

POLICY ANALYSIS OF HUDUMA BILL 2019

Kenya's Draft Digital Identity Law

**LAWYERS
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BACKGROUND

The question of proof of citizenship and legal Identity in Kenya has been present from the colonial period till now, where bona fide Kenyans have had the onus of proofing their citizenship sometimes with documents they lack. Kenya has a multiple disintegrated Identification system mainly comprised of the civil Birth and Death registry, which issues birth and death certificates, the department of National Registration Bureau that issues Identity Cards to Kenyan citizens only and the Department of Immigration that issues the Kenyan Passport¹. The World Bank in 2017 reported that although Kenya lacks a fully integrated National Population Registration System, it is currently working on an Integrated Population Registration Service which seeks to integrate information from the civil registry, National ID database and Immigration department to provide an online validation of identity to public and private service providers². The Huduma Bill 2019 was released to the public on July 15th 2019 for public comments and views as per article 10 and 118 of the Constitution of Kenya on which requires public participation when enacting legislation.

It introduces a National Integrated Identity Management System which combines both functional and foundational data of an individual to one database and grants them a unique identification number that will serve as proof of identity in Kenya. The bill however follows the Government Huduma Namba Pilot Registration exercise which was done in absence of any robust laws on privacy and Data protection in Kenya. Though the system proposes some benefits to Kenyans the process has elucidated suspicion among the citizenry leaving many wonderings why the government is in such a rush to roll out the system and who the main beneficiaries of the system are or will be. Moreover, there are serious legal questions which the bill leaves unanswered that challenge the constitutionality and legitimacy of the bill and require