednesday 23rd February 2022, the Committee conducted Public hearing on the Bill in the Mini-Chamber, County Hall, Parliament Buildings.

The report contains the analysis of the public submissions on the Bill, written submissions received from the public noting general comments in support or against the Bill, and the list of the individuals and institutions that submitted their memoranda and participated in the public hearing meetings.

The report further contains the signed list of Members who attended the sitting which considered and adopted the report on Friday, 11th March 2022, a copy of the newspaper advertisements of Thursday, 23rd December, 2021 and 17th February, 2022 together with copies of letters inviting various stakeholders for meetings.

May I take this opportunity to thank and commend Committee Members for their devotion and commitment to duty, the Speaker, and the Clerk of the National Assembly for providing leadership and direction, and finally the Committee Secretariat for exemplary performance in the provision of technical and logistical support. Further, the Committee expresses gratitude to the stakeholders who made submissions on the Bill. The Committee also appreciates the role played by the media following its coverage of the proceedings, thus enhancing accountability and transparency.

On behalf of the Departmental Committee on Administration and National Security and under the provisions of Standing Order 127(4) and 199 (6), it is my pleasant privilege and duty to present to the House the Report of the Committee on its consideration of the Huduma Bill, 2021 (*National Assembly Bill No. 57 of 2021*).



HON. PETER MWATHI, CBS, MP
(CHAIRPERSON)

**DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL
SECURITY**

1.0 PREFACE

The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to the provisions of Standing Orders 216(1).

1. The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, *inter alia*:
 - a) *investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; and*
 - b) *study and review all legislation referred to it;*
 - c) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204.*
2. In executing its mandate, the Committee oversights the functioning of the following Ministries and Departments:
 - i) Ministry of Interior and Coordination of National Government
 - a) State Department of Interior
 - b) State Department of Border Control, Immigration and Registration of Persons.
 - c) State Department of Correctional Services
 - ii) The National Police Service Commission
 - iii) The Independent Policing Oversight Authority
 - iv) The Public Service Commission
3. According to Schedule II of the Standing Orders, the subjects under the purview of the Constitution as follows:
 - i) National Security;
 - ii) Police Services;
 - iii) Home Affairs;
 - iv) Public Administration;
 - v) Public Service,
 - vi) Prisons;
 - vii) Immigration

2.0 COMMITTEE MEMBERS

Chairperson

Hon. Peter Mwathi, CBS, M.P.

Limuru Constituency

Jubilee Party

Vice-Chairperson

Hon. Fatuma Gedi, CBS, MP

Wajir County

Jubilee Party

Hon. Jeremiah Lomurukai, MP

Loima Constituency

ODM Party

Hon. (Dr.) Tecla Tum, MP

Nandi County

Jubilee Party

Hon. Kaluma Peter, MP

Homa Bay Town Constituency

ODM Party

Hon. Wambugu Munene, MP

Kirinyaga Central Constituency

Jubilee Party

Hon. (Dr.) Makali Mulu, MP

Kitui East Constituency

Jubilee Party

Hon. Nimrod Mbai, MP

Kitui East Constituency

Jubilee Party

Hon. Ngunjiri Wambugu, MP

Nyeri Town Constituency

Jubilee Party

Hon. Peter Masara, MP

Suna West Constituency

Independent Party

Hon. Abdi Shurie, MP

Balambala Constituency

Jubilee Party

Hon. Aduma Owour, MP

Nyakach Constituency

ODM Party

Hon. Halima Mucheke, MP

Nominated Member

Jubilee Party

Hon. Col. (Rtd) Geoffrey King'ang'i, MP

Mbeere South Constituency

Jubilee Party

Hon. Oku Kaunya, MP

Teso North Constituency

ANC Party

Hon. Dr. Mishra Swarup, MP

Kesses Constituency

Jubilee Party

Hon. Marselimo Arbelle, MP

Laisamis Constituency

Jubilee Party

Hon. Rozaah Buyu, MP

Kisumu County

ODM Party

COMMITTEE SECRETARIAT

Mr. Adan Sora Gindicha
Senior Clerk Assistant
Head of Secretariat

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigitta Mati
Legal Counsel

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Joseph Okongo
Media Officer

Delvin Onyancha
Research/Policy Analyst

Mr. Josphat Bundotich
Serjeant-at-Arms

Ms. Eva Kaare
Serjeant-at-Arms

Rodgers Kilungya
Audio Recording Office

2.0 OVERVIEW OF THE OF HUDUMA BILL, 2021

Part I-Preliminary Provisions

4. The Bill seeks to provide a primary law on civil registration and legal identity management by establishing the National Integrated Identity Management System (NIIMS) and provide for the enrolment into the system, assigning of the Huduma Namba and the issuance of legal identity documents.
5. The main objectives of the Bill are as follows-
 - a) consolidate the law on civil registration and legal identity management;
 - b) establish a digital national population database to be a primary source of foundational and functional data for a resident individual;
 - c) provide mechanisms for registration of births, deaths and recognition of vital events of a resident;
 - d) facilitate the assigning of the Huduma namba and issuance of legal identity documents;
 - e) promote integrity, confidentiality, and security of personal data under the NIIMs database.

Part II- The NIIMS

6. Clause 4 of the Bill establishes the National Integrated Identity Management System (NIIMS) which is to consist of the System's database, the Huduma Namba (which is assigned at birth) and the Huduma card. The NIIMS database will be an integrated digital population register of resident individuals enrolled under the law. It will contain the foundational data and functional data.
7. The main purpose of the NIIMS database is-
 - a. Operate as the primary source of foundational data for every enrolled resident individual;
 - b. Enable the use of biometric data to identify an enrolled individual; and
 - c. To facilitate the use of personal data under NIIMS to assign the Huduma number, issue Huduma card, issue a passport and support access and issuance of copies of legal identity documents.
8. The types of Huduma card to be issued under the Act include-

- a. Minors' Huduma card issued to a child who has attained six years;
 - b. Adults' Huduma card issued to a citizen who has attained eighteen years;
 - c. Foreign nationals Huduma card for Foreigners; and
 - d. Refugee Huduma card issued to a refugee.
9. The Huduma card shall be sufficient proof of identity to facilitate access to any public service which may require official identification. All government agencies are required to rely on the NIIMS database to authenticate the foundational data of an individual (clauses 8-9).

Part III-Enrolment into NIIMS

10. Clause 16 of the Bill imposes a duty on a resident individual with regard to compliance where every person who is enrolled under the law has a duty to notify the NIIMS registration officer to update the particulars of that individual whenever there is any change in any particular. An example of information as provided for in the First schedule is a person's phone number, change of address and email address to mention a few.
11. The Bill, in clause 18, states that every government agency delivering a public service shall be linked to the NIIMS database in such manner as to enable such agency to —
- a. authenticate personal data in their possession with NIIMS; and
 - b. transmit, access or retrieve information necessary for the proper discharge of agency's functions. The Huduma Namba is clearly intended to serve as a foundational and single identity system to which all other government databases shall be linked. What about the private sector?
12. Clause 17 (1) provides for the cancellation of an enrollment of any individual to the NIIMS database. It further gives the PS unfettered powers to cancel an enrollment where in his or her view there exists a justifiable cause.

Part IV- Births and Deaths

13. This part provides for the registration of births and deaths. In the case of a newborn or foundling, the particulars of the child shall be updated on a continuous basis in order to recognize the child's developmental milestones and other specified vital events.

14. It also outlaws the disposal of a body of a deceased person whose death has not been notified to a designated NIIMS officer. The penalty in this case is a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding six months.

Part V- Issuance of Passports

15. This part provides for the issuance of passports, the types of passports and the validity of passports.

Part VI- Data Protection Safeguards

16. This Part provides for the protection of all data provided under the Act. It further allows the Principal Secretary to designate a suitably qualified public officer to serve as a Data Protection Officer for the NIIMS. The qualifications are provided in clause 53 (2). It states that such officer is to possess relevant experience and technical skills in matters relating to data protection.

Part VII- Offences and Penalties

17. This Part provides for the offences and penalties relating to a protected computer system. They include unauthorized access, access with intent to commit further offence and unauthorized interference. The penalty in this case is a fine not exceeding twenty-five million shillings or imprisonment for a term not exceeding twenty years or both.

Part VIII-Administration

18. This part establishes the NIIMS Coordination Committee which is tasked to-
- a. Ensure effective co-ordination and implementation of the NIIMS;
 - b. Formulate a framework for coordinating agencies accessing the NIIMS database, among other things,

Part IX- Miscellaneous

19. This Part provides for regulation making power of the Cabinet Secretary, the implementation of the Act in terms of funding which is to be appropriated by parliament, verification of selected databases etc. It also seeks to save any action done under the proposed repealed Acts to be valid such as the issuance of identification cards, enrollment of

the NIIMS done under section 9A of the Registration of Persons Act and the issuance of Passports done before the commencement of the Act.

20. The Bill will repeal and replace the Registration of Persons Act, the Births and Deaths Registration Act, and the Kenya Citizens and Foreign Nationals Management Act, 2011.
21. Clause 72 (4) seeks to redeploy public officers who served in entities such as the National Registration Bureau, the Civil Registration Services, the Department of Immigration, and the Integrated Population Registration Services to carry out the functions of their respective office within the NIIMS.
22. This part provides for the Second schedule which lists the laws proposed to be amended in order to align them to the proposed Huduma Bill, 2021.

3.0 A COMPARATIVE ANALYSIS OF POPULATION INFORMATION MANAGEMENT IN SELECT JURISDICTIONS RELATIVE TO THE PROPOSAL CONTAINED IN THE HUDUMA BILL, 2021

23. This a comparative analysis of select jurisdictions relative to the proposals made before the House to make changes in the management of population information. It looks at how population registers, immigration and social security are handled in the United States, Estonia, United Kingdom, Canada, India, South Africa, Ghana, Nigeria, and United Republic of Tanzania. On this analysis, the Committee acknowledges the contribution of various stakeholders including the Directorate of Immigration Services in their submission to the Committee on 14th January, Ms. Kadri Humal Ayal, the Consular General of the Republic of Estonia in Kenya and Mr. Robert Jones in their submissions to the Committee on 25th March, 2022.

UNITED STATES OF AMERICA (USA)

24. The Social Security Number in the USA is coordinated by the Social Security Administration (SSA). While the SSN is issued to citizens and foreigners in the U.S.A, the number is coordinated by an authority away from Immigration. The SSA handles matters social security, employment, Medicare, Social Security insurance, disability, and security statements. Squarely, the SSN number handles social security.
25. The events around 9/11 in 2001, the USA was concerned about the many threats including terrorism, meta hazards (global warming, inferior education system, privatization of government services, dependence on foreign services, and an aging population), and national security among other concerns. In 2002, the USA government merged 22 federal departments to form a unified integrated agency – the Department of Homeland Security (DHS). As a result, DHS has the following departments:
- a) Cybersecurity and Infrastructure Security Agency
 - b) U.S. Customs and Border Protection
 - c) U.S. Citizenship and Immigration Services
 - d) Federal Emergency Management Agency
 - e) U.S. Coast Guard
 - f) U.S. Immigration and Customs Enforcement
 - g) U.S. Secret Service
 - h) Transportation Security Administration
26. While the social security number under SSA is concerned with social security issues, immigration is classified under DHS which handles national security issues.
27. Similarly, the USA has made it functionally clear that the maintenance of the population register is in a separate entity from the one handling immigration.

ESTONIA

Estonia's management of population and immigration matters is as follows:

28. The digital identification ID (ID) is issued by the Police and Border Guard Board since 2018. The ID is one of the most highly developed card system in the world giving access to the holder to access digital access to of Estonia government's e-services.
29. An Estonia's digital ID accords the holder several benefits including the assurance that the digital ID can be used as a travel document in the European Union; useful in health insurance card; proof of identification when logging into bank accounts; Used for i-voting; check medical records; and secure e-prescriptions.
30. Estonia is one of the states whose immigration officers are referred to border guards and thus associated with the police force.
31. Over and above the different police departments and formations, the Police and Border Guard Board issues several documents including ID cards for adults, children, and for citizens of European Union. Other documents include the Estonian passport; alien passports; residence permit card; Digital ID, Mobile ID, e-resident's digital ID; Seafarer's discharge book; refugee's travel document; temporary travel document.
32. Estonia presents a case where immigration work and police work coalesce to take care of the national security function. Crime is busted by the police formations which are tasked with a visible show of power. Citizenship, Visa, permits, passes, foreign nationals management, passports, and digital IDs – are handled by the Border guards (of the same categorization as immigration officers).
33. Estonia previously operated units independent of each other including a robust identification system and a population registration system. These two systems were integrated — an effort drawn from Estonia's history having been part of the Soviet Union's dissolution. Estonia was challenged to improve its population registers as the previous system had poor quality data that was controlled centrally and could not be compared to that of other countries.
34. Ministry of Interior houses the Population Facts Department (which handles population registers); and the Development Department (which houses the Police and Border Guard charged with the immigration and border management, and the national identity system.
35. The Ministry of Interior thus oversees citizenship and immigration matters, population identity registers, and national statistics. Other related functions such as registration of civil events such as births and death are housed in the Ministry of Finance. The coordination of government units explains why the Population department works with the MDAs in Ministry of Interior and Finance.

36. The population registration and ID system in Estonia is a complex amalgamation of functions spread in many ministries. The Ministry of Interior houses the Population Facts department and the Police and Border Guard Board. The Board handles ID issuance and maintenance of the ID registry. The Ministry of Communication and economic affairs looks at RIA -X-Road (an environment giving secure internet-based data exchange between systems). The Ministry of Finance is responsible for Estonia's Vital statistics procedures. The Ministry of Justice houses the Data Protection Inspectorate. Using the population registration, the Ministry of Social Affairs handles the Estonian Health Insurance Fund (EHIF) which looks at e-Health foundation and the National Institute for Health Development.
37. The consolidation of services as operationalized by Estonian government could offer some lessons for Kenya. The Estonian government has not changed the immigration functions. The nomenclature fairly remains the same. The immigration functions are clearly drawn, and the population identity register remains foundational to the functions of many other MDAs including immigration.
38. As captured in the USA case, Estonia has enforced the focus on national security by coalescing immigration with the police department. While the Kenya has taken an interagency cooperation model including having police officers at ports of entry, the establishment of the Border Patrol Unit, securing a government policy on lead border agency – all point to support models.
39. If Kenya were to go to the Estonia way, all the new units would be collapsed in the immigration department.

UNITED KINGDOM

40. The United Kingdom (UK) Home Office is the government unit responsible for securing borders and managing immigration. Specifically, the UK Visas and Immigration and the immigration Law Enforcement handle the immigration function.
41. The UK Visa and Immigration thus focuses on the many applications that come from foreign nationals who wish to visit, work, and study or settle in the United Kingdom. Typically, immigration function focuses on people entering the country with a limited attention on emigration.
42. Home office is a highly compartmentalized department and with little or none amalgamated tasks that create a function heavy departmental agency.
43. The data contained in the national identity register was destroyed in 2011. National details such as photograph, and other biometrics were all destroyed as part of the decommissioning of register.

44. One can see the borrowing that the current Kenya has inklings of the UK system where the security functions are all pulled under the Office of President or lately, in the Ministry of Interior and Coordination of National Government.

CANADA

45. Under the Ministry of Immigration, Refugees and Citizenship, the Immigration, Refugees and Citizenship Canada agency looks at the immigration needs of immigrants, protects the rights of refugees and offers programming to help those seeking to settle in Canada. The Agency also does process and issues travel documents, while considering applications and granting citizenship to applicants.
46. With no national identity cards, the Canadian government has shown the need to manage the immigration function within the universally accepted model where foreign nationals are processed to enter transit, stay, work, reside, and leave the country's jurisdiction.
47. Canada would almost have the same model as United Kingdom, Australia, and New Zealand. While the situation in Canada may not explain Kenya's context, population identity registers help developing countries to account, offer service, and build on the issuance of other documents using the registers as foundational documents. This does not mean or insinuate that such services can be grouped in the immigration function.

INDIA

48. In India, the Bureau of Immigration (BOI) is domiciled in the Ministry of Home Affairs. The Bureau handling information on immigration, restricted protected areas, health regulations, visas, permits, and manages the advanced passenger Information System (APIS).
49. The Unique Identification Authority of India (UIDAI) is responsible for the management of national identity card (popularly known as Aadhaar). The agency is charged with the duty of accepting applications, processing, maintaining registers, and authenticating identity documents among other functions.

NIGERIA

50. Nigeria has a National Identity Management Commission (NIMC) which operates, maintains, and manages the National Identity Database in Nigeria. Effectively, this is the African comparator to the NIIMS being proposed by the *Huduma* Bill. The NIMC has a function of assigning Nigerians with a unique National Identification Number (NIN) and thereby issue a General Multi-Purpose Cards (GMPC). What this means is that the GMPC is our proposed *Huduma* card – a card that has more functions than one would expect the identity card to have.

51. The National Identity Number (NIN) is an 11-digit e-card that is designed to identify the holder for the following current and potential services: Electronic Identity Information (e-ID); Security; travel; e-Health Application; e-Pension Application; e-Voting Application; e-Taxation Application; e-Drivers' License Application; e-Transport Application; e-SIM Application; and e-Insurance Application.
52. While Nigeria's NIN was progressive even thinking of free movement within ECOWAS and allowing the card to facilitate movement. EAC has similar proposals that the Regional Advisory Committee – a technical wing of the Chiefs of Immigration in the Partner States, proposed an ICAO compliant card that can help domesticate the concept of free movement, yet Huduma card has not considered such an opportunity.
53. Nigeria has a National Population Commission that collects, analyses, and disseminates demographic data with a view of ascertaining the population of the country. The body would conduct surveys, collect, and collate data and publish migratory trends. Critically, the civil registration role is undertaken in under this commission. This would sound like taking our KNBS and merging it with the Civil Registration Department. Ideally, populations need to note the births and deaths occurring over time. Incidentally, marriage registration would find a place in such a contextualization.
54. All these services are far removed (apart from providing basic application documents) from the National Immigration Service (NIS). In Nigeria, NIS has the following mandate:
- a) The control of persons entering or leaving Nigeria
 - b) The issuance of travel documents, to bona fide Nigerians in and outside Nigeria
 - c) The issuance of residence permits to foreigners in Nigeria
 - d) Border surveillance and patrol
 - e) Enforcement of laws and regulations with which we have been directly charged.
55. Typically, the immigration mandate seems to resonate with the Kenyan one, although a heavy profile is expected of an immigration officer in Kenya.
56. Nigeria case presents an interesting regional perspective. A systems theoretical approach seems to prefer having interdependent units to operate on their own. Collaboration is better felt with independent units working together and not the model Kenya seeks to adopt where everyone is in a pool called NIIMS and not sure what their designated role does to another undesignated role.
57. National Immigration Service has continued to retain the immigration functions of passports, visas and residence permits. Effectively, the Nigeria case study tells us that immigration and emigration imbue a State to consider the unique circumstances that categorize its citizens with foreign nationals under one umbrella body called immigration. In

immigration, citizens will be served as they seek passports and citizenship matters and move within regional economic blocs, but foreigners will be served as they seek to enter (visas), transit (visa), stay (permits and passes) or seek long term residency (citizenship and permanent residency).

GHANA

58. Ghana Immigration Service, handles the traditional immigration function of issuing visas, permits and passes. The only difference is that passport issuance is handled by the Ministry of Foreign Affairs and Regional Integration.
59. The National Identification Agency (NIA) is mandated to issue national identity card (Ghana Card), which is a basic document for opening a bank account, passport, and drivers' licence among others.
60. Typically, the Ghanaian government separates the issuance of visas, permits, and passes from the issuance of national identity cards, and even separate from the management of population data. The NIA is mandated to manage the National Identification System (NIS). Backed by the National Identity Register Act, 2008, NIA has the legal backing to collect personal and biometric data under conditions of privacy and the desired levels of confidentiality.
61. NIA makes attempts to harmonize data on the population by requiring all enrollees to supply the agency with documents such as driver's license; National Health Insurance Authority (NHIA) card; Social Security and National Insurance Trust (SSNIT) number; GRA Tax Identification Number (TIN); Voter ID card; and national passport.
62. For Ghana, the efforts to manage population registers and integrate data on an individual is the province of NIA. This, in Kenya, would be the equivalent of a merger between the National Registration Bureau (NRB) and the Integrated Population Registration department (IPRS).
63. Further, the issuance of passports by the foreign and regional integration ministry still shows a dotted line with the immigration department. Efforts to scatter the passport issuance function needs to be thought through so that the unique immigration service to citizens need to be consolidated in the legitimate government unit.

SOUTH AFRICA

64. The Department of Home Affairs handles the Civic Services and immigration functions.
65. The Civic Services unit maintains the national population register (NPR), manages all records on births, deaths, and marriage, handles applications for citizenship, issuance of identity documents, and processes travel documents including passports.

66. The Immigration Services Unit is restricted to border management, determination of residency status for foreign nationals, issuance of permits, handling refugee affairs, and conducting inspectorate duties.
67. The Immigration functions looks care of permanent residence permits, other permit categories (students, business, work, exchange, retired persons, relative, and medical treatment permits), visas, and refugee and asylum papers.
68. The South Africa case is unique, yet an alternative way of looking at immigration function at the operational and supervisory levels.

UNITED REPUBLIC OF TANZANIA

69. The United Republic of Tanzania has established the National Identification Authority (NIDA) mandated to issue identity cards to Tanzania citizens as well as card for non-citizens in line with immigration laws. The Authority was established in 2008 but has taken an active role in 2016.
70. The immigration department handles passports and travel documents, citizenship, residence permits, visas, and border management.
71. The only classical difference is that the Tanzanian model allows immigration to issue residence permits while allowing the Ministry of Labour to issue work permits. Technically, the immigration needs for foreign nationals seeking to work in the United Republic of Tanzania allows for three players in terms of the documents to be issued: NIDA, Immigration service department, and the Labour commissioner's office.
72. The Tanzania model is close to what Kenya has. In Tanzania, the departments are under the Home Affairs Ministry. Though feeding into each other, the units work independently.
73. In terms of the response, the Tanzania model introduces more functional units given the unique service provided by the ministries, departments, and agencies, unlike the consolidation model that Kenya wishes to espouse.

5.0 PUBLIC PARTICIPATION

74. In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Orders 127(3), the Committee, through local daily newspapers of Thursday, 23rd December, 2021 published advertisements inviting the public to submit memoranda on the Bill. Further, the Committee held consultative meetings on 14th January, 2022, 11th and 12th February, 2022, 17th and 18th February, 2022 and 25th March, 2022 with the State Department for Interior, Ministry of Information, communication and Technology, Department for Immigration, Office of the Data Commissioner, United Nations Children's Fund (UNICEF), Department for Registrar of Marriages, Department for Civil Registration Services, Ministry of Health, National Health Insurance Fund, Department for National Registration Bureau, Refugee Consortium of Kenya (RCK), National Security Social Fund (NSSF), Kenya Revenue Authority (KRA), National Transport and Safety Authority (NTSA), Estonia Embassy and various civil societies organizations. The meetings were held in Mombasa, Naivasha and Nairobi. On Wednesday 23rd February 2022, the Committee conducted public hearing on the Bill in the Mini-Chamber, County Hall, Parliament Buildings. This section contains a summary submission by various stakeholders on specific clauses of the Bill.

75. The following were the various stakeholders who made submission on the Bill as indicated below-

The Huduma Namba Secretariat

76. Citizen data in their various stages of growth and capacities is scattered across myriad inconsistent data sets; duplicity in collection and management; lack of interoperability of government systems; expensive to manage; multiple private sector holding key citizen data and inefficient in know your customer (KYC) enforcement.
77. Huduma Namba would create and manage a central master population repository/database which will be a single source of truth on a person's identity. The database will contain identity information of all Kenyan citizens and foreign nationals residing in Kenya and will serve as a reference point for ease of service delivery to the people of Kenya.
- 78.
79. The Huduma Namba project will ease the process of determination of citizenship, making it difficult for irregular acquisition of documents. It will enhance verification of identity through the use of fingerprints stored on the microchip. It will also ensure security of citizen data.

Coalition of Civil Society Organizations and United Nations in Kenya

80. Long title - Delete "to promote efficient delivery of public services"
Justification: Deleting this phrase will promote clarity on the content of the proposed legislation. The change will ensure the long title remains focused on the registration and

identification purposes of the bill, which are similar enough to be contained in a single piece of legislation.

Coalition of Civil Society Organizations, United Nations in Kenya and Nubian Rights Forum (NRF)

81. Short title - Update the title of the bill to “Registration of Persons Bill”

Justification: The revised title will emphasize the objects, purpose, and content of the legislation. While identification efforts may aid in delivery of services, this bill is not a “service” bill and has little content on service delivery.

United Nations in Kenya and Coalition of Civil Society Organizations

82. That clause 1 of the Bill be amended by inserting the words “and shall come into operation after 48 months from the date of assent” immediately after the phrase “Huduma Act, 2021;

Justification: The law must provide for a multi-year transitional period between the current Registration of Persons Act and the Huduma Act.

Kenya Revenue Authority (KRA) and National Health Insurance Fund (NHIF)

83. 2 – Interpretation

“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 dead or alive;

In the definition of “birth” amend to have a broad definition that includes births that occur before 28 weeks.

Justification: The WHO categorizes preterm births as follows; i) extreme preterm (less than 28 weeks) ii. Very preterm (28 to 32 weeks) iii. Moderate to late preterm (32 to 37 weeks). It is therefore possible for babies to be born before 28 weeks. The present definition is restrictive and does not recognize such births.

National Health Insurance Fund (NHIF)

84. Proposes definition of “birth” as means the complete expulsion or extraction from a mother of a product of conception alive.

Justification: The inclusion of the specific number of weeks for delivery is restrictive since it does not appreciate that some the average length of human gestation period is 280 days, most babies are born between 38 to 40 weeks and any baby born before 37 weeks is considered premature.

Office of the Data Protection Commissioner and Mr. Eliud Matindi

85. Substitute the definition of the word 'biometric' with—

"biometric" has the meaning assigned to it by section 2 of the Data Protection Act, 2019
"biometric data" means personal data resulting from specific technical processing based on physical, physiological or behavioural characterization including blood typing, fingerprinting, deoxyribonucleic acid analysis, earlobe geometry, retinal scanning and voice recognition.

Justification: To ensure consistency with existing laws.

Coalition of Civil Society Organizations

86. "Biometric data": Define biometric data in a more technical sense without referring to specific biometrics.

Another section could specify what types of biometric data are actually needed for purposes of identification; other types of biometric data should not be mandatory nor included in the bill.

The current definition of biometric data is too broad and there is no limitation in the bill about what is necessary for identification versus other functions

Justification: The Data Protection Act, 2019 already provides a useful definition of the term in section 2, which is based on international standards. This definition could be adopted and adapted for the Huduma Bill. However, the definition should continue to exclude DNA or deoxyribonucleic acid as this has already been found to be excessive and unconstitutional by the High Court.

Refugee Consortium of Kenya (RCK)

87. Section 2 The Bill defines 'foundational data' to include biometric and biographical data. The Bill to provide a definition for 'biographical data'.

Justification: Whereas biometric data is defined, there is no definition for biographical data.

Mr. Eliud Matindi

88. Definition and collection of "functional data"

Justification: The planned collection and retention of functional data would be unconstitutional and against Articles 24 and 31(c) of the Constitution. Such collection and retention would have the effect of abolishing the right to privacy in Kenya as the NIIMS database will be transformed into a mass surveillance system for everyone in the country, including through the use of things like face recognition cameras, both publicly-deployed as well as covert ones, to obtain and update of a person's data on the database without the person's consent.

Directorate of Immigration Services, Mr. George Mucee and Shadrack Wambui

89. In the Definition of the word 'NIIMS officer' delete paragraph (b)

Justification: Immigration officers to be retained as immigration officers and not NIIMS officers.

90. Delete the definition of the word 'passport' and substitute with "Passport means a passport issued under the Kenya Citizenship and Immigration Act or by any lawful authority or government recognized by government of Kenya to facilitate international travel"

Justification: The title of the Huduma Bill, 2021 does not mention anything on issuance of passports and travel documents. The bill is therefore a facilitative law. To the contrary, the title of the Kenya Citizenship and Immigration Act, 2011 is specific when it comes to matters of issuance of passports and other travel documents i.e expressly states that among other things the object of the Act is to provide a law on issuance of Passport and other travel documents.

Coalition of Civil Society Organizations

91. "Huduma Namba": Add the word "personal" immediately before "unique"

Justification: The Huduma Namba is a personal identification number and as such its definition should reflect this.

92. Resident individual": Expand the definition to include stateless persons

Justification: The current definition of resident individual excludes stateless persons from NIIMS and the registration processes set out under this Act.

Mr. George Mucee

93. Amend to read that a "Resident individual" means a foreign national who has been granted lawful residency in Kenya under the Kenya Citizenship and Immigration Act

Justification: This is the substantive law on matters Immigration and Foreign National Management including granting of residency and citizenship.

Coalition of Civil Society Organizations

94. Authenticate”: Add definition “Identity”: Add definition

Justification: Despite repeated use of the terms “identity” and “authenticate” in the draft bill, the terms lack a definition. In addition, “authenticate” is used in a broad way (“authenticated by biometrics”) that could open up the use of various technologies including facial recognition due to the lack of a set definition of what authentication means.

United Nations in Kenya

95. Add a definition of ‘sex’ to include: ‘male’, ‘female’ and ‘intersex’.

Justification: Recognition of intersex in legislation is already existent under the Persons Deprived of Liberty Act and the National Police Service, Police Standing Orders, 2017. It is necessary also to recognize intersex persons in this Bill that has far reaching implications on access to public services.

96. “enrolment” means the process of collecting ‘specified particulars’ from a resident individual for the purpose of assigning the Huduma Namba.
Justification: We recommend defining ‘specified particulars’

Office of the Data Protection Commissioner

97. Define “processing” has the meaning assigned to it by section 2 of the Data Protection Act, 2019.

Justification: The term processing under the Data Protection Act, 2019 goes beyond the common usage of the term. This term is used a number of times in Part IV; however, it is not defined. A definition will provide clarity and ensure consistency with existing laws.

98. Substitute the definition of the word ‘personal data’ with “personal data” has the meaning assigned to it by section 2 of the Data Protection Act

Justification: To ensure consistency with existing laws.

Coalition of Civil Society Organizations

99. 3 – Object of the Act

Amend Section 3 to give effect to specific Constitutional and other rights the bill,

including:

- i. Right to a Kenyan passport and any document of registration or identification issued by the State to citizens
- ii. Right to a nationality from birth (and proof of nationality)
- iii. Registration of stateless persons
- iv. Right to birth registration / Universal birth registration

Justification: This Act should not focus on bringing in technology, but about enhancing access to identification and access to proof of nationality in the country. This focus should be reflected in the Objects of the Act. As written, the content of the bill goes beyond the stated objects (i.e., use of NIIMS for the voter register). Currently, none of the Objects reference governance of NIIMS, which is critical given how expansive the system is intended to be and how many areas of life NIIMS will affect.

100. Insert new section

Insert new clause specifying the principles of registration in Kenya. These could be adopted from the Principles on Identification for Sustainable Development.

Justification: Target 16.9 of the Sustainable Development Goals, calls for all UN member States including Kenya, to "provide legal identity for all, including birth registration" by 2030.

National Health Insurance Fund (NHIF)

101. Clause 3 - proposes to add an object as follows;

- (f) Facilitate access to personal data for resident individuals where it can be authenticated for by relevant government agency.

Justification: To facilitate the realization of the Universal Health Coverage, the Ministry will require the information in the NIIMS database to create the comprehensive integrated health information system as mandated by the Health Act.

Mr. Eliud Matindi

102. Clause 3(c) - Provide mechanisms for registration of births, deaths and recognition of a vital event of a resident individual;

Justification: Define vital events

103. Delete the proposed 5 (2) (b)

Justification: The provisions of this clause do not meet the required constitutional standard under any circumstances. It is the duty of the State to produce a physical Huduma Card (for adults) with adequate security features to ensure that its Page 5 of 19 production by or on behalf of the holder can be authenticated without a requirement to cross-reference it with the data held on the primary digital database. The State already has the experience and access to technological means to do this, including through its issuance of current identity cards, passports and currency coins and notes. It, therefore, as required by the Constitution, already have and know of less restrictive and invasive means of achieving the purpose and objects of the proposed Bill. Granting unlimited, open-ended access to undefined agencies carrying out undefined functions which require a Huduma Namba further underlines the unconstitutionality of the provision.

Coalition of Civil Society Organizations

104. New part II

Establishing a governing body for NIIMS should be the first step, prior to the establishment of NIIMS in section 4.

The NIIMS Coordination Committee as proposed in section 65 cannot be responsible for day to day implementation of NIIMS. The Committee, as constituted, is more for general oversight.

Justification: Normal practice is to establish a body then that body is in charge of the system – but part II first establishes a database/register and makes the technology higher than governance institutions and humans. It is not clear how individuals can exercise rights granted in this law. For example, where should one go to rectify or update data.

Kenya Revenue Authority (KRA)

105. Under Section 5(1)(3)(c) expand the scope to enable the NIIMS database to support the issuance of functional administrative information identifier.

Justification: This will enable agencies to deal with specific administrative issues in their operations for example tax base expansion by KRA.

United Nations in Kenya

106. Clause 5(3)(c)(iii): Add “where applicable” after “issue a passport”.

Justification: With the addition of stateless persons and asylum seekers, this clarification will be required.

National Health Insurance Fund (NHIF)

Proposes inclusion of

(v) Support access by specific government agencies for purposes of authentication.

Justification: NHIF 's core business requires personal details of a resident individual in order to provide services; since NHIF relies on data as submitted by the client it is vital to ensure said data is authenticated via NIIMS to ascertain its correctness. This will also ensure harmony of personal data contained in both databases.

Coalition of Civil Society Organizations and United Nations in Kenya

107. Clause 7(2) The Huduma Card should contain limited data on the face of the card. The Huduma Namba, nationality, and resident status of an individual may be excessive information for the card itself. The birth certificate with Huduma Namba should be sufficient for children.

Clause 7(2) should be amended to include issuance of Huduma Namba and Huduma Cards to stateless persons who are present in Kenya. The definition of resident individual must also be expanded accordingly.

Justification: Including all of this information on the face of the Huduma Card is a danger to identity theft or other breach of data.

Mr. Eliud Matindi and Mr. Elias Okwara

108. Delete Clause 7(3)(a)

Justification: The issuing of Huduma Card and collection of biometric details for anyone under the age of eighteen is almost certainly unconstitutional. A person under the age of eighteen years cannot give informed consent to enable collection of their biometric data. In addition, this provision sets children to fail for no fault of their own when, upon reaching the age of six years, their parents or guardians fail to apply for Huduma Card on their behalf.

Kenya Revenue Authority (KRA)

109. Clause 8 – Proof of Identity

We propose for deletion of some contents and amendment of the clause as below.

There is a typographical error with the word 'to' missing between the words 'access' and the word 'any'. In addition the use of the words 'to conduct private transactions' is not necessary. The Clause should end at official identification.

Justification: The presentation of the card may be proof of identity to facilitate access of any public service which may require an official identification to conduct both private and public transactions as well.

Coalition of Civil Society Organizations and United Nations in Kenya

110. The language in section 8 should be amended to be clearer that while Huduma Namba may be sufficient proof of identity to access a public service or conduct a private transaction, it is not mandatory for one to access goods and services. Related sections, such as section 9, may also need similar adjustment.

Similarly, add a provision that individuals who might have enrolled in NIIMS but face difficulties with authentication of their data should not be denied services.

Justification: Lack of proof of identity should not deny anyone access to services, especially emergency services. In addition, the right to healthcare, education, voting, etc. are universal rights and thus related public services should not be contingent on a Huduma Namba or Huduma Card.

Mr. Eliud Matindi

111. Delete clause 8 and substitute the following-

The presentation of the Huduma card issued under this Act shall be sufficient proof of identity to facilitate access to any public service which may require an official identification.

Justification: revise this clause to make it clear that presentation of a Huduma Card shall constitute sufficient proof of identity by or on behalf of the holder to facilitate access to any service which may require official identification.

Coalition of Civil Society Organizations

112. Clause 9 – Primacy of the Database

The Bill should provide a procedure for the verification and authentication of information from the Database by 3rd party entities that are either government or non-government. There should be an accreditation process for institutions that seek to verify and authenticate information from the database, and the fees for doing so, if any, clearly prescribed.

Further, the bill should create a system for horizontal integration of existing government databases e.g. IPRS, NHIF, and NSSF, NTSA etc. to facilitate the transmission of information and to enhance coordination. This should enable all eGovernment services to access the existing information that is already collected or requested by other services.

The Bill should provide procedure, circumstances and limitations on the access, use, retention and disclosure of personal information by 3rd parties accessing the database. Or permit the making of rules to facilitate the same.

The Bill should provide the framework for the management of the eCitizen Portal (ecitizen.go.ke) which is the public window for enabling online access to government services. The portal should be managed by the proposed Huduma Authority. The procedure for access to the database, including who is permitted to access is not provided for in the Bill.

Justification: Currently, telecoms e.g. Safaricom, Mpesa, banks, financial and e-commerce institutions that will need to authenticate institutions already verify details in the IPRS register/database. Currently, the eCitizen portal and Huduma Centres have no legal framework for their operations, yet their services are central to the envisaged purpose of the Huduma Namba Bill. These services should be centralized and managed by a single institution offering the Huduma Namba services.

National Health Insurance Fund (NHIF) and Mr. Eliud Matindi

113. Clauses 9 - proposes the deletion of the term “at first instance”

Any government agency which requires personal particulars of a resident individual in order to provide services shall, rely on the NIIMS database to authenticate the foundational data of such individual.

Justification: Making NIIMS authenticator at the first instance of functional data will restrict access to quality and timely healthcare to beneficiaries and may ultimately hinder the realisation of UHC. It is worth noting that at the moment NHIF has registered approximately 13 million principal members and about 26 million dependants across the country against approximately 11.6 million Huduma cards printed. Furthermore, out of the 11.6 million cards printed, only 5.6 million are NHIF members with their cards printed.

Coalition of Civil Society Organizations and Nubian Rights Forum (NRF)

114. Part III - Add a section on initial enrollment and a 3 to 5 year transition period, as NIIMS is a new system.

Proposed section

“Transition period” means the period between commencement of this Act and three years after the publication of this Act.

The Commissioner shall monitor and oversee the transition process from registration under the repealed acts into the NIIMS database.

The current draft bill does not adequately acknowledge the existing registration and identification laws and systems and what is required to transition from one system to the next effectively.

The law must provide for a transitional process and period for enrollment into NIIMS, in particular for those without registration documents and for those in the process of obtaining an ID card under existing laws. The law should reference existing documents and how people holding birth certificates and ID cards can automatically transition into NIIMS, with appropriate safeguards. Likewise, the law should provide the period for the phasing out of all previous personal identification numbers issued by government institutions.

The Bill should articulate the status of the Integrated Population Registry System (IPRS) in regards to the NIIMS system. It should indicate whether the two systems shall operate concurrently, or whether one shall subsume the other. Also, provide for how the personal data in the IPRS shall be handled, stored or destroyed.

Justification: Need a multi-year (3 to 5 year) transition from the current Registration of Persons Act to the Huduma Act. A transition period, in which the focus is expanding coverage of birth registration and ID card issuance, prior to NIIMS enrollment, will help address challenges of those likely to be excluded from the system. The government must also be responsible for ensuring everyone is registered, including through conducting outreach and implementing mobile registration campaigns at the village level, as opposed to expecting people to avail themselves. Expanding coverage first is particularly important given the heavy time, distance, and cost burden that exists in the current registration and identification system plus additional obstacles faced by persons with disabilities, people in remote areas, families and children living on the street, among others – leading many Kenyans to lack proof of identification at present. The transition period will also allow for intensive public education on NIIMS and the process of enrollment and using the new Huduma Namba.

Coalition of Civil Society Organizations, Nubian Right Forum (NRF) and Laura Goodwin

115. 10(1)(b) delete “such documentary proof as may be required”

Insert a new sub clause

10(2) If an applicant meets the requirements set out in section 10, the bill should state “the NIIMS Officer shall enroll” the adult applicant.

Need a multi-year (3 to 5 year) transition from the current Registration of Persons Act to the Huduma Act.

Justification: A transition period in which the focus is expanding coverage of birth registration and ID card issuance, prior to NIIMS enrollment, will help address challenges of those likely to be excluded from the system. The government must also be responsible for ensuring everyone is registered, including through conducting outreach and implementing mobile registration campaigns at the village level, as opposed to expecting people to avail themselves. Expanding coverage first is particularly important given the heavy time, distance, and cost burden that exists in the current registration and identification system plus additional obstacles faced by persons with disabilities, people in remote areas, families and children living on the street, among others – leading many Kenyans to lack proof of identification at present. The transition period will also allow for intensive public education on NIIMS and the process of enrollment and using the new Huduma Namba.

Mr. Eliud Matindi

116. Clause 10(1)(b)

As required by Article 24 of the Constitution, the clause must specify, either on the face of the statute or provide that, by Regulations, documentary proof that will be required to satisfy provision’s requirements.

117. Clause 10(2)

Specifically provide under what circumstances a person shall be required to provide their personal data and that data processed, notwithstanding objection of the data subject. This must include justification for each type of data collected and processed.

Justification: Article 31 (c) and (d) of the Constitution, as read together with Section 26 (c) of the Data Protection Act, 2019, entitles a person to object to the processing of part or all their personal data. This includes information required for the NIIMS database.

118. Clause 11(a)

Delete the word “immediately” and substitute therefor the words “within a reasonable time”
Justification: The expression “immediately” fails to meet the requirements of Article 24(1-3) due its vagueness, which renders it meaningless and unenforceable. The Bill defines a “new-born” as a human person from the time of birth through the twenty-eight days of life.

119. Delete Clause 11(b)

Justification: requirements for regular and routine updating of minors' details on the NIIMS database is unconstitutional.

Coalition of Civil Society Organizations

120. Add a time limit of 30 days in both Section 12(1)(b) and 12(2)

Add more information on how to exercise right of appeal.

Justification: Without a time limit, applicants may seek enrollment into NIIMS and be left pending for months or years while waiting for a response.

Mr. Eliud Matindi, Solinka Nangendo and Joshua Lolecho

121. Clause 12

Given the very extensive and far-reaching invasion to the right to privacy as proposed in the Bill, it is virtually impossible how anything other than an independent commission or office, having the status and powers of a commission under Chapter Fifteen of the Constitution, can meet the requirements of Article 24 of the Constitution. Vesting the powers of administration to the Principal Secretary provides no safeguards to the personal data and would, instead, be a licence for wholesale abuse and effective abolition of the right to privacy in Kenya.

Mr. Eliud Matindi

122. Delete Clause 13(2)

Justification: The issuing of Huduma Card and collection of biometric details for anyone under the age of eighteen is almost certainly unconstitutional. While it is legitimate to record a child's birth on the NIIMS database (using the least possible amount of their personal data – for example, given and family names, date and place of birth, parents' details) and issue them with a birth certificate, no further processing of the child's personal data should be undertaken (other than upon reporting of the child's death) until they reach the age of eighteen and, hence, able to exercise their rights under Article 31(c) and (d), as read together with Section 31(1)(a) of the Data Protection Act, 2019.

United Nations in Kenya

123. In clause 13(3) delete “to a citizen”

Justification: As written, the initial issue of the card is only free for citizens – not for foreigners, refugees, asylum-seekers or stateless persons – which may put an undue burden on vulnerable populations to obtain a Huduma Card under NIIMS. Initial issuance should be free for all enrollees regardless of nationality status.

Mr. George Mucee, Refugee Consortium of Kenya and Mr. Philip Maiyo

124. Amend Clause 13(3) - By inserting the words “or a refugee” immediately after the words “to a Citizen”

Justification: They are vulnerable persons in need of protection.

United Nations in Kenya

125. Clause 13 (3) provides that the initial enrolment is free, and clause 15 (1) clarifies that subsequent replacements shall be charged.

They propose that the Bill should explicitly make it clear that any fee imposed for replacement of Huduma Card shall be reasonable and shall not impede access to the card.

Justification: Given the far reaching consequences of not having a Huduma Card, the Law should make it clear that fees charged to replace the card shall not impose a disproportionate burden on the poor, who are also the ones who are least likely to afford private services.

Coalition of Civil Society Organizations

126. Delete section 14, in line with recommendations above on section 7, to eliminate the Minors’ Huduma Card.

If the Minors’ Huduma Card remains, this section should be improved by:

In 14(a), remove “verify and update” Consider adding a mechanism for informed consent as a minor transitions to an adult, otherwise children, once adults, have no choice in this process.

Justification: Given that children will already have a Huduma Namba and birth certificate from birth, the rationale for a Minors’ Huduma Card is not clear. “Verify and update” is too vague and allows too much unregulated discretion to NIIMS Officers There should be a separate decision making process as the child becomes an adult in regards to their enrollment and data.

127. Delete Clause 14

Justification: The issuing of Huduma Card and collection of biometric details for anyone under the age of eighteen is almost certainly unconstitutional. While it is legitimate to record a child's birth on the NIIMS database (using the least possible amount of their personal data – for example, given and family names, date and place of birth, parents' details) and issue them with a birth certificate, no further processing of the child's personal data should be undertaken (other than upon reporting of the child's death) until they reach the age of eighteen and, hence, able to exercise their rights under Article 31(c) and (d), as read together with Section 31(1)(a) of the Data Protection Act, 2019.

Coalition of Civil Society Organizations and United Nations in Kenya

128. Consider adding a section 15(3) indicating the waiting period/time for replacement of lost/worn out cards.

Justification: With no clear timelines, individuals might wait forever for the replacement of the very vital document.

United Nations in Kenya

129. The law should prescribe an interim document that must be issued for purposes of enabling a person to participate in daily life when they lose a Huduma Card as the registrar processes the replacement.

Justification: Persons without identification documents are often subject to harassment and extortion by security officers in street operations and in urban informal settlements or slums. Presentation of an ID number is often not enough to spare a person from extortions and hence the documentation is essential.

Mr. Eliud Matindi

130. Delete clause 16(1)

Justification: How will the NIIMS officer verify the information provided? This implies further processing of personal data, either of the informant or other linked persons or other sources of data about the informant. Under these circumstances and, in the absence of the consent of all the data subjects whose data would be processed in the verification process, the process of verification of the information provided by the NIIMS officer would be unlawful processing of personal data and against Article 31(c) and (d), as read together with the Data Protection Act, 2019.

131. Delete clause 16(3)

Justification: this proposal fails to meet the test set out in Article 24 of the Constitution. No justification is given why the minor's personal data is required. In addition, the provision is simply setting up children in Kenya to fail due to other people's acts or omissions, including their parents and/or guardians. Once a child has been enrolled onto NIIMS, either at birth or later, they are entitled to enjoy their childhood without being harassed by the State, until they reach the age of eighteen years, upon which they can give their informed consent about the collection any more personal data by the State for the purposes of NIIMS.

Coalition of Civil Society Organizations

132. Clause 16 Update of Particulars

Add timeframe in which updates must be done.

Specify which particulars require updating.

Justification: A timeframe will better guide both individuals (such as parents and guardians) and NIIMS Officers in following their respective duties.

Schedule 1 lists a wide range of data; this places an unnecessary burden on both individuals (on whom the duty is placed) and the state for lack of clarity on how to administer such a broad provision.

"Any other justifiable cause" invites arbitrary action. The other provisions sufficiently cover justifiable cases for cancellation and adequately safeguard against fraud and corruption.

There should be a very high threshold to cancel someone's enrollment, due to the severity of impacts that would result.

There must be an internal review mechanism or other grievance redress mechanism set up in order to deal appeals on enrollment and cancellation decisions.

133. Clause 17. Cancellation of Enrolment

Delete clause 17(1) (c)

In 17(4) (b) change "may" to "shall"

The law should specify what happens to data of individuals whose registration is cancelled – is it kept, archived, deleted?

Justification: "Any other justifiable cause" invites arbitrary action. The other provisions

sufficiently cover justifiable cases for cancellation and adequately safeguard against fraud and corruption. There should be a very high threshold to cancel someone's enrollment, due to the severity of impacts that would result. There must be an internal review mechanism or other grievance redress mechanism set up in order to deal appeals on enrollment and cancellation decisions.

National Health Insurance Fund (NHIF)

134. Clause 17 (4) - proposes the re-ordering of the section to read:

A person aggrieved by a decision under this section may –

- a) Explore any internal review mechanisms as may be provided;
- b) Pursue Alternative Dispute Resolution mechanisms;
- c) Appeal to the High Court.

Justification: Internal dispute resolution mechanisms must first be exhausted before referring a matter to court. Further the use of ADR is in line with the spirit of the Constitution to promote alternative forms of dispute resolution in order to enhance access to justice, reduce backlog of cases and resolve disputes expeditiously.

Refugee Consortium of Kenya

135. The law needs to go a step further to make provision that a person whose enrolment has been cancelled has an option of applying for it again.

Justification: If the provision is left as it, many persons will be unable to access government services if their enrolment has been cancelled.

Eliud Matindi and Philip Maiyo

136. Delete Clause 17

Justification: This clause is out rightly unconstitutional. Given the very significant effect to a person of the cancellation of their details on NIIMS (which, for all intents and purposes, will mean that the person ceases to exist), this power should only be exercised upon the issuance of a court order. Even then, given the provisions of Articles 12, 14 and 17 of Constitution which prohibits deprivation of citizenship of a Kenyan citizen by birth, no action whose effect is to violate that provision can be constitutional.

Coalition of Civil Society Organizations

137. Amend Clause 18 by adding specific limitations on how long data can be stored and on access to data.

Justification: The provision currently gives an extremely broad allowance for agency access.

Mr. Eliud Matindi

138. Delete Clause 18

Justification: This clause, like Clause 9, is unconstitutional. Its effect is to establish an all-encompassing surveillance state where every dealing between a person and the State is recorded on a centralised database and the details held for an indefinite period. It has no provision for consent by the data subject and, implicit to the provision is that refusal to submit to the requirement would lead to no service being provided. This clause directly contradicts Clause 8 which provides that presentation of Huduma Card issued under the Act is sufficient proof of identity for all purposes. Further, this Clause violates Section 30(2) of the Data Protection Act, 2019, which provides that personal data provided for one purpose can only be further processed for the same purpose. Any government agency other than NIIMS cannot therefore lawfully share with NIIMS the personal data of persons collected as proposed by the clause.

Coalition of Civil Society Organizations and United Nations in Kenya

139. There are inconsistencies in clause 19 and 20 that must be clearly addressed in order to support universal birth registration. The government should register the birth of all children born in Kenya – not only those who are resident individuals and/or whose parents have a Huduma Namba.

Justification: NIIMS is a register of 'resident' individuals but not everyone in Kenya is captured under that term. While here the bill states in section 19 the births all children in Kenya will be registered under NIIMS, the definition of resident individual in section 2 and the particulars for registering a birth in section 20 limit whose birth can actually be recorded. These provisions undermine universal birth registration.

140. Delete Clause 19

Justification: This clause directly contradicts unconstitutional Clause 11(a) above. The time period given for registration of a birth under this clause (within ninety days), is more humane and better reflect the reality of the life immediately after the birth of a child.

Coalition of Civil Society Organizations and Laura Goodwin

141. Clause 20 Particulars of Birth

What happens if the nationality of parents is not known or cannot be proven? The law should provide options or alternatives to ensure the birth is still registered properly.

Justification: As the particulars require the nationality of the father and the mother, section 20 could impact the ability of a child to receive a birth certificate and/or have their own nationality questioned, should the nationality of one or both parents be unknown or unproven.

Office of the Data Protection Commissioner, United Nations in Kenya, Eliud Matindi and Philip Maiyo

142. Clause 20. Particulars of Birth - Amend the provision by deleting the following particulars: type of delivery, and weight at birth; previous births, if any; age of the father and mother.

Justification: Reduce the particulars being collected during the universal registration of the Birth to what is relevant to the purpose of registering the Birth. This will be in keeping with the Data Protection Principle of data minimization.

National Health Insurance Fund

143. Clause 20 sub-clause 2(a) - proposes to delete the word “sex” and replace with “gender”. Further anywhere else in the bill where the word sex appears then it should be replaced with gender. Secondly, include “name” of the child as one of the requirements in 20 (2) (a).

Justification: The use of the word sex connotes that a child can either be male or female disregarding the possibility of a child being intersex. Therefore, the use of gender captures all three instances without exclusion or discrimination.

Mr. Eliud Matindi

144. Amend clause 20(2) in the definition of “new born” to mean a human infant from the time of birth through the ninetieth day of life.

Justification: There is confusion and contradiction between this clause and the definition of “new-born” in Clause 2 of the Bill. Whereas Clause 2 defines new-born as someone from birth through the twenty-eight days of life. Yet, Clause 20(2)(a), as read together with Clause 19(1) provides that a new-born may be registered to NIIMS up to ninety days after birth.

Amend clause 20 by deleting subclause 2 and substituting therefor the following;

(2) The particulars referred to under subsection (1) include—

- a) in regard to the new-born, the sex, date and place of birth, type of delivery, any disability and weight at birth; and
- b) in regard to the mother, the name, age, usual place of residence, nationality, Huduma Number and previous births, if any; or
- c) in regard to the father, the name, age, usual place of residence, nationality and Huduma Number.

Justification: What will happen to the requirement to register the new born within ninety days of birth while any dispute about the new-born's paternity is being resolved?

Mr. Phillip Maiyo

145. Amend clause 21 By inserting the words “left blank and only filled” immediately after the words “the father shall”

Justification: Mandatory requirement that the person giving a notification of birth must approach the court before completing the registration of birth.

Coalition of Civil Society Organizations and Office of the Data Protection Commissioner

146. Clause 23 should allow late registration with no penalty if there is a reason.

Justification: A penalty or denial of late registration punishes a child for something that is not their fault and locks the child out of the system. In most cases these penalties are paid by parents and guardians only without recognizing the fact that some delays are caused by the administrative system - such as currently when birth notification returns from a health facility arrive at Civil Registry late - and the applications become late applications despite the parent/guardian completing all steps on time.

Kenya Revenue Authority

147. Clause 23 – Late enrolment of child - On penalty for late registration, amend the provision to give power to the designated NIIMS office to waive the late registration penalty.

THAT Clause 23 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) —

(4) Regulations prescribed under this section shall provide for circumstances where such penalty shall be waived.

Justification: The penalty is likely to punish families from low income areas and in the rural areas who are the ones likely to give birth at home and not at health facilities. The negative

effect might be that instead of encouraging registration, it might lead to non-registration at all where poor families elect to avoid paying the penalty. The intention of the law is to register everyone.

National Health Insurance Fund

148. Clause 24 - proposes inclusion of (f) Midwife or community health worker.

Justification: The proposal in the Bill implies that every birth in Kenya happens in a facility whereas in reality enumerable births happen in at home with the assistance of midwives. Thus limiting the categories of persons to those proposed in the bill will reduce will reduce the effectiveness of the registration efforts.

Coalition of Civil Society Organizations

149. Amend 25 so that the person who found the child should give information they have to police or those in whose charge the child is placed, but not necessarily have burden to register them in NIIMS.

Add a provision to waive the fee, time limitation, and other requirements for late registration so that section 23 does not apply in full to foundlings.

THAT, Clause 25 of the Bill be amended by inserting the following subclause immediately after subclause (2)-

(3) Requirements under section 23 (3) shall not apply in regard to registration of a foundling-

Justification: Shifting responsibility for registration to the person who found the child is too high of a burden, and may lead to less assistance for foundlings and/or result in unregistered foundlings. Without a waiver, section 23 may prevent the late registration of a foundling.

Mr. George Mucee

150. Amend Clause 25 by Inserting new subclause (3) to read-

(3) No child can be registered by a NIIMS Officer whose origin and identity is in question without an order from the Children's court in accordance with the provisions of section 9 of the Kenya Citizenship and Immigration Act.

Justification: The proposed amendment will make the bill align with the Constitution and the existing laws on matters on foundlings.

Mr. Eliud Matindi

151. Clause 25(1) Where any child for whom registration is sought under this Act is a foundling, the person in whose charge such a child is placed shall provide the following information to facilitate the child's registration-

(a) the name and address of the person who has custody of the foundling or the child.

152. Amend Clause 26 by deleting huduma namba

Justification: Inclusion of the Huduma Namba of the parents or guardians of the child in the birth certificate of the child is an unconstitutional revelation of the personal data of the parents or guardians of the child. The purpose of this provision, like many in the Bill, is to abolish the right of privacy in Kenya by unconstitutionally.

Coalition of Civil Society Organizations and Laura Goodwin

153. Amend clause 27 Update of Particulars of a Child to specify which particulars require updating and in what timeframe, in order to better guide parents of enrolled children and NIIMS Officers. Refer to First schedule or even more narrowly defined set of particulars if possible. Remove "continuous basis"

Justification: This language of "attainments and other specified vital events" is usually used in clinic cards – and does not appear in the first Schedule. The phrases "developmental milestones and other specified vital events" as well as "on continuous basis" are vague and impose an unclear and impractical duty on parents and guardians.

Office of the Data Protection Commissioner

154. Amend clause 27 to include a new provision stating that the update of the particulars shall at be no cost to the persons applying for the update (parents or guardians).

Justification: The Data Protection Act and regulations 2020 and 2021 provided that the change of particulars being an update, rectification deletion of false or misleading data should be done at no cost to the data subject.

Mr. Eliud Matindi

155. Delete Clause 28(b)

Justification: Provide for regulations in accessing adoption certificates

Coalition of Civil Society Organizations and Eliud Matindi

156. Delete clause 29

Justification: The need for a Minor's Huduma Card is not clear enough to justify another NIIMS registration at age six. Birth certificates and Huduma Namba issued at birth can still be used for proof of identity by children below 18 years. At six years, reliable biometrics cannot be captured nor can informed consent be given by a child.

Office of the Data Protection Commissioner

157. Clause 30 Universal registration of deaths - Amend the provision to allow for the registration of the death upon the discovery of the occurrence – the death

- (1) Every death occurring within the country shall be registered through the NIIMS in the prescribed manner within thirty days of the discovery of the occurrence.

Justification: The occurrence of a death and the discovery of a death are two separate events. Requiring the registration of the death upon occurrence as opposed to the discovery of the same will place a heavy burden on the person expected to register the same, given that the occurrence of the death is out of their control. This section should also be lined to section 36 of the Bill on Late registration of death.

158. Delete Clause 30 sub-clause (3)

Justification: Charging a fee for late registration of a death will merely lead to the death not being registered, thereby defeating the objects and purpose of the Bill and the NIIMS database. Even more so as, in the case of death registration, the person affected would not be around to be punished by the State.

National Health Insurance Fund

159. Amend clause 37 by replacing “designated officer with “system”

Justification: This shall remove the element of human intervention at this level since the process is automated.

Coalition of Civil Society Organizations and Eliud Matindi

160. Amend clause 37 to specify what happens to the data of a deceased individual after their death is registered in NIIMS

Justification: The current bill does not specify whether a person's data is kept, archived, deleted, or handled in another way after they are registered in the system as deceased. It is

also not clear who would be able to access the certificate of death mentioned in section 39 and for how long access to the certificate would be possible.

Coalition of Civil Society Organizations

161. Clause 39 Failure to register death - In practice, what will it mean to seek out a NIIMS Officer to register a death? Is it feasible within just 30 days?

Justification: Current practice is that one can seek a burial permit at a very local level, then proceed to bury a body and use the burial permit to process a death certificate. The bill would require one to seek out a NIIMS Officer. How decentralized will the NIIMS administration be? Will this requirement put a burden on an applicant – particularly concerning as failure to register a death is an offence.

Directorate of Immigration Services, Mr. George Mucee, United Nations in Kenya and Shadrack Wambui

162. Almost the entire Part V of Huduma Bill, 2021 is lifted from Part V of Kenya Citizenship and Immigration Act, 2011. Bill Proposes therefore to repeal the entire s.41 to s.45 of the Act.

Justification: The Primary role of a passport and travel documents is to facilitate international travel. Passports and travel documents have function relevancy to other immigration functions which do not interact with NIIMS i.e Border management. The Huduma Bill, 2011 does not define travel documents but limits itself to passports only. The need to harmonize the Kenya Citizenship and Immigration Act, 2011 in line with the objective of ensuring Huduma Card and Huduma Namba are used in applications for a Passport and travel documents. The Passport is a secondary document and not primary document and its production is purely reliant on the birth certificate and ID cards, the same as the driving license. Some types of passport mentioned have become obsolete i.e East Africa Passport. Immigration officer to be designated as NIIMS officers for purpose of accessing the NIIMS system in processing passports and other travel documents.

Coalition of Civil Society Organizations

163. Clause 40 Entitlement to a Passport - Clarify in the bill if other documents (birth certificate, Huduma Card) are also evidence of citizenship – this is not yet explicit in the bill.

Justification: In the bill, only a passport (in section 40(3)) is explicitly noted as evidence of citizenship. Given the cost of a passport and the fact that many Kenyans do not possess a passport, it would be useful to clarify in the bill if other documents – such as a birth certificate or a Huduma Card, both of which will include the person's nationality on the face of the document – are also evidence of citizenship, as they will be more accessible.

164. Delete clause 41(4)(b)

Justification: "Make any further verification as may be necessary" is too vague and allows too much unregulated discretion to NIIMS Officers in processing an application or a passport.

165. Delete clause 45(1)(a)

Justification: While we do not yet know how simple or burdensome updating particulars in the NIIMS database will be in practice— the bill states passports can be rejected for lack of updates.

166. Substitute section 46 with the following: "The processing of personal data shall be carried out in accordance with the Data Protection Act, 2019."

Justification: To enhance clarity.

167. Clause 47. Access to Information - Legitimate interest of collecting and storing data must be stated. Provide all individuals the right to access personal information about themselves, including how the information has been used or disclosed. Add time for response to a data request for a copy of particulars e.g. upon request, or within 30 days.
Add a time limitation for data storage;

Define and limit who has authority to access data;

Limit the collection/storage and access to metadata – no metadata should be collected.

Provide a procedure for obtaining the prior, informed consent of the individual prior to the collection and processing of their personal data. The procedure should include a process for withdrawing consent.

Justification: This Act should state what the legitimate interest is for keeping data as this is a limitation to the right to privacy. (and whether it's all data or some data like biometrics or data of the deceased will continue to be stored), sharing of data with third parties. Is data held in perpetuity? If so, is all data treated the same or are there different categories of data? (For example, foundational data versus Record History and Registration History as included in Schedule 1)

Mr. Eliud Matindi, Elias Okwara, Caroline warui and Amnesty International

168. Amend Clauses 48. - Insert a new subclause (3A) Data shared to another entity or agency under this Act shall be done at the request of the data subject.

Justification: Any personal data in the NIIMS database cannot be shared or disclosed for purposes other than for which it was provided for without the express purpose of the data

subject. Article 31(c) of the Constitution protects every person's information relating to their family or private affairs unnecessarily required or disclosed. This is further reinforced by Section 30 of the Data Protection Act, 2019, including Section 30(2). Whether a requirement or disclosure of such information is necessary, including under the terms of Article 24 of the Constitution can only be judged by the data subject at the time of the request or requirement.

Office of the Data Protection Commissioner

169. Amend Clause 48 to include a provision that requires all entities receiving any personal data to be compliant with the Data Protection Act and that a data sharing agreement be signed.

Justification: In relation to the sharing of foundational data with a private entity for purposes of verification, provide for the requirement of the private entity to sign a data sharing agreement prior to the sharing of the data. To ensure compliance with the Data Protection Act, 2019.

Coalition of Civil Society Organizations

170. Add a clause 49(c) that provides for the conduct of regular operational and institutional risk assessments.

Justification: If designed and implemented properly, operational and institutional risk assessments (including periodic Data Protection Impact Assessments) can reduce the risk of data breaches and intrusion of privacy both prior to establishing a system such as NIIMS as well as on an ongoing basis while the system is operational.

National Health Insurance Fund

171. Clause 50 Subsection (3) proposes the inclusion of the word “validate” before “rectify”. Where erroneous functional data is linked to the NIIMS database, the designated NIIMS officer shall cause the agency to which the data relates to validate and rectify their records and submit the rectified data without delay.

Justification: Rectification of a person's data without validation may prejudice the validity of the data presented since it needs to reflect the current true state of affairs.

Coalition of Civil Society Organizations

172. Add new section 54 in Part VI
Add an explicit clause on the protection of persons and/or organizations that expose instances of data misuse.

Justification: The law will be ineffective if it cannot protect the people supporting and holding to account the Office of the Data Commissioner, NIIMS Officers, and others with access to NIIMS data.

Part VII – Offences and Penalties

173. The bill should clearly state what offences may be committed by NIIMS Officers and what the consequences or penalties are. Include corruption and failure to/delay in issuing a Huduma Namba as potential offences of NIIMS Officers.

Justification: There is too much emphasis on offences of individuals rather than the NIIMS Officers who have more power and more access to sensitive data in their roles.

174. Clause 58. Interference with the NIIMS database - Consider increasing the penalty listed for someone who without authorization accesses or secures access to the NIIMS database, damages data in the NIIMS database, disrupts access to the NIIMS database, or another offence under section 58.

Justification: Given the sensitive and personal nature of the data to be stored in the NIIMS database, unauthorized access or damage to the data should carry a heavier penalty than only 100,000 Shillings or one year imprisonment.

175. Delete clause 59

Justification: Offences should be focused on actions that are fraudulent or done in bad faith – but not for actions such as failing to register, not updating details, or not providing information.

Mr. George Mucee NRB, NSSF, UN, Civil Societies and Amnesty International

176. PART VIII- ADMINISTRATION

- a) Create an Agency and a Director General who runs the Agency.
- b) Create a NIIMS Directorate to be headed by a Director-General;
- c) The Directorate to merge the three departments namely-
 - (i) Births and deaths;
 - (ii) National ID; and
 - (iii) IPRS.
- d) Delete any reference to the Principal Secretary with the Director General.
- e) Delink Department of Immigration and Citizenship because it has distinct roles

Justification: Making the PS responsible for the day to day administration of NIIMS is stretching it too far and goes against the spirit of the constitution where power has been centralized in the spirit of devolution and placed on various state agencies rather than in one individual. To provide for a clear framework for institutional mandates and accountabilities to ensure effective leveraging on NIMS to support provision of Social Security.

Mr. Eliud Matindi

177. Amend clause 60 to provide for an entity-

Justification: As previously stated, to meet the requirements of the Constitution, including Articles 24, 31(c), and 35(2), of the Constitution, the administration of the NIIMS database would require to be done by a commission or independent office established under Articles 59(4) and (5) and Chapter Fifteen of the Constitution.

178. Clause 63 should specifically reference Kenyans who lack proof of identification, people with poor biometrics, and stateless persons.

Justification: This section is not sufficient to promote inclusion in practice, especially given lack of universal coverage of Kenya's current birth registration and national ID systems as well as a history of deeply embedded discrimination in the identification system.

Coalition of Civil Society Organizations

179. Clause 65. The NIIMS Coordination Committee - Change committee to a commission or agency with more administrative power. Transfer all the powers bestowed on the Principal Secretary to the commission or agency. They propose the establishment of an independent institution as a body corporate of similar status as a Commission, named and styled as the National Identification Authority or Huduma Namba Authority, complete with a Board and Secretariat to implement the Act. The proposed NIIMS Committee in the Bill can be the Board of the Proposed National Identification Authority. The Board should include representation of other relevant agencies, entities, and stakeholders:

- a) Data Protection Commissioner
- b) Ministry of Social Welfare
- c) Ministry of Health
- d) Department of Refugee Affairs
- e) Civil Society Organizations
- f) Kenyans affected by challenges accessing proof of identity
- g) Office of the Attorney General
- h) Kenya National Commission on Human Rights
- i) Representative of private sector organizations
- j) National Gender and Equality Commission

Exclude the Chief Executive Officer of the Independent Electoral and Boundaries Commission from the list of Committee and/or Board Members.
Provide for the Secretariat of the Commission or Agency for the Authority, including among others:

- a) Appointment of the Director-general
- b) Qualifications of the Director-general
- c) Functions of the Authority
- d) Powers of the Authority
- e) Vacancy and removal of the Director-general
- g) Staff
- h) Remuneration
- i) Oath of office
- j) Confidentiality
- k) Funding
- l) Audit

Justification: The committee currently has a large mandate and needs to be established with the proper administrative power, potentially also reporting directly to Parliament. The draft bill bestows sweeping powers with regard to the administration of NIIMS on a single individual, the Principal Secretary, which should instead be held by a commission or agency. The current governance structure for the implementation of the Act, is weak. Civil registration and identification are vitally important processes for the country and cannot be overseen by a single individual. It requires an entire organizational structure which must be established within the law, and not left to the discretion of the Permanent Secretary.

Registrar General – Office of the Attorney-General and Department of Justice

180. Amend Clause 65 to include the Solicitor General

Justification: Since marriages and adoptions records will form part of NIIMS database, and the records are domiciled in the Office of the Attorney General, the clause should be amended to include the Solicitor General.

National Health Insurance Fund

181. In clause clause 65 - NHIF proposes the inclusion of the chief Executive officer of the National Health Insurance Fund.

Justification: The kind of data handled by NHIF is mostly functional data therefore representation in the NIIMS coordination committee is crucial to ensure seamless cooperation between the two agencies. Furthermore, NHIF relies on the Huduma Number database to effectively role out UHC and should be represented in the committee.

Coalition of Civil Society Organizations

182. Clause 66. Functions of the Committee - Add establishment and oversight over appeals and grievance redress mechanisms for all NIIMS-related processes (enrollment, updating of particulars, issuance of birth certificate, issuance of Huduma Cards, issuance of passports, issuance of death certificates, etc.)

Justification: Given the implications of not being enrolled in NIIMS, such as denial of public services or inability to complete private transactions, there must be an internal review mechanism or other grievance redress mechanism set up in order to deal with appeals on enrollment and cancellation decisions as well as issuance of various related documents.

Registrar General – Office of the Attorney-General and Department of Justice

183. Clause 70 – Verification of various databases - The Section is agreeable and wholly supported. It provides for validation of foundational data under the custody of NIIMS.

Justification: Immediate digitization of marriage records and automation of marriage processes so as to provide a link with the NIIMS database.

Directorate of Immigration, Mr. George Mucee and UN

184. THAT, Clause 70 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (j)—

“(k) issuance of passports and other travel documents;
(l) Registration of foreign Nationals”

*Justification: passports and other travel documents to be issued using information on the NIIMS database)
(foreign nationals registration to be undertaken using information on niims database)*

Mr. Eliud matindi

185. Delete Clause 70

Justification: This clause is unconstitutional. As previously stated, Article 31(c) protects a person's information from being unnecessarily required or revealed. Personal information cannot be automatically processed without the explicit consent of the data subject. Information provided for the NIIMS cannot be used for any purpose other than to generate the Huduma Namba. Production of a Huduma Namba is sufficient proof that the details

recorded on the card are authentic without any further need to confirm them by accessing the NIIMS database.

Solinka Nangendo and Joshua Lolecho

186. Delete Clause 71

Justification: The departments have served the public well and the services they provide are at the core of access to key government services such as tax system, electoral system etc

Mr. Eliud Matindi

187. Provide in regulations the Data Protection Impact Assessments as provided by Section 31, Data Protection Act, 2019.

Justification: The Act cannot commence and, hence, the provisions of the clause implemented unless and until the requirements of Data Protection Impact Assessments as provided by Section 31, Data Protection Act, 2019, have been complied with.

Directorate of Immigration, Mr. George Mucce and UN

188. THAT, Clause 72 of the Bill be amended by deleting sub clause (3)

THAT, Clause 72 of the Bill be amended in subclause (4) by deleting the words “the Department of Immigration” appearing immediately after the words “Registration Services”;

Justification: passport and other travel documents to continue being issued under the kenya citizenship and immigration act, 2011

Solinka Nangendo and Joshua Lolecho

189. Transitional clause - Continuous enrolment and production of any document or service under the repealed acts shall continue until such a time that eligible persons shall be enrolled or issued with huduma card.

Justification: There is need for saving all process currently being undertaken under the old regimes.

Mr. Phillip Maiyo

190. Delete clause 72

Justification: Provide for a data impact assessment before rolling out of the Bill.

Registrar Marriages

191. The Registrar of Marriages is in support of the provision requiring the definition of marriages and divorces into the NIIMS database. However, this duty can only be realized after digitization of marriage records.

Justification: Immediate digitization of marriage records and automation of marriage processes so as to provide a link with the NIIMS database.

192. Clause 74. Repeal - The bill should include provisions for a transition period, rather than repealing these other identification and registration laws without providing for a smooth transition.

Justification: The Bill has provided for a transition provision and the Ministry has put in place sufficient administrative measures to ensure smooth transition.

Directorate of Immigration Services

193. On the repeal of the Kenya Citizens and Foreign Nationals Management Service Act, 2011 there's Need to retain the various operational committees of the Directorate that are established under the Kenya Citizens and Foreign Nationals Management Service Act.

Justification: The proposal to repeal the Kenya Citizens and Foreign Nationals Management Service Act, 2011 without transferring and saving relevant committees will impact on issuance of Permits, Citizenship and Permanent Residence including other operations of the Directorate. These committees were put in place for purposes of ensuring checks in issuance of immigration documents

Coalition of Civil Society Organizations

194. On the Elections Act (No. 24 of 2011) - Remove proposed amendments to sections 4, 8, and 8A(2) of The Elections Act.

Justification: IEBC is an independent commission that has a mandate to register, verify and store the voters register and therefore providing the option for the voters register to be generated from NIIMS is usurpation of IEBC's constitutional mandate. Additionally, the draft bill in section (3) does not indicate that one of the Objects of the Act is to provide a database for the generation of a voters register by IEBC.

Registrar General – Office of the Attorney-General and Department of Justice

195. Amendments of the marriage Act, 2014. The Registrar of Marriages is in support of the

provision requiring the definition of marriages and divorces into the NIIMS database. However, this duty can only be realized after digitization of marriage records.

Justification: Immediate digitization of marriage records and automation of marriage processes so as to provide a link with the NIIMS database.

196. Proposed amendment of S. 170(5) of the Children Act, 2001 to provide for the Registrar General to make appropriate entries into the Register of birth. Amend to only require the Registrar General to cause definition of adoption certificates into NIIMS database.

Justification: The Registrar General is not the custodian of the Register of birth and this function should be performed by the Registrar of birth. The Registrar General should only be mandated to cause the definition of adoption certificates into NIIMS database.

National Health Insurance Fund (NHIF)

197. **First Schedule section 3 (c) ,(f)** NHIF proposes the inclusion of the word “National Identification Number or Current Kenyan Passport number if any; proposes that anywhere NHIF has been referred to as National Hospital insurance Fund the same be amended to read “National Health Insurance Fund.”

Justification: The National Identity card still remain a crucial form of identification of persons in the country – Section 72 (2). This is to ensure uniformity and alignment with the Amended NHIF Act no 1 of 2022 s.21 that requires the Board to take into account the existing national system of registration.

Mr. Eliud Matindi

198. First Schedule - Delete phone numbers, email addresses

Justification: the amount of personal information required for the NIIMS database offends Articles 24 and 31(c) of the Constitution. Only the least amount of personal information necessary to establish as national population database should be required to be provided. Requiring information such as unspecified biometric data, phone numbers, email addresses, etc, does not meet the requirement of minimisation of data collection.

199. Second Schedule - Amend 8 by inserting the words “and providing proof of income” immediately after the words “eighteen years” in paragraph 10. Paragraph 11 insert the words “and there has sufficient proof of income.

Justification: The planned amendments to Tax Procedures Act, 2015, are unconstitutional. Information provided for the purposes of enrolling on NIIMS cannot be used for any other purposes without the express consent of the data subject. There cannot be a presumption

that merely reaching the age of eighteen years automatically mean the person fulfils the mandatory requirements set out in Section 8(1) of the Tax Procedures Act, 2015. Neither can it be presumed that a person registered in NIIMS database and attains the age of eighteen years will automatically be liable to pay direct taxes in Kenya. There will be Kenyan citizens registered on NIIMS who do not pay direct tax in Kenya because they do not have any relevant income for the purposes of the country's tax laws, e.g., because they reside outside Kenya.

Robert Aswani, Shadrack Wambui, Musyoki Mogaka and Company advocates

200. On Kenya Citizenship and Immigration Act - Deleting paragraph (d)

- a. deleting the proposed new definition of “passport”;
- b. deleting the proposed new definition of “NIIMS officer”;
- c. deleting the proposed new definition of “principal secretary” and substituting therefor the following new definition—
- d. ““Director General” means a person appointed as a Director General under section 4(1) of the Act;”
- e. Inserting the following definition
““Immigration Officer” means the Director General and any persons appointed as Immigration officers under section 5 of the Act;”

No.12 Of 2011

Delete proposed paragraph (1)

Delete proposed paragraph (2) and substitute with the following-

Delete the word “Director “wherever it appears and substitute therefor the words “director general”

201. In the proposed amendments to section 4(1) of the Kenya Citizenship and immigration Act, 2011 by deleting the words “Principal Secretary shall” and substituting therefor the following words “The President shall, in consultation with the Public Service Commission, appoint a Director General to”;

by deleting the proposed amendments to section 4(2) of the Kenya Citizenship and immigration Act, 2011 and substituting therefor the following amendment—
Delete the opening statement and substitute therefor the following—

“(2) The Director General shall subject to such directions as may from time to time be given by the Cabinet Secretary perform the following functions— “

by deleting the proposed amendments to section 5 of the Kenya Citizenship and Immigration Act, 2011 and substituting therefor the following new amendment—
by renumbering the existing provision as (1)

By inserting the following section (2)

“(2) The Cabinet Secretary responsible for Immigration matters shall establish a Permit Determination committee Citizenship Advisory committee, Permanent Residency Advisory Committee and such other committees as it shall be deemed necessary for effective administration of the Act”;

by deleting the proposed amendments to section 24 of the Kenya Citizenship and Immigration Act, 2011;

by deleting the proposed amendments to section 25 of the Kenya Citizenship and Immigration Act, 2011 and substituting therefor the following amendment—
“Delete subsection (1)(c);”

h) by deleting the proposed amendments to section 26 of the Kenya Citizenship and Immigration Act, 2011 and substituting therefor the following amendment—
“Delete subsection (2);”

by deleting the proposed amendments to section 27 of the Kenya Citizenship and Immigration Act, 2011 and substituting therefor the following amendments—
“(1) Delete subsection (3) and substitute therefor the following new subsection—

(3) An application made under subsection (1) shall be accompanied by a Huduma card or Huduma namba;

(2) Insert the following new subsections immediately after subsection (4)—

(4A) An Immigration officer shall utilize the information under NIIMS database to
Delete proposed amendments to the Refugees Act
Substitute with

(7) delete “refugee identity card” substitute therefor with “Refugees Huduma Card” by deleting the proposed amendments to section 29 of the Kenya Citizenship and Immigration Act, 2011;

a) by deleting the proposed amendments to section 30 of the Kenya Citizenship and Immigration Act, 2011;

by deleting the proposed amendments to section 32 of the Kenya Citizenship and Immigration Act, 2011; issue or replace a passport to applicant.

(4B) In processing an application for a passport, an Immigration officer may—

a) update, or require an applicant to provide further details required to update any particulars as provided under the first Schedule of the Huduma Act,
and

b) Make such further verification as may be necessary.”

202. The following organizations/individuals appeared before the Committee on Wednesday 23rd February, 2022 during the Public Hearing and made submission supporting the Bill in its entirety. They include:

- i. The Young Kenya Patriots through its Chairman, Mark Moses Maina
- ii. Youth Advocacy, Africa, through Mr. Elija Koome
- iii. Non- Governmental Organisations Council through its Chairman, Mr. Stephen Cheboi
- iv. Godfrey Akimali Atiel and Ken Rotich, appearing as individuals.

Chair NGO Council

203. He submitted that by having citizen data in one place would be like a one stop shop. It would bring order as one document will be able to serve all public requirements.

Residents of Mathare

204. They have been facing bottlenecks in accessing identification documents. And Burji and Borana in Mathare are victimized when applying for an ID. Many couldn't get Huduma Namba due to lack of an ID.

Mr. Mustafa

205. The bill is very crucial that has taken more than 70 years. The focus should be on how to make it work for the citizens and not just the corporates that want to mine the data.

Ms. Laura Goodwin

206. The bill if passed in the current form it would exclude children living on the streets, Kenyans with first generation IDs and many minority communities. It would be essential that the bill should be amended to address historical exclusion and ensure everyone has an identity before we move forward.

Ms. Aisha Wambu

207. There are people who wait as long as three years to get an identity card. What would happen to these people who are treated as 2nd class citizens? This was the only time they would have a chance to change for good of all.

6.0 COMMITTEE OBSERVATIONS

In considering the Huduma Bill, 2021, the Committee isolated the following **concerns** raised by various stakeholders, and made its observation on each as follows:

- 6.1 That the Huduma Bill is not implementable since the other important components, namely, the civil registration service and the National Registration Bureau are not automated.

Observation: *The Ministry invested in both human and IT infrastructure in the last three years to digitize Civil Registration Service (CRS) and therefore the position that that CRS is not automated is incorrect. Currently the automation is at optimal level and does not hamper the generation of Huduma numbers and especially for persons above eighteen years as their data is with NRB which is fully optimally digitized.*

On the National Registration Bureau, the bureau is fully digitized and their data has so far assisted in generating more than eleven million Huduma numbers and subsequent printing of the cards.

- 6.2 That the Huduma Bill, 2021 is a bad bill. It is a misnomer. It is a security surveillance bill, that perpetuates exclusion as it securitizes social services and should it pass in its current form, it will prevent access to the Chapter three and chapter four rights under the Constitution of Kenya, 2010.

Observation: *The bill provides for a digital and modern registration of births and issuance of a digital ID (Third generation ID). With digital registration of births, a number hereinafter referred to as "Huduma Namba" is issued and upon attaining eighteen years, an adult is issued with a digital ID hereinafter referred to as Huduma Card. Further, the bill provides for integration of existing government databases and their access within government or by the private sector is limited. In this regard, the bill does not contain any form of surveillance as it does not provide for collection of DNA or GPS coordinates as ruled by the High Court in Child Welfare Society and 9 others (Interested Parties) [2020] eKLR. Once issued with a number or card, there is not any form of tracking or wiretapping that is supported by the National Integrated Identity Management Systems (NIIMS). On the matter of securitization of social services, as it is today, access of critical social services to either children or adults is pegged on availing a birth certificate or an ID and therefore requiring that one provides a huduma number (which replaces the Birth Certificate) or a Huduma Card (Which replaces Huduma Card) is not securitizing social services. In summary, it's important to note that the allegations of securitization of Huduma project were heavily canvassed by the CSOs in the consolidated NBI Constitutional Petitions Nos 56,58 and 59 of 2019 Nubian Rights Forum & Others and a bench of three (3) judges ruled that based on the evidence provided by the Ministry, the benefits of biometric data capture far outweighed the concerns brought before the courts*

by the CSOs.

- 6.3 That the objects and the long title of the bill do not speak to the Kenyan problem that the bill seeks to solve, which is the reform of the identity ecosystem, hence making the bill fatally flawed in form and structure.

Observation: *The bill aims at providing a primary law on civil registration and legal identification establishes NIIMS, mechanisms of assigning Huduma Namba and issuance of legal identity documents and how to register births and deaths and this is tied sufficiently to the objects of the bill in Clause 3. So the assertion that the bill is fatally defective in form and structure is untrue and if not downright alarmist.*

- 6.4 That the institutional infrastructure proposed in the bill makes the Principal Secretary, the prosecutor and judge in cases of decision making on issuance of Huduma number, arbitrary powers subject to abuse. A good institutional infrastructure would have provided for an institution to oversee management of the legal identity and a two or three tier administrative process, with an appellate provision and subject to Parliamentary oversight.

Observation: *The national government has a sacrosanct duty to protect personal data of all citizens and residents lawfully residing in Kenya. With this in mind, different countries have different local solutions or infrastructures on how best to protect their personal data. Currently, Kenya does not have a state corporation that is charged with administration of personal data. The National Registration Bureau which is charged with issuance of IDs, Department of Immigration which issues passports and the Civil Registration Services which registers births and deaths are creatures of administrative actions even though they draw their mandate from various laws. The principle behind these institutions being administratively created and not state corporations is based on the experience that the protection of personal data gets more premium and attention that it deserves when done through administrative organs than state corporations whose management is done by a board of persons whose contracts are for short-term basis. With that in mind, it's a misunderstanding that the Principal Secretary in charge of NIIMS would administer the daily operations of NIIMS. Out of practice, the Ministry will form subject to approval of the Public Service Commission a body that would undertake daily administration of NIIMS that would have a Director who will run daily operations of NIIMS. The Director, as it is currently with directors of IPRS, CRS, NRB and Immigration would report to the Ministry through the Principal Secretary in charge. Be that as it may, it's important to note that the law currently in Section 9A of the Registration of Persons Act, Cap 149, provides that the Principal Secretary shall be in charge of administration and management of NIIMS.*

- 6.5 That a law should not purport to disband institutions in the identity ecosystem like the Huduma bill, 2021 proposes, especially, since some of the legislations that it proposes to repeal, were enacted to help implement the Constitution of Kenya, 2010. The Huduma Bill, 2021 proposes to repeal them without factoring their Constitutional

anchorage and their role in operationalizing the Constitution of Kenya, 2010 to give effect to rights under Chapter three of the Constitution.

Observation: *With issuance of a Huduma Namba that replaces the strict requirement of a hard copy birth certificate (with issuance of a Huduma Namba, one will only print a birth certificate if need arises) and issuance of a Huduma Card which replaces the current Identity Card, it means that you cannot reasonably have CRS and NRB remain as standalone institutions. Both the number and card will be respectively generated and produced through the NIIMS system and therefore the institution in charge of NIIMS and CRS and NRB cannot exist side by side. In addition, the primary laws that are marked for repeal are actually pre-colonial laws which don't support a digital identity system. The law governing CRS, the Births and Deaths Registration Act, Cap. 149 was enacted in 1928 and the law governing NRB, the Registration of Persons Act, Cap. was enacted in 1949. These laws have served us well for many years but with the rapid ICT transformation both locally and globally, they have now become archaic and cannot support modern digital registration systems. The third law proposed for repeal, the Kenya Citizens and Foreign Nationals Management Service Act, No 31 of 2011, has not been operationalized since its enactment due to sensitivities of having a state corporation to manage personal data. Further the objects of the Act are mirrored in the Huduma Bill 2021 and therefore repealing that law is necessary and avoids duplication of laws.*

- 6.6 That the risks of enacting the Huduma Bill, 2021 as is, far outweigh the benefits. The current structure and the form of the bill is not in legislative harmony with the identity ecosystem, making the bill fatally incurable.

Observation: *The supposed risks of enacting Huduma Bill 2021 directly speaks to the risks associated with rolling-out Huduma Namba project and these were sufficiently addressed by the High Court in the matter of Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR. Paragraph 1030 of the judgment reads, "It was also our holding that the biometric data collected is necessary to the stated purposes of NIIMS in section 9A of the Registration of Persons Act, and the functionalities of NIIMS as an identification and verification system in our view, also justified the utility of NIIMS and the other existing identification and registration databases. It was thus our finding that NIIMS is not superfluous from an identification and verification point of view, as the biometric data collected therein is necessary for identification, and will be used for verification purposes in relation to other existing databases. Lastly, we found the stated benefits of NIIMS given by the Respondents in their evidence to be in the public interests and not unconstitutional"*

- 6.7 That the timing of the bill with less than six months to the General Election 2022, especially since it mentions that the Independent Electoral and Boundaries Commission may rely on it for purposes of voter registration, may create confusion and throw the

entire electoral process into disarray.

Observation: *Firstly, NIIMs may not be fully operational or rolled-out by 9th August 2022 and now that even the Mass Voter Registration (MVR) II has closed and the continuous one is nearing a closure, fears that NIIMs can disrupt the electoral process are unfounded.*

Secondly, the proposal that NIIMs can aid in voter registration was informed on the desire to save the billions of taxpayers spent during MVRs as the system would have real-time data on persons who have attained the age of eighteen years and also on deaths. However, it's also our understanding that IEBC is an independent institution and therefore the data would be audited before being loaded into the register of voters.

- 6.8 That there is no digital identity policy for Kenya, which as a good practice, should precede and guide the development of a digital identity ecosystem legislation, such as the Huduma Bill, 2021.

Observation: *NIIMs project and its philosophy is drawn from situational analysis of the civil registration systems that was done by the Ministry. It's also informed by:*

- a) The Kenya National ICT Master Plan-2014; and*
- b) National Information Communications and Technology Policy 2019*

In addition, in appreciation of the ongoing transformation of the civil registration systems, the Ministry has formulated a comprehensive National Civil Registration and Identity Management Policy which is awaiting Cabinet approval.

- 6.9 That the Huduma bill is fundamentally unconstitutional, as it violates rights under chapter three of the Constitution of Kenya 2010, in a manner not contemplated by Article 24 of the said Constitution.

Observation: *The bill seeks to give effect to Article 12 by providing a mechanism for issuance of identification documents.*

- 6.10 That Technology needs to be used as an enabler for Social Services, to serve the citizens, but in the Huduma Bill, 2021, it is being used for exclusion to services.

Observation: *The bill aims at providing a primary law on civil registration and legal identification establishes NIIMS, mechanisms of assigning Huduma Namba and issuance of legal identity documents and how to register births and deaths and this is tied sufficiently to the objects of the bill in Clause 3.*

- 6.11 That the Huduma Bill, 2021 will add to further exclusion of various categories of persons, as it seeks the requirement of documentation such as national identity cards amongst others to access huduma namba; documents that sections of persons have been

discriminated from obtaining. The Huduma Bill, 2021 will aggravate an already bad situation.

Observation: *Clause 61 of the bill obliges the Cabinet Secretary to put in place measures to ensure inclusion. Given the very different circumstances that face different classes of the persons, it is not practically possible to include the measures that ought to be taken in an Act of Parliament. These measures are intended to be provided for under regulations or other administrative means based on the circumstance in question.*

- 6.12 That the Huduma Bill, 2021 treats minors, in a similar manner to adults in obtaining their data, whilst normally, minors might not receive the types of services anticipated under the Huduma Bill, 2021, unless with the consent or through their parents and guardians.

Observation: *The development of the bill was guided by international best practices and the principles for identification for sustainable development. Target 16.9 of the Sustainable Development Goals, calls for all UN member States including Kenya, to "provide legal identity for all, including birth registration" by 2030.*

- 6.13 That the disharmony that was displayed by the government/public institutions, the Independent Electoral and Boundaries Commission, the Huduma Secretariat, the office of the Data Protection Officer and the Department of Immigration during the consultative meeting calls for a multi-sectoral, multi-departmental and Civil Society task force approach to facilitate further consultations and initiate reform to the policy and legislative framework on the identity ecosystem.

Observation:

- a) *There are no divergent views about the bill between the Ministry on one hand and the Huduma Secretariat and Office of the Data Commissioner (ODC) on the other hand. The views submitted by ODC were supportive of the bill and only proposed harmonization of some interpretations in the bill with those of the Data Protection Act, 2019 which the Ministry has no objection to. Further the Ministry informed the ODC that the data required during a child's birth is not a new set of data mining but rather it's currently collected under the Births and Deaths Registration Act and either way, it's utilized by both the Ministry of Health and World Health Organization for statistical purposes and planning.*
- b) *On the matter of IEBC submission, the Ministry is aware that IEBC is an independent body and considering that the proposal for using NIIMS database in developing a register of voters was made to save taxpayers billions of money in fresh registration.*

COMMITTEE RECOMMENDATIONS

208. The Committee having considered the Huduma Bill, 2021 in accordance with the provisions of Article 118 of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, recommends that the House approves the Bill with amendments as proposed in the schedule.

8.0 SCHEDULE OF PROPOSED AMENDMENTS

Committee proposed the following amendments to be considered by the House in the Committee Stage-

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

- (a) by inserting the following definitions of terms in their proper alphabetical sequence—

"Appeals Committee" means the NIIMS Appeals Committee established under section 67F of this Act;

"Commissioner" means the Commissioner for NIIMS Services appointed under section 67E;

"Departments" means the Department of —

- (a) Civil registration services;
- (b) Registration Bureau services;
- (c) Immigration Services; and
- (d) Integrated Population Registration services,
established under section 67A of the Act;

- (b) by deleting the definition of the term "biometric data" and substituting therefor the following new definition—

"biometric data" has the meaning assigned to it under section 2 of the Data Protection Act, No.24 of 2019;"

- (c) by deleting the definition of the term "birth" and substituting therefor the following new definition—

"birth" means the complete expulsion or extraction from a mother of a product of conception whether dead or alive;"

- (d) by deleting the definition of the term "Committee" and substituting therefor the following new definition—

"Committee" means the NIIMS Services Advisory Committee established under section 65 of the Act;

- (e) in the definition of the term "foundational data" by deleting the words "and includes biometric data and biographical data."

- (f) in the definition of the term "new-born" by deleting the words "twenty eighth" and substituting therefor the word "ninetieth"

(g) by deleting the definition of the term “personal data” and substituting therefor the following new definition—

“personal data” has the meaning assigned to it under section 2 of the Data Protection Act, No.24 of 2019;”

(h) by deleting the definition of “Principal Secretary”.

Justification: To include new definitions such as NIIMS Appeals Committee as used in the Bill

CLAUSE 8

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Proof of identity. 8. The presentation of the Huduma card issued under this Act shall be sufficient proof of identity to facilitate access to any public service which may require an official identification.

Justification: To provide clarity in clause 8 by stating that the presentation of a Huduma card it shall be sufficient proof of identity.

CLAUSE 9

THAT, Clause 9 of the Bill be amended by deleting the words “at first instance”.

Justification: Making NIIMS authenticator at a first instance of functional data will restrict access to quality and timely services.

CLAUSE 10

THAT, Clause 10 of the bill be amended in sub clause (4) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in paragraph (a), by deleting the word “immediately” and substituting therefor the words “within ninety days”;

Justification: To align the duration for registration of new borns to ninety days.

CLAUSE 12

THAT, Clause 12 of the bill be amended—

- (a) in sub clause (1), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) notify the individual within twenty-one days of the status of the enrolment”

- (b) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide for timelines within which the Commissioner shall notify an individual on his status of enrolment into NIIMS. To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in sub clause (4), by inserting the word “reasonable” immediately after the words “payment of such”;

Justification: To provide that any penalties levied shall be reasonable.

CLAUSE 15

THAT, Clause 15 of the Bill be amended by inserting a new sub clause immediately after sub clause (1)—

“(1a) The procedure for replacement of a Huduma card contemplated under sub section (1) shall be completed within twenty-one days after receipt of such application.”

Justification: To provide for timelines where one has un serviceable card to be replaced.

CLAUSE 17

THAT, Clause 17 of the Bill be amended—

- (a) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;
- (b) by deleting sub clause (4), and substituting therefor the following new sub clauses—
 - (4) A person aggrieved by a decision under this section may—
 - (a) appeal to the Appeals Committee;
 - (b) explore any other internal review mechanisms as may be provided; or
 - (c) pursue alternative dispute resolution mechanisms.
 - (5) A person dissatisfied with a decision of under subsection (4) may appeal to the High Court within (60) sixty days of receipt of such decision.

Justification: To provide for appeal review mechanisms that a person may opt to pursue if dissatisfied with a decision under the Act.

CLAUSE 21

THAT, Clause 21 of the Bill be amended by inserting the word “filled” immediately after the words “the father shall be”

Justification: To provide with certainty that any details of the father will be used after direction from the high court.

CLAUSE 22

THAT, Clause 22 of the Bill be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 23

THAT, Clause 23 of the Bill be amended by inserting the following new sub clauses immediately after sub clause (3)—

“(4) Despite subsections (1), (2) and (3), the Commissioner may allow late registration under this section where an applicant provides sufficient reasons for not registering within the stipulated period.

(5) The Cabinet Secretary shall prescribe the circumstances under which a penalty may be waived.”

Justifications: To provide for that the Commissioner may waive a penalty. This is to take into consideration families in rural areas who are likely to give birth at home and not at health facilities where registration is almost immediate.

CLAUSE 24

THAT, Clause 24 of the Bill be amended—

- (a) in sub clause (1), by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;
- (b) in sub clause (2), by inserting the following new paragraph immediately after paragraph (e)—
- “(f) mid-wife or community health worker”

Justification: The proposal in the Bill implies that every birth in Kenya happens in a health facility whereas the bulk of births happen at home with the assistance of a mid-wife or community health workers.

CLAUSE 25

THAT, Clause 25 of the Bill be amended—

- (a) in sub clause (1), by deleting paragraph (d) and substituting therefor the following new paragraph—
- “(d) the name and address of the person who has custody of the foundling or child.”
- (b) by inserting the following new sub clause immediately after sub clause (2)—
- “(3) For the avoidance of doubt, a penalty under section 23 shall not apply in the registration of a foundling.

Justification: To correct a typographical error in sub clause 1 (d) and to provide in clear terms that penalties for late registration shall not apply for foundlings.

CLAUSE 27

THAT, Clause 27 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “developmental milestones and other”;
- (b) by inserting the following new sub clause immediately after sub clause (3)—
- “(4) An update of particulars under sub section (1), shall be at no cost to the applicant.”

Justification: To provide clarity with regard to use of the words “developmental milestones” this word may connote other milestones of a child that may not need to be captured in the databases such as graduation. Also the amendments seek to provide clarity that updates of particulars are at no costs.

CLAUSE 30

THAT, Clause 30 of the Bill be amended by inserting the words “the discover of” immediately after the words “within thirty days of”.

Justification: The occurrence of a death and discovery of a death are two separate events. Requiring the registration of the death upon occurrence as opposed to the discovery of the same will place a heavy burden on the person expected to register the same, given that the occurrence of the death is out of their control.

CLAUSE 32

THAT, Clause 32 of the Bill be amended by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 37

THAT, Clause 37 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

- (c) delete the functional data of the deceased person and any linkage thereof to any living data subjects.

Justification: The current bill does not specify whether a person’s data is kept, archived, deleted, or handled in another way after they are registered in the system as deceased.

CLAUSE 46

THAT, the Bill be amended by deleting clause 46 and substituting therefor the following new clause—

Application of No. 24 of 2019. **46.** The processing of personal data shall be carried out in accordance with Data Protection Act, 2019.

Justification: To enhance clarity.

CLAUSE 47

THAT, Clause 47 of the Bill be amended in sub clause (2) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 48

THAT Clause 48 of the Bill be amended—

(a) by inserting the following sub clauses immediately after sub clause (1)—

“(1a) Data under this Act shall be shared to a private entity at the request of the data subject.”

(1b) An entity who seeks any data under this Act shall—

(a) comply with the provisions of the Data Protection Act; and

(b) sign a data sharing agreement.

(b) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: to provide for the requirement of the private entity to sign a data sharing agreement prior to the sharing of the data. To ensure compliance with the Data Protection Act, 2019.

CLAUSE 49

THAT, Clause 49 of the Bill be amended—

(a) by inserting the following paragraph immediately after paragraph (b)—

“(c) operational and institutional risks”

(c) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: to provide that the Commissioner shall implement measures that reduce the risk of data breaches and intrusion of privacy both prior to establishing a system such as NIIMS as well as on an ongoing basis while the system is operational.

CLAUSE 53

THAT, Clause 53 of the Bill be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 58

THAT, Clause 58 of the Bill be amended in sub clause (1) by deleting the words “to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year” and substituting therefor the following words “upon conviction to a fine not exceeding five million shillings or to imprisonment for a period not exceeding five years.

Justification: To provide for stiffer penalties.

CLAUSE 63

THAT, Clause 63 of the Bill be amended be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 64

THAT, Clause 64 of the Bill be deleted.

Justification: Appeals Committee has been provided in detail.

CLAUSE 65

THAT, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

The NIIMS Advisory Committee. **65.** (1) There is established the National Integrated Identity Management System Advisory Committee.

(2) The Committee shall comprise of —

(a) the Principal Secretary responsible for internal security who shall be the Chairperson to the Committee;

(b) the Commissioner who shall provide secretariat services to

the Committee;

- (c) the Principal Secretary responsible for information, communication and technology or a representative in writing;
 - (d) the Principal Secretary for the National Treasury or a representative in writing;
 - (e) the Principal Secretary responsible for basic education or a representative in writing;
 - (f) the Principal Secretary responsible for matters relating to health or a representative in writing;
 - (g) the Chief Executive Officer of the Independent Electoral and Boundaries Commission or a representative in writing;
 - (h) the Inspector General of Police or a representative in writing;
 - (i) the Commissioner General of the Kenya Revenue Authority or a representative in writing;
 - (j) the Director General of National Intelligence Service or a representative in writing; and
 - (k) the Attorney General or a representative in writing.
- (3) Each member of the Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.
- (4) The Chairperson shall convene at least four meetings in every year.
- (5) Except as expressly provided in this Act, the Committee shall regulate its own procedure as it deems fit.

Justification: To provide for an advisory Committee rather than a coordination committee. This structure seeks to decentralise the centred roles of the Principal Secretary.

CLAUSE 66

THAT, the Bill be amended by deleting clause 66 and substituting therefor the following new clause—

Functions of the Advisory Committee.

- 66.** (1) The functions of the Committee shall be to—
- (a) advise the Cabinet secretary on formulation of national

policies on matters relating to civil registration and legal identification management in accordance with international standards;

- (b) advise the Cabinet Secretary on matters relating to civil registration and legal identification management;
- (c) advise the Cabinet Secretary on imposition of fees to classes of person in relation to subsequent issuance of huduma card after initial issue and penalties for late registration;
- (d) advise the Cabinet Secretary on the administrative measures that address any procedural or social barriers that may limit the enrolment of an individual;
- (e) make a recommendation for enrolment and cancellation into NIIMS; and
- (f) ensure in liaison with other government authorities that adequate and appropriate facilities and services are provided to facilitate the enrolment of persons with disabilities, marginalised communities, persons incapacitated by illness, elderly citizens, and individuals in institutional households;

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

Justification: To provide for an advisory Committee rather than a coordination committee. This structure seeks to decentralise the centred roles of the Principal Secretary.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clause immediately after Clause 67—

Administrative
institutions.

67A. There is established—

- (a) the Department of Civil registration Services;
- (b) the Department of National Registration Bureau Services
- (c) the Department of Immigration Services;
- (d) the Department of Integrated population registration services;
- (e) the Huduma Advisory Committee; and
- (f) the Huduma Appeals Committee.

Department of Civil
Registration Services.

67B. (1) The Department known as the Department of Civil Registration Services shall be an office in the public service.

(2) The functions of the Department shall be to—

- (a) register births in the NIIMS database;
- (b) register deaths in the NIIMS database;
- (c) issue a birth certificate from the NIIMS database;
- (d) assign huduma cards to minors; and
- (e) any other relevant function as maybe assigned by the Commissioner.

Department

of **67C.** (1) The Department of National Registration Bureau Services shall be an

National Registration
Bureau Services. office in the public service.

- (2) The functions of the Department shall be—
- (a) to assign huduma namba and huduma cards to adult citizens;
 - (b) to assign huduma namba and huduma cards to foreign nationals;
 - (c) to assign huduma namba and huduma cards to refugees; and
 - (d) any other relevant function as maybe assigned by the Commissioner.

Department of
Immigration Services. **67D.** (1) The Department of Immigration Services shall be an office in the public service.

- (2) The functions of the Department shall be—
- (a) control and regulate entry and exit of all persons at our airports, seaports and land border posts;
 - (b) issue passports and other travel documents;
 - (c) control and regulate residency through issuance and renewal of work permits, residence permits and other passes;
 - (d) consider and grant Kenyan citizenship to qualified foreigners;
 - (e) issue entry visas, register all non-citizens resident in Kenya;
 - (f) declare and remove prohibited immigrants;
 - (g) provide consular services to Kenya nationals and foreigners at all missions abroad; and
 - (h) any other relevant function as maybe assigned by the Commissioner.

Department of
Integrated population
registration services. **67E.** (1) The Department of Integrated Population Registration Services shall be an office in the public service.

- (2) The functions of the Department shall be —
- (a) to be the administrator to the NIIMS database;
 - (b) to store and organise data in the NIIMS database;
 - (c) to authenticate data for users in a secure platform;
 - (d) to link government agencies in accessing NIIMS database in the prescribed manner for purposes of authenticating personal data; and
 - (e) any other relevant function as maybe assigned by the Commissioner.

Justification: To establish the departments and provide their functions. To allow a seamless transition for the CRS, NRB and IPRS directorates so that they may perform the functions of the respective office.

Commissioner for
NIIMS Services. **67F.** (1) There shall be a Commissioner for the National Integrated Identity Management System Services whose office shall be an office in the Public Service and who shall be the head of the Departments.

(2) The Commissioner shall be subject to the general supervision of Cabinet Secretary and the day-to-day operations of the Departments.

(3) Without the generality of the foregoing, the functions of the

Commissioner shall be—

- (a) the overall head of the Departments established under section 66A of the Act;
- (b) in consultation with the Cabinet Secretary, coordinate and mobilize resources for the implementation of the relevant policies;
- (c) ensure effective co-ordination and implementation of the NIIMS;
- (d) receiving, storing and updating information on the NIIMS database;
- (e) establish a framework for ensuring the compatibility of technology infrastructure among different government agencies to comply with requirements of the NIIMS;
- (f) undertake the task of data collection and dissemination in a manner that ensures consistency and accuracy in accordance with set national standards and guidelines;
- (g) formulate a framework for coordinating agencies accessing the NIIMS database;
- (h) support the printing and distribution for collection of huduma card;
- (i) collaborate with other state agencies for effective discharge of its mandate;
- (j) reviewing and recommending for review of laws and regulations for the better management of the Act.; and
- (k) perform any other function incidental to the above functions or as may be assigned.

(4) The Commissioner shall be appointed by the President upon recommendation of the Public Service Commission and approval of the National Assembly.

(5) A person who qualifies to be appointed as a Commissioner shall—

- (a) possess a degree in law, administration, management, population studies, demography, information and technology or any other related field;
- (b) be in possession of qualifications as provided for under chapter six of the Constitutions; and
- (c) possess five years managerial experience.

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

NIIMS Appeals Committee. 67G. (1) There shall be a National Integrated Identity Management System Appeals Committee.

(2) The Cabinet Secretary shall, by notice in the Gazette appoint the following persons to serve in the Appeals Committee —

- (a) an advocate of not less than ten years standing who shall be the Chairperson to the Committee ;
- (b) a representative of the Department responsible for information , communication and technology;
- (c) one persons nominated by the Attorney General; and
- (d) three other persons with knowledge and experience in civil registration

and legal identification matters.

(3) The quorum for a meeting of the Appeals Committee shall be three members.

(4) The function of the Appeals committee shall be to hear and determine appeals against any decision of the Commissioner with regard to —

- (a) the rejection of any individual application for enrolment into NIIMS ;
and
- (b) the cancellation or revocation of the enrolment of an individual into the NIIMS

(4)The Appeals Committee shall convene as and when appeals have been filed against decisions of the Commissioner and, save as expressly provided in this Act, regulate its own procedures.

(5) A member of the Appeals Committee shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(6) Each member of the Appeals Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.

(7) The Public Service Commission shall provide the Appeals Committee with a secretariat for the purposes of discharging its mandate.

(8)A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within sixty days of being notified.

Justification: To provide for an elaborate appeal mechanism structure.

CLAUSE 68

THAT, Clause 68 of the Bill be amended—

(a) by deleting sub clause (1) and substituting therefor the following new sub clause—

(1) The Cabinet Secretary shall, make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act within twelve months of the commencement of this Act.

(b) by inserting the following paragraphs immediately after paragraph (d)—

- (d) other documentary proof for access to enrolment;
- (e) provision of replacement cards to enable access to critical services;
- (f) registration and management of stateless persons;
- (g) Appeals Committee;
- (h) Mechanisms for registration of births and deaths;
- (i) Enrollement of stateless persons to NIIMS;
- (j) Other specified biometric data for an individual and a child;
- (k) recognition of specified vital event of an individual and a child;
- (l) Conditions for late registration for births and deaths;

- (m) Procedures for verification and authentication of information from third party entities;
- (n) Accreditation process for institutions who seek to verify and authenticate information;
- (o) Horizontal integration of existing government databases;
- (p) Procedures, circumstances and limitations on the access, use, retention and disclosure of personal information by third parties;
- (q) Framework for the management of existing databases and portals;
- (r) Special administrative arrangements to ensure registration;
- (s) Procedures for updating particulars in the database and attendant timelines;
- (t) Procedures for capturing birth registration data for stateless persons and foreign nationals not resident in Kenya;
- (u) Access to adoption certificates;
- (v) Process of validation and rectification under NIIMS; and
- (w) Data protection impact assessments

Justification: To provide for regulation making power to the Cabinet Secretary.

CLAUSE 72

THAT, Clause 72 of the Bill be amended—

- (a) by inserting the following new sub clause immediately after sub clause (1)—

“(1a) All issues that arise on the repeal Acts, that are related to this Act, shall be dealt with and discharged by the Commissioner within eighteen months from the date of commencement of this Act;

(1b) Despite subsection (1a), the Cabinet Secretary may, by notice in the *Gazette*, extend the period prescribed in respect of any particular issue under subsection (1a), by a period not exceeding one year.”

- (b) in sub clause (5), by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: There is need for saving all process currently being undertaken under the old regimes.

FIRST SCHEDULE

THAT the First schedule be amended—

(a) in paragraph 1, by inserting the following subparagraph immediately after paragraph (g)—
“(h) ethnicity”

(b) in paragraph 2, by deleting subparagraph (b)

Justification: To be in line with the Constitution.

SECOND SCHEDULE

THAT the Second Schedule be amended—

(a) in the proposed amendments to the Interpretation and General provisions Act, by deleting the new definition of “gender” and substituting therefor the following new definition—
“sex” includes male, female and intersex”

(b) by deleting the proposed amendments to section 5 and substituting therefor the following—

New section Insert the following section immediately after section 5D—

5E. (1) The Cabinet Secretary responsible for matters relating to immigration shall establish the Citizenship and Permits Determination Advisory Committee.

(2) The Cabinet Secretary shall prescribe the composition and functions of the committees established under subsection (1).

(a) by deleting the proposed amendments to the Refugees Act (No.13 of 2006), and substituting therefor the following—

Refugees Act (No. 10 of 2021) 28(7)

Delete the words “ refugee identity card” and substitute therefor the words “Refugees Huduma Card”

Justification: To rely on the correct Act of Parliament.

Signed..... Date 31st March, 2022

HON. PETER MWATHI, CBS, M.P.
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 06 APR 2022
DAY:
TABLED BY:
THE TABLE:

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

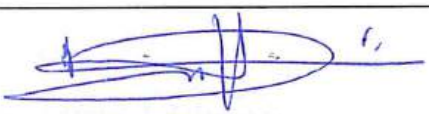
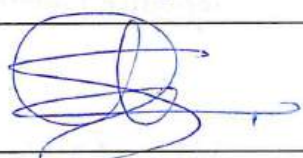
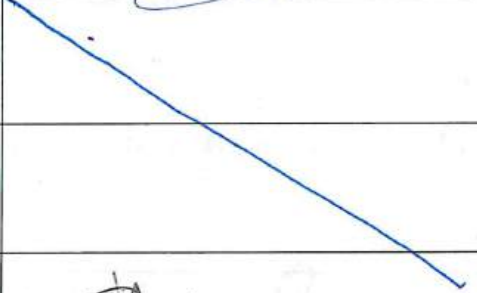
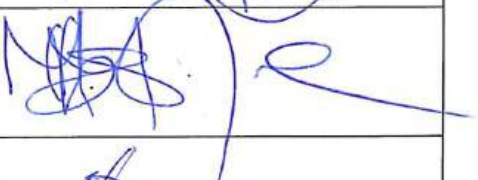
ADOPTION SCHEDULE

DATE: 31st March 2022

TIME: 10.00 am

VENUE: Committee Room on 5th Floor Continental House

AGENDA: Adoption of the Report on Huduma Bill, 2021

NO.	NAME	SIGNATURE
1.	Hon. Peter Mwathi, CBS, MP - Chairperson	
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	
3.	Hon. George Peter Kaluma, MP	
4.	Hon. Dr. Makali Mulu, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Dr. Tecla Chebet Tum, MP	Virtual
7.	Hon. Halima Mucheke, MP	Virtual 
8.	Hon. Marselino Malimo Arbelle, MP	
9.	Hon. Nimrod Mbithuka Mbai, MP	

10.	Hon. Ngunjiri Wambugu, CBS, MP	Virtual
11.	Hon. Abdi Omar Shurie, MP	
12.	Hon. Col (Rtd) Geoffrey Kingangi, MP	Virtual
13.	Hon. Peter Masara, MP	
14.	Hon. Oku Kaunya, MP	
15.	Hon. Rozaah Buyu, MP	Virtual
16.	Hon. Jeremiah Lomurukai, MP	Virtual
17.	Hon. William Chepkut, MP	
18.	Hon. Dr. Swarup Mishra, MP	
19.	Hon. Wambugu Munene, MP	Virtual

Signed.....

Adan Gindicha,

Director, Clerk

Departmental Committee on Administration and National Security.

Date.....

3,10272022

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY , 31ST MARCH, 2022 AT 10.00 A.M. IN CONTINENTAL HOUSE 5TH FLOOR BOARDROOM , NAIROBI.

PRESENT

- | | |
|--|--------------------|
| 1. Hon. Peter Mwathi, CBS, MP | - Chairperson |
| 2. Hon. Fatuma Gedi, CBS, MP | - Vice-Chairperson |
| 3. Hon. Oku Kaunya, MP | |
| 4. Hon. Dr. Makali Mulu, MP | |
| 5. Hon. Aduma Owour, MP | |
| 6. Hon. Peter Kaluma, MP | |
| 7. Hon. Marselino Arbelle, MP | |
| 8. Hon. Dr. Tecla Tum, MP | |
| 9. Hon. Halima Mucheke, MP | |
| 10. Hon. Peter Masara, MP | |
| 11. Hon. Rozaah Buyu, MP | |
| 12. Hon. William Chepkut, MP | |
| 13. Hon. Wambugu Munene, MP | |
| 14. Hon. Jeremiah Lomurukai, MP | |
| 15. Hon. Nimrod Mbithuka Mbai, MP | |
| 16. Hon.Col(Rtd) Geoffrey Kingangi, MP | |
| 17. Hon. Ngunjiri Wambugu, CBS, MP | |

ABSENT WITH APOLOGIES.

1. Hon. Abdi Shurie, MP
2. Hon. Dr. Swarup Mishra, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|----------------------------|
| 1. Mr. Adan Gindicha | - | Senior Clerk Assistant |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Ms. Delvin Onyancha | - | Research Assistant Officer |
| 5. Ms. Eva Kaare | - | Serjeant-At-Arms |

MIN No. 35/2022:-

PRELIMINARIES AND COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 10.23am with a word of prayer.

The agenda was adopted after being proposed by Hon. William Chepkut, MP and seconded by Hon. Oku Kaunya, MP.

The Committee considered the report and made the following observations in relation to concerns raised by various stakeholders

1. That the Huduma Bill is not implementable since the other important components, namely, the civil registration service and the National Registration Bureau are not automated.

Observation: The Ministry has invested in both human and IT infrastructure in the last three years to digitize Civil Registration Service (CRS) and therefore the position that that CRS is not automated is incorrect. Currently the automation is at optimal level and does not hamper the generation of Huduma numbers and especially for persons above eighteen years as their data is with NRB which is fully optimally digitized.

On the National Registration Bureau, the Committee observed that the bureau is fully digitized and their data has so far assisted in generating more than eleven million Huduma numbers and subsequent printing of the cards.

2. That the Huduma Bill, 2021 is a bad bill. It is a misnomer. It is a security surveillance bill, that perpetuates exclusion as it securitizes social services and should it pass in its current form, it will prevent access to the Chapter three and chapter four rights under the Constitution of Kenya, 2010.

Observation: The bill provides for a digital and modern registration of births and issuance of a digital ID (Third generation ID). With digital registration of births, a number hereinafter referred to as "Huduma Namba" is issued and upon attaining eighteen years, an adult is issued with a digital ID hereinafter referred to as Huduma Card. Further, the bill provides for integration of existing government databases and their access within government or by the private sector is limited. In this regard, the bill does not contain any form of surveillance as it does not provide for collection of DNA or GPS coordinates as ruled by the High Court in Child Welfare Society and 9

others (Interested Parties) [2020] eKLR. Once issued with a number or card, there is not any form of tracking or wiretapping that is supported by the National Integrated Identity Management Systems (NIIMs). On the matter of securitization of social services, as it is today, access of critical social services to either children or adults is pegged on availing a birth certificate or an ID and therefore requiring that one provides a huduma number (which replaces the Birth Certificate) or a Huduma Card (Which replaces Huduma Card) is not securitizing social services. In summary, it's important to note that the allegations of securitization of Huduma project were heavily canvassed by the CSOs in the consolidated NBI Constitutional Petitions Nos 56,58 and 59 of 2019 Nubian Rights Forum & Others and a bench of three (3) judges ruled that based on the evidence provided by the Ministry, the benefits of biometric data capture far outweighed the concerns brought before the courts by the CSOs.

2. That the objects and the long title of the bill do not speak to the Kenyan problem that the bill seeks to solve, which is the reform of the identity ecosystem, hence making the bill fatally flawed in form and structure.

Observation: *The bill aims at providing a primary law on civil registration and legal identification establishes NIIMS, mechanisms of assigning Huduma Namba and issuance of legal identity documents and how to register births and deaths and this is tied sufficiently to the objects of the bill in Clause 3. So the assertion that the bill is fatally defective in form and structure is untrue and if not downright alarmist.*

3. That the institutional infrastructure proposed in the bill makes the Principal Secretary, the prosecutor and judge in cases of decision making on issuance of Huduma number, arbitrary powers subject to abuse. A good institutional infrastructure would have provided for an institution to oversee management of the legal identity and a two or three tier administrative process, with an appellate provision and subject to Parliamentary oversight.

Observation: *The national government has a sacrosanct duty to protect personal data of all citizens and residents lawfully residing in Kenya. With this in mind, different countries have different local solutions or infrastructures on how best to protect their personal data. Currently, Kenya does not have a state corporation that is charged with administration of personal data. The National Registration Bureau which is charged with issuance of IDs, Department of Immigration which issues passports and the Civil Registration Services which registers births and deaths are creatures of administrative actions even though they draw their mandate from various laws. The principle behind these institutions being administratively created and not state corporations is based on the experience that the protection of personal data gets more premium and attention that it deserves when done through administrative organs than state corporations whose management is done by a board of persons whose contracts are for short-term basis. With that in mind, it's a misunderstanding that the Principal Secretary in charge of NIIMS would administer the daily operations of NIIMS. Out of practice, the Ministry will form subject to approval of the Public Service Commission a body that would undertake daily administration of NIIMS that would have a Director who will run daily operations of NIIMS. The Director, as it is currently with directors of IPRS, CRS, NRB and Immigration would report to the Ministry through the Principal Secretary in charge. Be that as it may, it's important to note that the law currently in Section 9A of the Registration of Persons Act, Cap 149, provides that the Principal Secretary shall be in charge of administration and management of NIIMS.*

4. That a law should not purport to disband institutions in the identity ecosystem like the Huduma bill, 2021 proposes, especially, since some of the legislations that it proposes to repeal, were enacted to help implement the Constitution of Kenya, 2010. The Huduma Bill, 2021 proposes to repeal them without factoring their Constitutional anchorage and their role in operationalizing the Constitution of Kenya, 2010 to give effect to rights under Chapter three of the Constitution.

Observation: With issuance of a Huduma Namba that replaces the strict requirement of a hard copy birth certificate (with issuance of a Huduma Namba, one will only print a birth certificate if need arises) and issuance of a Huduma Card which replaces the current Identity Card, it means that you cannot reasonably have CRS and NRB remain as standalone institutions. Both the number and card will be respectively generated and produced through the NIIMS system and therefore the institution in charge of NIIMS and CRS and NRB cannot exist side by side. In addition, the primary laws that are marked for repeal are actually pre-colonial laws which don't support a digital identity system. The law governing CRS, the Births and Deaths Registration Act, Cap. 149 was enacted in 1928 and the law governing NRB, the Registration of Persons Act, Cap. was enacted in 1949. These laws have served us well for many years but with the rapid ICT transformation both locally and globally, they have now become archaic and cannot support modern digital registration systems. The third law proposed for repeal, the Kenya Citizens and Foreign Nationals Management Service Act, No 31 of 2011, has not been operationalized since its enactment due to sensitivities of having a state corporation to manage personal data. Further the objects of the Act are mirrored in the Huduma Bill 2021 and therefore repealing that law is necessary and avoids duplication of laws.

5. That the risks of enacting the Huduma Bill, 2021 as is, far outweigh the benefits. The current structure and the form of the bill is not in legislative harmony with the identity ecosystem, making the bill fatally incurable.

Observation: The supposed risks of enacting Huduma Bill 2021 directly speaks to the risks associated with rolling-out Huduma Namba project and these were sufficiently addressed by the High Court in the matter of Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR. Paragraph 1030 of the judgment reads, "It was also our holding that the biometric data collected is necessary to the stated purposes of NIIMS in section 9A of the Registration of Persons Act, and the functionalities of NIIMS as an identification and verification system in our view, also justified the utility of NIIMS and the other existing identification and registration databases. It was thus our finding that NIIMS is not superfluous from an identification and verification point of view, as the biometric data collected therein is necessary for identification, and will be used for verification purposes in relation to other existing databases. Lastly, we found the stated benefits of NIIMS given by the Respondents in their evidence to be in the public interests and not unconstitutional"

6. That the timing of the bill with less than six months to the General Election 2022, especially since it mentions that the Independent Electoral and Boundaries Commission may rely on it for purposes of voter registration, may create confusion and throw the entire electoral process into disarray.

Observation: Firstly, NIIMS may not be fully operational or rolled-out by 9th August 2022 and now that even the Mass Voter Registration (MVR) II has closed and the continuous one is nearing a closure, fears that NIIMS can disrupt the electoral process are unfounded.

Secondly, the proposal that NIIMs can aid in voter registration was informed on the desire to save the billions of taxpayers spent during MVRs as the system would have real-time data on persons who have attained the age of eighteen years and also on deaths. However, it's also our understanding that IEBC is an independent institution and therefore the data would be audited before being loaded into the register of voters.

7. That there is no digital identity policy for Kenya, which as a good practice, should precede and guide the development of a digital identity ecosystem legislation, such as the Huduma Bill, 2021.

Observation: *NIIMs project and its philosophy is drawn from situational analysis of the civil registration systems that was done by the Ministry. It's also informed by: the Kenya National ICT Master Plan-2014; and National Information Communications and Technology Policy 2019.*

In addition, in appreciation of the ongoing transformation of the civil registration systems, the Ministry has formulated a comprehensive National Civil Registration and Identity Management Policy which is awaiting Cabinet approval.

8. That the Huduma bill is fundamentally unconstitutional, as it violates rights under chapter three of the Constitution of Kenya 2010, in a manner not contemplated by Article 24 of the said Constitution.

Observation: *The bill seeks to give effect to Article 12 by providing a mechanism for issuance of identification documents.*

9. That Technology needs to be used as an enabler for Social Services, to serve the citizens, but in the Huduma Bill, 2021, it is being used for exclusion to services.

Observation: *The bill aims at providing a primary law on civil registration and legal identification establishes NIIMS, mechanisms of assigning Huduma Namba and issuance of legal identity documents and how to register births and deaths and this is tied sufficiently to the objects of the bill in Clause 3.*

10. That the Huduma Bill, 2021 will add to further exclusion of various categories of persons, as it seeks the requirement of documentation such as national identity cards amongst others to access huduma namba; documents that sections of persons have been discriminated from obtaining. The Huduma Bill, 2021 will aggravate an already bad situation.

Observation: *Clause 61 of the bill obliges the Cabinet Secretary to put in place measures to ensure inclusion. Given the very different circumstances that face different classes of the persons, it is not practically possible to include the measures that ought to be taken in an Act of Parliament. These measures are intended to be provided for under regulations or other administrative means based on the circumstance in question.*

11. That the Huduma Bill, 2021 treats minors, in a similar manner to adults in obtaining their

data, whilst normally, minors might not receive the types of services anticipated under the Huduma Bill, 2021, unless with the consent or through their parents and guardians.

***Observation:** The development of the bill was guided by international best practices and the principles for identification for sustainable development. Target 16.9 of the Sustainable Development Goals, calls for all UN member States including Kenya, to “provide legal identity for all, including birth registration” by 2030.*

That the disharmony that was displayed by the government/public institutions, the Independent Electoral and Boundaries Commission, the Huduma Secretariat, the office of the Data Protection Officer and the Department of Immigration during the consultative meeting calls for a multi-sectoral, multi-departmental and Civil Society task force approach to facilitate further consultations and initiate reform to the policy and legislative framework on the identity ecosystem.

On the matter of IEBC submission, the Ministry is aware that IEBC is an independent body and considering that the proposal for using NIIMS database in developing a register of voters was made to save taxpayers billions of money in fresh registration.

Recommendation-

The Committee, having considered the Bill pursuant to the provisions of Article 118 of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, recommends that the House approves the Bill with amendments as proposed in the schedule below.

SCHEDULE OF AMENDMENTS

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

(a) by inserting the following definitions of terms in their proper alphabetical sequence—

"Appeals Committee" means the NIIMS Appeals Committee established under section 67F of this Act;

"Commissioner" means the Commissioner for NIIMS Services appointed under section 67E;

"Departments" means the Department of —

- (a) Civil registration services;
- (b) Registration Bureau services;

- (c) Immigration Services; and
- (d) Integrated Population Registration services,
established under section 67A of the Act;
- (b) by deleting the definition of the term “biometric data” and substituting therefor the following new definition—
“biometric data” has the meaning assigned to it under section 2 of the Data Protection Act, No.24 of 2019;”
- (c) by deleting the definition of the term “birth” and substituting therefor the following new definition—
“birth” means the complete expulsion or extraction from a mother of a product of conception whether dead or alive;”
- (d) by deleting the definition of the term “Committee” and substituting therefor the following new definition—
“Committee” means the NIIMS Services Advisory Committee established under section 65 of the Act;
- (e) in the definition of the term “foundational data” by deleting the words “and includes biometric data and biographical data.”
- (f) in the definition of the term “new-born” by deleting the words “twenty eighth” and substituting therefor the word “ninetieth”
- (g) by deleting the definition of the term “personal data” and substituting therefor the following new definition—
“personal data” has the meaning assigned to it under section 2 of the Data Protection Act, No.24 of 2019;”
- (h) by deleting the definition of “Principal Secretary”.

Justification: *To include new definitions such as NIIMS Appeals Committee as used in the Bill*

CLAUSE 8

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

- Proof of identity. 8. The presentation of the Huduma card issued under this Act shall be sufficient proof of identity to facilitate access to any public service which may require an official identification.

Justification: *To provide clarity in clause 8 by stating that the presentation of a Huduma card it shall be sufficient proof of identity*

CLAUSE 9

THAT, Clause 9 of the Bill be amended by deleting the words “at first instance”.

Justification: Making NIIMs authenticator at a first instance of functional data will restrict access to quality and timely services

CLAUSE 10

THAT, Clause 10 of the bill be amended in sub clause (4) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in paragraph (a), by deleting the word “immediately” and substituting therefor the words “within ninety days”;

Justification: To align the duration for registration of new borns to ninety days

CLAUSE 12

THAT, Clause 12 of the bill be amended—

(a) in sub clause (1), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) notify the individual within twenty-one days of the status of the enrolment”

(b) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide for timelines within which the Commissioner shall notify an individual on his status of enrolment into NIIMS. To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in sub clause (4), by inserting the word “reasonable” immediately after the words “payment of such”;

Justification: To provide that any penalties levied shall be reasonable

CLAUSE 15

THAT, Clause 15 of the Bill be amended by inserting a new sub clause immediately after sub clause (1)—

“(1a) The procedure for replacement of a Huduma card contemplated under sub section (1) shall be completed within twenty-one days after receipt of such application.”

Justification: To provide for timelines where one has unserviceable card to be replaced

CLAUSE 17

THAT, Clause 17 of the Bill be amended—

- (a) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;
- (b) by deleting sub clause (4), and substituting therefor the following new sub clauses—
 - (4) A person aggrieved by a decision under this section may—
 - (a) appeal to the Appeals Committee;
 - (b) explore any other internal review mechanisms as may be provided; or
 - (c) pursue alternative dispute resolution mechanisms.
 - (5) A person dissatisfied with a decision of under subsection (4) may appeal to the High Court within (60) sixty days of receipt of such decision.

Justification: To provide for appeal review mechanisms that a person may opt to pursue if dissatisfied with a decision under the Act

CLAUSE 21

THAT, Clause 21 of the Bill be amended by inserting the word “filled” immediately after the words “the father shall be”

Justification: To provide with certainty that any details of the father will be used after direction from the high court

CLAUSE 22

THAT, Clause 22 of the Bill be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 23

THAT, Clause 23 of the Bill be amended by inserting the following new sub clauses immediately after sub clause (3)—

“(4) Despite subsections (1), (2) and (3), the Commissioner may allow late registration under this section where an applicant provides sufficient reasons for not registering within the stipulated period.

- (5) The Cabinet Secretary shall prescribe the circumstances under which a penalty may be waived."

Justifications: To provide for that the Commissioner may waive a penalty. This is to take into consideration families in rural areas who are likely to give birth at home and not at health facilities where registration is almost immediate

CLAUSE 24

THAT, Clause 24 of the Bill be amended—

- (a) in sub clause (1), by deleting the words "Principal Secretary" and substituting therefor the word "Commissioner";
- (b) in sub clause (2), by inserting the following new paragraph immediately after paragraph (e)—
 - "(f) mid-wife or community health worker"

Justification: The proposal in the Bill implies that every birth in Kenya happens in a health facility whereas the bulk of births happen at home with the assistance of a mid-wife or community health workers

CLAUSE 25

THAT, Clause 25 of the Bill be amended—

- (a) in sub clause (1), by deleting paragraph (d) and substituting therefor the following new paragraph—
 - "(d) the name and address of the person who has custody of the foundling or child."
- (b) by inserting the following new sub clause immediately after sub clause (2)—
 - "(3) For the avoidance of doubt, a penalty under section 23 shall not apply in the registration of a foundling."

Justification: To correct a typographical error in sub clause 1 (d) and to provide in clear terms that penalties for late registration shall not apply for foundlings.

CLAUSE 27

THAT, Clause 27 of the Bill be amended—

- (a) in sub clause (1) by deleting the words "developmental milestones and other";
- (b) by inserting the following new sub clause immediately after sub clause (3)—
 - "(4) An update of particulars under sub section (1), shall be at no cost to the applicant."

Justification: To provide clarity with regard to use of the words "developmental milestones" this word may connote other milestones of a child that may not need to be

captured in the databases such as graduation. Also the amendments seek to provide clarity that updates of particulars are at no costs.

CLAUSE 30

THAT, Clause 30 of the Bill be amended by inserting the words “the discover of” immediately after the words “within thirty days of”.

Justification: The occurrence of a death and discovery of a death are two separate events. Requiring the registration of the death upon occurrence as opposed to the discovery of the same will place a heavy burden on the person expected to register the same, given that the occurrence of the death is out of their control.

CLAUSE 32

THAT, Clause 32 of the Bill be amended by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 37

THAT, Clause 37 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

- (c) delete the functional data of the deceased person and any linkage thereof to any living data subjects.

Justification: The current bill does not specify whether a person’s data is kept, archived, deleted, or handled in another way after they are registered in the system as deceased.

CLAUSE 46

THAT, the Bill be amended by deleting clause 46 and substituting therefor the following new clause—

Application of No. 24 of 2019. **46.** The processing of personal data shall be carried out in accordance with Data Protection Act, 2019.

Justification: To enhance clarity.

CLAUSE 47

THAT, Clause 47 of the Bill be amended in sub clause (2) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 48

THAT Clause 48 of the Bill be amended—

- (a) by inserting the following sub clauses immediately after sub clause (1)—
 - “(1a) Data under this Act shall be shared to a private entity at the request of the data subject.”
 - (1b) An entity who seeks any data under this Act shall—
 - (a) comply with the provisions of the Data Protection Act; and
 - (b) sign a data sharing agreement.
- (b) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: to provide for the requirement of the private entity to sign a data sharing agreement prior to the sharing of the data. To ensure compliance with the Data Protection Act, 2019.

CLAUSE 49

THAT, Clause 49 of the Bill be amended—

- (a) by inserting the following paragraph immediately after paragraph (b)—
 - “(c) operational and institutional risks”
- (c) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: to provide that the Commissioner shall implement measures that reduce the risk of data breaches and intrusion of privacy both prior to establishing a system such as NIIMS as well as on an ongoing basis while the system is operational.

CLAUSE 53

THAT, Clause 53 of the Bill be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 58

THAT, Clause 58 of the Bill be amended in sub clause (1) by deleting the words “to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year” and substituting therefor the following words “upon conviction to a fine not exceeding five million shillings or to imprisonment for a period not exceeding five years.

Justification: To provide for stiffer penalties.

CLAUSE 63

THAT, Clause 63 of the Bill be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 64

THAT, Clause 64 of the Bill be deleted.

Justification: Appeals Committee has been provided in detail.

CLAUSE 65

THAT, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

The NIIMS Advisory Committee.

65. (1) There is established the National Integrated Identity Management System Advisory Committee.

(2) The Committee shall comprise of —

- (a) the Principal Secretary responsible for internal security who shall be the Chairperson to the Committee;
- (b) the Commissioner who shall provide secretariat services to the Committee;
- (c) the Principal Secretary responsible for information, communication and technology or a representative in writing;
- (d) the Principal Secretary for the National Treasury or a representative in writing;
- (e) the Principal Secretary responsible for basic education or a representative in writing;

- (f) the Principal Secretary responsible for matters relating to health or a representative in writing;
 - (g) the Chief Executive Officer of the Independent Electoral and Boundaries Commission or a representative in writing;
 - (h) the Inspector General of Police or a representative in writing;
 - (i) the Commissioner General of the Kenya Revenue Authority or a representative in writing;
 - (j) the Director General of National Intelligence Service or a representative in writing; and
 - (k) the Attorney General or a representative in writing.
- (3) Each member of the Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.
 - (4) The Chairperson shall convene at least four meetings in every year.
 - (5) Except as expressly provided in this Act, the Committee shall regulate its own procedure as it deems fit.

Justification: To provide for an advisory Committee rather than a coordination committee. This structure seeks to decentralise the centred roles of the Principal Secretary.

CLAUSE 66

THAT, the Bill be amended by deleting clause 66 and substituting therefor the following new clause—

Functions of the Advisory Committee.

- 66. (1)** The functions of the Committee shall be to—
- (a) advise the Cabinet secretary on formulation of national policies on matters relating to civil registration and legal identification management in accordance with international standards;
 - (b) advise the Cabinet Secretary on matters relating to civil registration and legal identification management;
 - (c) advise the Cabinet Secretary on imposition of fees to classes of person in relation to subsequent issuance of huduma card after initial issue and penalties for late registration;

- (d) advise the Cabinet Secretary on the administrative measures that address any procedural or social barriers that may limit the enrolment of an individual;
- (e) make a recommendation for enrolment and cancellation into NIIMS; and
- (f) ensure in liaison with other government authorities that adequate and appropriate facilities and services are provided to facilitate the enrolment of persons with disabilities, marginalised communities, persons incapacitated by illness, elderly citizens, and individuals in institutional households;

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

Justification: To provide for an advisory Committee rather than a coordination committee. This structure seeks to decentralise the centred roles of the Principal Secretary.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clause immediately after Clause 67—

Administrative
institutions.

67A. There is established—

- (a) the Department of Civil registration Services;
- (b) the Department of National Registration Bureau Services
- (c) the Department of Immigration Services;
- (d) the Department of Integrated population registration services;
- (e) the Huduma Advisory Committee; and
- (f) the Huduma Appeals Committee.

Department of Civil
Registration Services.

67B. (1) The Department known as the Department of Civil Registration Services shall be an office in the public service.

(2) The functions of the Department shall be to—

- (a) register births in the NIIMS database;
- (b) register deaths in the NIIMS database;
- (c) issue a birth certificate from the NIIMS database;
- (d) assign huduma cards to minors; and
- (e) any other relevant function as maybe assigned by the Commissioner.

Department of
National Registration
Bureau Services.

67C. (1) The Department of National Registration Bureau Services shall be an office in the public service.

(2) The functions of the Department shall be—

- (a) to assign huduma namba and huduma cards to adult citizens;
- (b) to assign huduma namba and huduma cards to foreign nationals;
- (c) to assign huduma namba and huduma cards to refugees; and

- (d) any other relevant function as maybe assigned by the Commissioner.

Department of
Immigration Services.

67D. (1) The Department of Immigration Services shall be an office in the public service.

(2) The functions of the Department shall be—

- (a) control and regulate entry and exit of all persons at our airports, seaports and land border posts;
- (b) issue passports and other travel documents;
- (c) control and regulate residency through issuance and renewal of work permits, residence permits and other passes;
- (d) consider and grant Kenyan citizenship to qualified foreigners;
- (e) issue entry visas, register all non-citizens resident in Kenya;
- (f) declare and remove prohibited immigrants;
- (g) provide consular services to Kenya nationals and foreigners at all missions abroad; and
- (h) any other relevant function as maybe assigned by the Commissioner.

Department of
Integrated population
registration services.

67E. (1) The Department of Integrated Population Registration Services shall be an office in the public service.

(2) The functions of the Department shall be —

- (a) to be the administrator to the NIIMS database;
- (b) to store and organise data in the NIIMS database;
- (c) to authenticate data for users in a secure platform;
- (d) to link government agencies in accessing NIIMS database in the prescribed manner for purposes of authenticating personal data; and
- (e) any other relevant function as maybe assigned by the Commissioner.

Justification: To establish the departments and provide their functions. To allow a seamless transition for the CRS, NRB and IPRS directorates so that they may perform the functions of the respective office.

Commissioner for
NIIMS Services.

67F. (1) There shall be a Commissioner for the National Integrated Identity Management System Services whose office shall be an office in the Public Service and who shall be the head of the Departments.

(2) The Commissioner shall be subject to the general supervision of Cabinet Secretary and the day-to-day operations of the Departments.

(3) Without the generality of the foregoing, the functions of the Commissioner shall be—

- (a) the overall head of the Departments established under section 66A of the Act;
 - (b) in consultation with the Cabinet Secretary, coordinate and mobilize resources for the implementation of the relevant policies;
 - (c) ensure effective co-ordination and implementation of the NIIMS;
 - (d) receiving, storing and updating information on the NIIMS database;
 - (e) establish a framework for ensuring the compatibility of technology infrastructure among different government agencies to comply with requirements of the NIIMS;
 - (f) undertake the task of data collection and dissemination in a manner that ensures consistency and accuracy in accordance with set national standards and guidelines;
 - (g) formulate a framework for coordinating agencies accessing the NIIMS database;
 - (h) support the printing and distribution for collection of huduma card;
 - (i) collaborate with other state agencies for effective discharge of its mandate;
 - (j) reviewing and recommending for review of laws and regulations for the better management of the Act.; and
 - (k) perform any other function incidental to the above functions or as may be assigned.
- (4) The Commissioner shall be appointed by the President upon recommendation of the Public Service Commission and approval of the National Assembly.
- (5) A person who qualifies to be appointed as a Commissioner shall—
- (a) possess a degree in law, administration, management, population studies, demography, information and technology or any other related field;
 - (b) be in possession of qualifications as provided for under chapter six of the Constitutions; and
 - (c) possess five years managerial experience.

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

NIIMS Appeals
Committee.

67G. (1) There shall be a National Integrated Identity Management System Appeals Committee.

(2) The Cabinet Secretary shall, by notice in the Gazette appoint the following persons to serve in the Appeals Committee —

- (a) an advocate of not less than ten years standing who shall be the Chairperson to the Committee ;

- (b) a representative of the Department responsible for information , communication and technology;
 - (c) one persons nominated by the Attorney General; and
 - (d) three other persons with knowledge and experience in civil registration and legal identification matters.
- (3) The quorum for a meeting of the Appeals Committee shall be three members.
- (4) The function of the Appeals committee shall be to hear and determine appeals against any decision of the Commissioner with regard to —
- (a) the rejection of any individual application for enrolment into NIIMS ; and
 - (b) the cancellation or revocation of the enrolment of an individual into the NIIMS
- (4)The Appeals Committee shall convene as and when appeals have been filed against decisions of the Commissioner and, save as expressly provided in this Act, regulate its own procedures.
- (5) A member of the Appeals Committee shall hold office for a term of three years and shall be eligible for reappointment for one further term.
- (6) Each member of the Appeals Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.
- (7) The Public Service Commission shall provide the Appeals Committee with a secretariat for the purposes of discharging its mandate.
- (8)A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within sixty days of being notified.

Justification: To provide for an elaborate appeal mechanism structure.

CLAUSE 68

THAT, Clause 68 of the Bill be amended—

- (a) by deleting sub clause (1) and substituting therefor the following new sub clause—
 - (1) The Cabinet Secretary shall, make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act within twelve months of the commencement of this Act.
- (b) by inserting the following paragraphs immediately after paragraph (d)—
 - (d) other documentary proof for access to enrolment;
 - (e) provision of replacement cards to enable access to critical services;
 - (f) registration and management of stateless persons;
 - (g) Appeals Committee;
 - (h) Mechanisms for registration of births and deaths;
 - (i) Enrollement of stateless persons to NIIMS;
 - (j) Other specified biometric data for an individual and a child;
 - (k) recognition of specified vital event of an individual and a child;

- (l) Conditions for late registration for births and deaths;
- (m) Procedures for verification and authentication of information from third party entities;
- (n) Accreditation process for institutions who seek to verify and authenticate information;
- (o) Horizontal integration of existing government databases;
- (p) Procedures, circumstances and limitations on the access, use, retention and disclosure of personal information by third parties;
- (q) Framework for the management of existing databases and portals;
- (r) Special administrative arrangements to ensure registration;
- (s) Procedures for updating particulars in the database and attendant timelines;
- (t) Procedures for capturing birth registration data for stateless persons and foreign nationals not resident in Kenya;
- (u) Access to adoption certificates;
- (v) Process of validation and rectification under NIIMS; and
- (w) Data protection impact assessments

Justification: To provide for regulation making power to the Cabinet Secretary.

CLAUSE 72

THAT, Clause 72 of the Bill be amended—

- (a) by inserting the following new sub clause immediately after sub clause (1)—
 - “(1a) All issues that arise on the repeal Acts, that are related to this Act, shall be dealt with and discharged by the Commissioner within eighteen months from the date of commencement of this Act;
 - (1b) Despite subsection (1a), the Cabinet Secretary may, by notice in the *Gazette*, extend the period prescribed in respect of any particular issue under subsection (1a), by a period not exceeding one year.”
- (b) in sub clause (5), by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: There is need for saving all process currently being undertaken under the old regimes.

FIRST SCHEDULE

THAT the First schedule be amended—

- (a) in paragraph 1, by inserting the following subparagraph immediately after paragraph (g)—
 - “(h) ethnicity” .
- (b) in paragraph 2, by deleting subparagraph (b)

Justification

To be in line with the Constitution.

SECOND SCHEDULE

THAT the Second Schedule be amended—

- (a) in the proposed amendments to the Interpretation and General provisions Act, by deleting the new definition of “gender” and substituting therefor the following new definition—

“sex” includes male, female and intersex”

- (b) by deleting the proposed amendments to section 5 and substituting therefor the following—

New
section

Insert the following section immediately after section 5D—

5E. (1) The Cabinet Secretary responsible for matters relating to immigration shall establish the Citizenship and Permits Determination Advisory Committee.

(2) The Cabinet Secretary shall prescribe the composition and functions of the committees established under subsection (1).

- (a) by deleting the proposed amendments to the Refugees Act (No.13 of 2006), and substituting therefor the following—

Refugees Act (No. 10
of 2021)

28(7)

Delete the words “refugee identity card” and substitute therefor the words “Refugees Huduma Card”

Justification: To rely on the correct Act of Parliament.

MIN No. 37/2022:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at Ten Minutes past one o'clock. The next meeting will be by notice.

Signed.....

Chairperson

Date.....

5th April, 2022

**MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON FRIDAY, 11TH MARCH,
2022 AT 10.00 A.M. IN TAMARIND TREE HOTEL, NAIROBI.**

PRESENT

- | | |
|-----------------------------------|--------------------|
| 1. Hon. Peter Mwathi, CBS, MP | - Chairperson |
| 2. Hon. Fatuma Gedi, CBS, MP | - Vice-Chairperson |
| 3. Hon. Oku Kaunya, MP | |
| 4. Hon. Dr. Makali Mulu, MP | |
| 5. Hon. Aduma Owour, MP | |
| 6. Hon. Peter Kaluma, MP | |
| 7. Hon. Marselino Arbelle, MP | |
| 8. Hon. Dr. Tecla Tum, MP | |
| 9. Hon. Halima Mucheke, MP | |
| 10. Hon. Peter Masara, MP | |
| 11. Hon. Rozaah Buyu, MP | |
| 12. Hon. William Chepkut, MP | |
| 13. Hon. Wambugu Munene, MP | |
| 14. Hon. Jeremiah Lomurukai, MP | |
| 15. Hon. Nimrod Mbithuka Mbai, MP | |

ABSENT WITH APOLOGIES.

1. Hon. Abdi Shurie, MP
2. Hon. Col(Rtd) Geoffrey Kingangi, MP
3. Hon. Ngunjiri Wambugu, MP
4. Hon. Dr. Swarup Mishra, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|----------------------------|
| 1. Mr. Adan Gindicha | - | Senior Clerk Assistant |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Ms. Delvin Onyancha | - | Research Assistant Officer |
| 5. Ms. Eva Kaare | - | Serjeant-At-Arms |

MIN No. 24/2022:-

**PRELIMINARIES AND COMMUNICATION FROM
THE CHAIRPERSON**

The Chairperson called the meeting to order at 10.23am with a word of prayer.

The agenda was adopted after being proposed by Hon. Dr. Tecla Chebet Tum, MP and seconded by Hon. Peter Francis Masara, MP.

The Committee considered the report and came up with the following observations and recommendations-

Observations-

1. That the Huduma Bill is not implementable since the other important components, namely, the civil registration service and the National Registration Bureau are not automated.

Observation: The Ministry invested in both human and IT infrastructure in the last three years to digitize Civil Registration Service (CRS) and therefore the position that that CRS is not automated is incorrect. Currently the automation is at optimal level and does not hamper the generation of Huduma numbers and especially for persons above eighteen years as their data is with NRB which is fully optimally digitized.

2. On the National Registration Bureau, the bureau is fully digitized and their data has so far assisted in generating more than eleven million Huduma numbers and subsequent printing of the cards. That the Huduma Bill, 2021 is a bad bill. It is a misnomer. It is a security surveillance bill, that perpetuates exclusion as it securitizes social services and should it pass in its current form, it will prevent access to the Chapter three and chapter four rights under the Constitution of Kenya, 2010.

Observation: The bill provides for a digital and modern registration of births and issuance of a digital ID (Third generation ID). With digital registration of births, a number hereinafter referred to as "Huduma Namba" is issued and upon attaining eighteen years, an adult is issued with a digital ID hereinafter referred to as Huduma Card. Further, the bill provides for integration of existing government databases and their access within government or by the private sector is limited. In this regard, the bill does not contain any form of surveillance as it does not provide for collection of DNA or GPS coordinates as ruled by the High Court in Child Welfare Society and 9 others (Interested Parties) [2020] eKLR. Once issued with a number or card, there is not any form of tracking or wiretapping that is supported by the National Integrated Identity Management Systems (NIIMS). On the matter of securitization of social services, as it is today, access of critical social services to either children or adults is pegged on availing a birth certificate or an ID and therefore requiring that one provides a huduma number (which replaces the Birth Certificate) or a Huduma Card (Which replaces Huduma Card) is not securitizing social services. In summary, it's important to note that the allegations of securitization of Huduma project were heavily canvassed by the CSOs in the consolidated NBI Constitutional Petitions Nos 56,58 and 59 of 2019 Nubian Rights Forum & Others and a bench of three (3) judges ruled that based on the evidence provided by the Ministry, the benefits of biometric data capture far outweighed the concerns brought before the courts by the CSOs.

3. That the objects and the long title of the bill do not speak to the Kenyan problem that the

bill seeks to solve, which is the reform of the identity ecosystem, hence making the bill fatally flawed in form and structure.

Observation: *The bill aims at providing a primary law on civil registration and legal identification establishes NIIMS, mechanisms of assigning Huduma Namba and issuance of legal identity documents and how to register births and deaths and this is tied sufficiently to the objects of the bill in Clause 3. So the assertion that the bill is fatally defective in form and structure is untrue and if not downright alarmist.*

4. That the institutional infrastructure proposed in the bill makes the Principal Secretary, the prosecutor and judge in cases of decision making on issuance of Huduma number, arbitrary powers subject to abuse. A good institutional infrastructure would have provided for an institution to oversee management of the legal identity and a two or three tier administrative process, with an appellate provision and subject to Parliamentary oversight.

Observation: *The national government has a sacrosanct duty to protect personal data of all citizens and residents lawfully residing in Kenya. With this in mind, different countries have different local solutions or infrastructures on how best to protect their personal data. Currently, Kenya does not have a state corporation that is charged with administration of personal data. The National Registration Bureau which is charged with issuance of IDs, Department of Immigration which issues passports and the Civil Registration Services which registers births and deaths are creatures of administrative actions even though they draw their mandate from various laws. The principle behind these institutions being administratively created and not state corporations is based on the experience that the protection of personal data gets more premium and attention that it deserves when done through administrative organs than state corporations whose management is done by a board of persons whose contracts are for short-term basis. With that in mind, it's a misunderstanding that the Principal Secretary in charge of NIIMS would administer the daily operations of NIIMS. Out of practice, the Ministry will form subject to approval of the Public Service Commission a body that would undertake daily administration of NIIMS that would have a Director who will run daily operations of NIIMS. The Director, as it is currently with directors of IPRS, CRS, NRB and Immigration would report to the Ministry through the Principal Secretary in charge. Be that as it may, it's important to note that the law currently in Section 9A of the Registration of Persons Act, Cap 149, provides that the Principal Secretary shall be in charge of administration and management of NIIMS.*

5. That a law should not purport to disband institutions in the identity ecosystem like the Huduma bill, 2021 proposes, especially, since some of the legislations that it proposes to repeal, were enacted to help implement the Constitution of Kenya, 2010. The Huduma Bill, 2021 proposes to repeal them without factoring their Constitutional anchorage and their role in operationalizing the Constitution of Kenya, 2010 to give effect to rights under Chapter three of the Constitution.

Observation: With issuance of a Huduma Namba that replaces the strict requirement of a hard copy birth certificate (with issuance of a Huduma Namba, one will only print a birth certificate if need arises) and issuance of a Huduma Card which replaces the current Identity Card, it means that you cannot reasonably have CRS and NRB remain as standalone institutions. Both the number and card will be respectively generated and produced through the NIIMS system and therefore the institution in charge of NIIMS and CRS and NRB cannot exist side by side. In addition, the primary laws that are marked for repeal are actually pre-colonial laws which don't support a digital identity system. The law governing CRS, the Births and Deaths Registration Act, Cap. 149 was enacted in 1928 and the law governing NRB, the Registration of Persons Act, Cap. was enacted in 1949. These laws have served us well for many years but with the rapid ICT transformation both locally and globally, they have now become archaic and cannot support modern digital registration systems. The third law proposed for repeal, the Kenya Citizens and Foreign Nationals Management Service Act, No 31 of 2011, has not been operationalized since its enactment due to sensitivities of having a state corporation to manage personal data. Further the objects of the Act are mirrored in the Huduma Bill 2021 and therefore repealing that law is necessary and avoids duplication of laws.

6. That the risks of enacting the Huduma Bill, 2021 as is, far outweigh the benefits. The current structure and the form of the bill is not in legislative harmony with the identity ecosystem, making the bill fatally incurable.

Observation: The supposed risks of enacting Huduma Bill 2021 directly speaks to the risks associated with rolling-out Huduma Namba project and these were sufficiently addressed by the High Court in the matter of Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR. Paragraph 1030 of the judgment reads, "It was also our holding that the biometric data collected is necessary to the stated purposes of NIIMS in section 9A of the Registration of Persons Act, and the functionalities of NIIMS as an identification and verification system in our view, also justified the utility of NIIMS and the other existing identification and registration databases. It was thus our finding that NIIMS is not superfluous from an identification and verification point of view, as the biometric data collected therein is necessary for identification, and will be used for verification purposes in relation to other existing databases. Lastly, we found the stated benefits of NIIMS given by the Respondents in their evidence to be in the public interests and not unconstitutional"

7. That the timing of the bill with less than six months to the General Election 2022, especially since it mentions that the Independent Electoral and Boundaries Commission may rely on it for purposes of voter registration, may create confusion and throw the entire electoral process into disarray.

Observation: Firstly, NIIMS may not be fully operational or rolled-out by 9th August 2022 and now that even the Mass Voter Registration (MVR) II has closed and the continuous one is nearing a closure, fears that NIIMS can disrupt the electoral process are unfounded.

Secondly, the proposal that NIIMs can aid in voter registration was informed on the desire to save the billions of taxpayers spent during MVRs as the system would have real-time data on persons who have attained the age of eighteen years and also on deaths. However, it's also our understanding that IEBC is an independent institution and therefore the data would be audited before being loaded into the register of voters.

8. That there is no digital identity policy for Kenya, which as a good practice, should precede and guide the development of a digital identity ecosystem legislation, such as the Huduma Bill, 2021.

Observation: *NIIMs project and its philosophy is drawn from situational analysis of the civil registration systems that was done by the Ministry. It's also informed by: the Kenya National ICT Master Plan-2014; and National Information Communications and Technology Policy 2019.*

In addition, in appreciation of the ongoing transformation of the civil registration systems, the Ministry has formulated a comprehensive National Civil Registration and Identity Management Policy which is awaiting Cabinet approval.

9. That the Huduma bill is fundamentally unconstitutional, as it violates rights under chapter three of the Constitution of Kenya 2010, in a manner not contemplated by Article 24 of the said Constitution.

Observation: *The bill seeks to give effect to Article 12 by providing a mechanism for issuance of identification documents.*

10. That Technology needs to be used as an enabler for Social Services, to serve the citizens, but in the Huduma Bill, 2021, it is being used for exclusion to services.

Observation: *The bill aims at providing a primary law on civil registration and legal identification establishes NIIMS, mechanisms of assigning Huduma Namba and issuance of legal identity documents and how to register births and deaths and this is tied sufficiently to the objects of the bill in Clause 3.*

11. That the Huduma Bill, 2021 will add to further exclusion of various categories of persons, as it seeks the requirement of documentation such as national identity cards amongst others to access huduma namba; documents that sections of persons have been discriminated from obtaining. The Huduma Bill, 2021 will aggravate an already bad situation.

Observation: *Clause 61 of the bill obliges the Cabinet Secretary to put in place measures to ensure inclusion. Given the very different circumstances that face different classes of the persons, it is not practically possible to include the measures that ought to be taken in an Act of Parliament. These measures are intended to be provided for under regulations or other administrative means based on the circumstance in question.*

12. That the Huduma Bill, 2021 treats minors, in a similar manner to adults in obtaining their

data, whilst normally, minors might not receive the types of services anticipated under the Huduma Bill, 2021, unless with the consent or through their parents and guardians.

***Observation:** The development of the bill was guided by international best practices and the principles for identification for sustainable development. Target 16.9 of the Sustainable Development Goals, calls for all UN member States including Kenya, to "provide legal identity for all, including birth registration" by 2030.*

That the disharmony that was displayed by the government/public institutions, the Independent Electoral and Boundaries Commission, the Huduma Secretariat, the office of the Data Protection Officer and the Department of Immigration during the consultative meeting calls for a multi-sectoral, multi-departmental and Civil Society task force approach to facilitate further consultations and initiate reform to the policy and legislative framework on the identity ecosystem.

On the matter of IEBC submission, the Ministry is aware that IEBC is an independent body and considering that the proposal for using NIIMS database in developing a register of voters was made to save taxpayers billions of money in fresh registration.

Recommendations-

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

- (a) by inserting the following definitions of terms in their proper alphabetical sequence—
 - "Appeals Committee" means the NIIMS Appeals Committee established under section 67F of this Act;
 - "Commissioner" means the Commissioner for NIIMS Services appointed under section 67E;
 - "Departments" means the Department of —
 - (a) Civil registration services;
 - (b) Registration Bureau services;
 - (c) Immigration Services; and
 - (d) Integrated Population Registration services,established under section 67A of the Act;
- (b) by deleting the definition of the term "biometric data" and substituting therefor the following new definition—
 - "biometric data" has the meaning assigned to it under section 2 of the Data Protection Act, No.24 of 2019;"

- (c) by deleting the definition of the term "birth" and substituting therefor the following new definition—

"birth" means the complete expulsion or extraction from a mother of a product of conception whether dead or alive;"

- (d) by deleting the definition of the term "Committee" and substituting therefor the following new definition—

"Committee" means the NIIMS Services Advisory Committee established under section 65 of the Act;

- (e) in the definition of the term "foundational data" by deleting the words "and includes biometric data and biographical data."

- (f) in the definition of the term "new-born" by deleting the words "twenty eighth" and substituting therefor the word "ninetieth"

- (g) by deleting the definition of the term "personal data" and substituting therefor the following new definition—

"personal data" has the meaning assigned to it under section 2 of the Data Protection Act, No.24 of 2019;"

- (h) by deleting the definition of "Principal Secretary".

Justification: To include new definitions such as NIIMS Appeals Committee as used in the Bill

CLAUSE 8

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Proof of identity. 8. The presentation of the Huduma card issued under this Act shall be sufficient proof of identity to facilitate access to any public service which may require an official identification.

Justification: To provide clarity in clause 8 by stating that the presentation of a Huduma card it shall be sufficient proof of identity

CLAUSE 9

THAT, Clause 9 of the Bill be amended by deleting the words "at first instance".

Justification: Making NIIMS authenticator at a first instance of functional data will restrict access to quality and timely services

CLAUSE 10

THAT, Clause 10 of the bill be amended in sub clause (4) by deleting the words "Principal Secretary" and substituting therefor the word "Commissioner";

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 11

THAT, Clause 11 of the Bill be amended in paragraph (a), by deleting the word "immediately" and substituting therefor the words "within ninety days";

Justification: To align the duration for registration of new borns to ninety days

CLAUSE 12

THAT, Clause 12 of the bill be amended—

(a) in sub clause (1), by deleting paragraph (b) and substituting therefor the following new paragraph—

"(b) notify the individual within twenty-one days of the status of the enrolment"

(b) by deleting the words "Principal Secretary" wherever it occurs and substituting therefor the word "Commissioner";

Justification: To provide for timelines within which the Commissioner shall notify an individual on his status of enrolment into NIIMS. To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 13

THAT, Clause 13 of the Bill be amended in sub clause (4), by inserting the word "reasonable" immediately after the words "payment of such";

Justification: To provide that any penalties levied shall be reasonable

CLAUSE 15

THAT, Clause 15 of the Bill be amended by inserting a new sub clause immediately after sub clause (1)—

"(1a) The procedure for replacement of a Huduma card contemplated under sub section (1) shall be completed within twenty-one days after receipt of such application."

Justification: To provide for timelines where one has un serviceable card to be replaced

CLAUSE 17

THAT, Clause 17 of the Bill be amended—

- (a) by deleting the words "Principal Secretary" wherever it occurs and substituting therefor the word "Commissioner";
- (b) by deleting sub clause (4), and substituting therefor the following new sub clauses—
 - (4) A person aggrieved by a decision under this section may—
 - (a) appeal to the Appeals Committee;
 - (b) explore any other internal review mechanisms as may be provided; or
 - (c) pursue alternative dispute resolution mechanisms.
 - (5) A person dissatisfied with a decision of under subsection (4) may appeal to the High Court within (60) sixty days of receipt of such decision.

Justification: To provide for appeal review mechanisms that a person may opt to pursue if dissatisfied with a decision under the Act

CLAUSE 21

THAT, Clause 21 of the Bill be amended by inserting the word "filled" immediately after the words "the father shall be"

Justification: To provide with certainty that any details of the father will be used after direction from the high court

CLAUSE 22

THAT, Clause 22 of the Bill be amended by deleting the words "Principal Secretary" wherever it occurs and substituting therefor the word "Commissioner";

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 23

THAT, Clause 23 of the Bill be amended by inserting the following new sub clauses immediately after sub clause (3)—

"(4) Despite subsections (1), (2) and (3), the Commissioner may allow late registration under this section where an applicant provides sufficient reasons for not registering within the stipulated period.

(5) The Cabinet Secretary shall prescribe the circumstances under which a penalty may be waived."

Justifications: To provide for that the Commissioner may waive a penalty. This is to take into consideration families in rural areas who are likely to give birth at home and not at health facilities where registration is almost immediate

CLAUSE 24

THAT, Clause 24 of the Bill be amended—

- (a) in sub clause (1), by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;
- (b) in sub clause (2), by inserting the following new paragraph immediately after paragraph (e)—
 - “(f) mid-wife or community health worker”

Justification: The proposal in the Bill implies that every birth in Kenya happens in a health facility whereas the bulk of births happen at home with the assistance of a mid-wife or community health workers

CLAUSE 25

THAT, Clause 25 of the Bill be amended—

- (a) in sub clause (1), by deleting paragraph (d) and substituting therefor the following new paragraph—
 - “(d) the name and address of the person who has custody of the foundling or child.”
- (b) by inserting the following new sub clause immediately after sub clause (2)—
 - “(3) For the avoidance of doubt, a penalty under section 23 shall not apply in the registration of a foundling.

Justification: To correct a typographical error in sub clause 1 (d) and to provide in clear terms that penalties for late registration shall not apply for foundlings.

CLAUSE 27

THAT, Clause 27 of the Bill be amended—

- (a) in sub clause (1) by deleting the words “developmental milestones and other”;
- (b) by inserting the following new sub clause immediately after sub clause (3)—
 - “(4) An update of particulars under sub section (1), shall be at no cost to the applicant.”

Justification: To provide clarity with regard to use of the words “developmental milestones” this word may connote other milestones of a child that may not need to be captured in the databases such as graduation. Also the amendments seek to provide clarity that updates of particulars are at no costs.

CLAUSE 30

THAT, Clause 30 of the Bill be amended by inserting the words “the discover of” immediately after the words “within thirty days of”.

Justification: The occurrence of a death and discovery of a death are two separate events. Requiring the registration of the death upon occurrence as opposed to the discovery of the same will place a heavy burden on the person expected to register the same, given that the occurrence of the death is out of their control.

CLAUSE 32

THAT, Clause 32 of the Bill be amended by deleting the words "Principal Secretary" and substituting therefor the word "Commissioner";

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 37

THAT, Clause 37 of the Bill be amended by deleting paragraph (c) and substituting therefor the following new paragraph—

- (c) delete the functional data of the deceased person and any linkage thereof to any living data subjects.

Justification: The current bill does not specify whether a person's data is kept, archived, deleted, or handled in another way after they are registered in the system as deceased.

CLAUSE 46

THAT, the Bill be amended by deleting clause 46 and substituting therefor the following new clause—

Application of No. 24 of 2019. **46.** The processing of personal data shall be carried out in accordance with Data Protection Act, 2019.

Justification: To enhance clarity.

CLAUSE 47

THAT, Clause 47 of the Bill be amended in sub clause (2) by deleting the words "Principal Secretary" and substituting therefor the word "Commissioner";

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 48

THAT Clause 48 of the Bill be amended—

(a) by inserting the following sub clauses immediately after sub clause (1)—

“(1a) Data under this Act shall be shared to a private entity at the request of the data subject.”

(1b) An entity who seeks any data under this Act shall—

(a) comply with the provisions of the Data Protection Act; and

(b) sign a data sharing agreement.

(b) by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: to provide for the requirement of the private entity to sign a data sharing agreement prior to the sharing of the data. To ensure compliance with the Data Protection Act, 2019.

CLAUSE 49

THAT, Clause 49 of the Bill be amended—

(a) by inserting the following paragraph immediately after paragraph (b)—

“(c) operational and institutional risks”

(c) by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: to provide that the Commissioner shall implement measures that reduce the risk of data breaches and intrusion of privacy both prior to establishing a system such as NIIMS as well as on an ongoing basis while the system is operational.

CLAUSE 53

THAT, Clause 53 of the Bill be amended by deleting the words “Principal Secretary” wherever it occurs and substituting therefor the word “Commissioner”;

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 58

THAT, Clause 58 of the Bill be amended in sub clause (1) by deleting the words “to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year” and substituting therefor the following words “upon conviction to a fine not exceeding five million shillings or to imprisonment for a period not exceeding five years.

Justification: To provide for stiffer penalties.

CLAUSE 63

THAT, Clause 63 of the Bill be amended by deleting the words "Principal Secretary" wherever it occurs and substituting therefor the word "Commissioner";

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

CLAUSE 64

THAT, Clause 64 of the Bill be deleted.

Justification: Appeals Committee has been provided in detail.

CLAUSE 65

THAT, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

The NIIMS Advisory Committee.

65. (1) There is established the National Integrated Identity Management System Advisory Committee.

(2) The Committee shall comprise of —

- (a) the Principal Secretary responsible for internal security who shall be the Chairperson to the Committee;
- (b) the Commissioner who shall provide secretariat services to the Committee;
- (c) the Principal Secretary responsible for information, communication and technology or a representative in writing;
- (d) the Principal Secretary for the National Treasury or a representative in writing;
- (e) the Principal Secretary responsible for basic education or a representative in writing;
- (f) the Principal Secretary responsible for matters relating to health or a representative in writing;
- (g) the Chief Executive Officer of the Independent Electoral and Boundaries Commission or a representative in writing;
- (h) the Inspector General of Police or a representative in writing;

- (i) the Commissioner General of the Kenya Revenue Authority or a representative in writing;
 - (j) the Director General of National Intelligence Service or a representative in writing; and
 - (k) the Attorney General or a representative in writing.
- (3) Each member of the Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.
- (4) The Chairperson shall convene at least four meetings in every year.
- (5) Except as expressly provided in this Act, the Committee shall regulate its own procedure as it deems fit.

Justification: To provide for an advisory Committee rather than a coordination committee. This structure seeks to decentralise the centred roles of the Principal Secretary.

CLAUSE 66

THAT, the Bill be amended by deleting clause 66 and substituting therefor the following new clause—

Functions of the Advisory Committee.

- 66.** (1) The functions of the Committee shall be to—
- (a) advise the Cabinet secretary on formulation of national policies on matters relating to civil registration and legal identification management in accordance with international standards;
 - (b) advise the Cabinet Secretary on matters relating to civil registration and legal identification management;
 - (c) advise the Cabinet Secretary on imposition of fees to classes of person in relation to subsequent issuance of huduma card after initial issue and penalties for late registration;
 - (d) advise the Cabinet Secretary on the administrative measures that address any procedural or social barriers that may limit the enrolment of an individual;
 - (e) make a recommendation for enrolment and cancellation into NIIMS ; and
 - (f) ensure in liaison with other government authorities that adequate and appropriate facilities and services are provided to facilitate the enrolment of persons with disabilities, marginalised communities, persons incapacitated by illness, elderly citizens, and individuals in institutional households;

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

Justification: To provide for an advisory Committee rather than a coordination committee. This structure seeks to decentralise the centred roles of the Principal Secretary.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clause immediately after Clause 67—

Administrative
institutions.

67A. There is established—

- (a) the Department of Civil registration Services;
- (b) the Department of National Registration Bureau Services
- (c) the Department of Immigration Services;
- (d) the Department of Integrated population registration services;
- (e) the Huduma Advisory Committee; and
- (f) the Huduma Appeals Committee.

Department of Civil
Registration Services.

67B. (1) The Department known as the Department of Civil Registration Services shall be an office in the public service.

(2) The functions of the Department shall be to—

- (a) register births in the NIIMS database;
- (b) register deaths in the NIIMS database;
- (c) issue a birth certificate from the NIIMS database;
- (d) assign huduma cards to minors; and
- (e) any other relevant function as maybe assigned by the Commissioner.

Department of
National Registration
Bureau Services.

67C. (1) The Department of National Registration Bureau Services shall be an office in the public service.

(2) The functions of the Department shall be—

- (a) to assign huduma namba and huduma cards to adult citizens;
- (b) to assign huduma namba and huduma cards to foreign nationals;
- (c) to assign huduma namba and huduma cards to refugees; and
- (d) any other relevant function as maybe assigned by the Commissioner.

Department of
Immigration Services.

67D. (1) The Department of Immigration Services shall be an office in the public service.

(2) The functions of the Department shall be—

- (a) control and regulate entry and exit of all persons at our airports, seaports and land border posts;
- (b) issue passports and other travel documents;

- (c) control and regulate residency through issuance and renewal of work permits, residence permits and other passes;
- (d) consider and grant Kenyan citizenship to qualified foreigners;
- (e) issue entry visas, register all non-citizens resident in Kenya;
- (f) declare and remove prohibited immigrants;
- (g) provide consular services to Kenya nationals and foreigners at all missions abroad; and
- (h) any other relevant function as maybe assigned by the Commissioner.

Department of Integrated population registration services.

67E. (1) The Department of Integrated Population Registration Services shall be an office in the public service.

(2) The functions of the Department shall be —

- (a) to be the administrator to the NIIMS database;
- (b) to store and organise data in the NIIMS database;
- (c) to authenticate data for users in a secure platform;
- (d) to link government agencies in accessing NIIMS database in the prescribed manner for purposes of authenticating personal data; and
- (e) any other relevant function as maybe assigned by the Commissioner.

Justification: To establish the departments and provide their functions. To allow a seamless transition for the CRS, NRB and IPRS directorates so that they may perform the functions of the respective office.

Commissioner for NIIMS Services.

67F. (1) There shall be a Commissioner for the National Integrated Identity Management System Services whose office shall be an office in the Public Service and who shall be the head of the Departments.

(2) The Commissioner shall be subject to the general supervision of Cabinet Secretary and the day-to-day operations of the Departments.

(3) Without the generality of the foregoing, the functions of the Commissioner shall be—

- (a) the overall head of the Departments established under section 66A of the Act;
- (b) in consultation with the Cabinet Secretary, coordinate and mobilize resources for the implementation of the relevant policies;
- (c) ensure effective co-ordination and implementation of the NIIMS;
- (d) receiving, storing and updating information on the NIIMS database;
- (e) establish a framework for ensuring the compatibility of technology infrastructure among different government agencies to comply with requirements of the NIIMS;

- (f) undertake the task of data collection and dissemination in a manner that ensures consistency and accuracy in accordance with set national standards and guidelines;
 - (g) formulate a framework for coordinating agencies accessing the NIIMS database;
 - (h) support the printing and distribution for collection of huduma card;
 - (i) collaborate with other state agencies for effective discharge of its mandate;
 - (j) reviewing and recommending for review of laws and regulations for the better management of the Act.; and
 - (k) perform any other function incidental to the above functions or as may be assigned.
- (4) The Commissioner shall be appointed by the President upon recommendation of the Public Service Commission and approval of the National Assembly.
- (5) A person who qualifies to be appointed as a Commissioner shall—
- (a) possess a degree in law, administration, management, population studies, demography, information and technology or any other related field;
 - (b) be in possession of qualifications as provided for under chapter six of the Constitutions; and
 - (c) possess five years managerial experience.

Justification: To provide that the Commissioner shall take the role of the Principal Secretary and further provide for a tiered structure that decentralises power of administration of the act.

NIIMS
Committee.

Appeals

67G. (1) There shall be a National Integrated Identity Management System Appeals Committee.

(2) The Cabinet Secretary shall, by notice in the Gazette appoint the following persons to serve in the Appeals Committee —

- (a) an advocate of not less than ten years standing who shall be the Chairperson to the Committee ;
- (b) a representative of the Department responsible for information , communication and technology;
- (c) one persons nominated by the Attorney General; and
- (d) three other persons with knowledge and experience in civil registration and legal identification matters.

(3) The quorum for a meeting of the Appeals Committee shall be three members.

(4) The function of the Appeals committee shall be to hear and determine appeals against any decision of the Commissioner with regard to —

- (a) the rejection of any individual application for enrolment into NIIMS ; and

- (b) the cancellation or revocation of the enrolment of an individual into the NIIMS

(4) The Appeals Committee shall convene as and when appeals have been filed against decisions of the Commissioner and, save as expressly provided in this Act, regulate its own procedures.

(5) A member of the Appeals Committee shall hold office for a term of three years and shall be eligible for reappointment for one further term.

(6) Each member of the Appeals Committee shall have one vote but in case of a tie in votes, the Chairperson shall have a casting vote.

(7) The Public Service Commission shall provide the Appeals Committee with a secretariat for the purposes of discharging its mandate.

(8) A person who is aggrieved by the decision of the Appeals Committee may appeal to the High Court within sixty days of being notified.

Justification: To provide for an elaborate appeal mechanism structure.

CLAUSE 68

THAT, Clause 68 of the Bill be amended—

- (a) by deleting sub clause (1) and substituting therefor the following new sub clause—

(1) The Cabinet Secretary shall, make regulations generally for giving effect to this Act, and for prescribing anything required or necessary to be prescribed by or under this Act within twelve months of the commencement of this Act.

- (b) by inserting the following paragraphs immediately after paragraph (d)—

- (d) other documentary proof for access to enrolment;
- (e) provision of replacement cards to enable access to critical services;
- (f) registration and management of stateless persons;
- (g) Appeals Committee;
- (h) Mechanisms for registration of births and deaths;
- (i) Enrolment of stateless persons to NIIMS;
- (j) Other specified biometric data for an individual and a child;
- (k) recognition of specified vital event of an individual and a child;
- (l) Conditions for late registration for births and deaths;
- (m) Procedures for verification and authentication of information from third party entities;
- (n) Accreditation process for institutions who seek to verify and authenticate information;
- (o) Horizontal integration of existing government databases;
- (p) Procedures, circumstances and limitations on the access, use, retention and disclosure of personal information by third parties;
- (q) Framework for the management of existing databases and portals;
- (r) Special administrative arrangements to ensure registration;

- (s) Procedures for updating particulars in the database and attendant timelines;
- (t) Procedures for capturing birth registration data for stateless persons and foreign nationals not resident in Kenya;
- (u) Access to adoption certificates;
- (v) Process of validation and rectification under NIIMS; and
- (w) Data protection impact assessments

Justification: To provide for regulation making power to the Cabinet Secretary.

CLAUSE 72

THAT, Clause 72 of the Bill be amended—

- (a) by inserting the following new sub clause immediately after sub clause (1)—
 - “(1a) All issues that arise on the repeal Acts, that are related to this Act, shall be dealt with and discharged by the Commissioner within eighteen months from the date of commencement of this Act;
 - (1b) Despite subsection (1a), the Cabinet Secretary may, by notice in the *Gazette*, extend the period prescribed in respect of any particular issue under subsection (1a), by a period not exceeding one year.”
- (b) in sub clause (5), by deleting the words “Principal Secretary” and substituting therefor the word “Commissioner”;

Justification: There is need for saving all process currently being undertaken under the old regimes.

FIRST SCHEDULE

THAT the First schedule be amended—

- (a) in paragraph 1, by inserting the following subparagraph immediately after paragraph (g)—
 - “(h) ethnicity”
- (b) in paragraph 2, by deleting subparagraph (b)

Justification

To be in line with the Constitution.

SECOND SCHEDULE

THAT the Second Schedule be amended—

- (a) in the proposed amendments to the Interpretation and General provisions Act, by deleting the new definition of “gender” and substituting therefor the following new definition—
 - “sex” includes male, female and intersex”

(b) by deleting the proposed amendments to section 5 and substituting therefor the following—

New
section

Insert the following section immediately after section 5D—

5E. (1) The Cabinet Secretary responsible for matters relating to immigration shall establish the Citizenship and Permits Determination Advisory Committee.

(2) The Cabinet Secretary shall prescribe the composition and functions of the committees established under subsection (1).

(a) by deleting the proposed amendments to the Refugees Act (No.13 of 2006), and substituting therefor the following—

Refugees Act (No. 10
of 2021)

28(7)

Delete the words “refugee identity card” and substitute therefor the words “Refugees Huduma Card”

Justification: To rely on the correct Act of Parliament.

MIN No. 26/2022:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at quarter past one o'clock. The next meeting will be by notice.

Signed.....

Chairperson

Date.....

31st March 2022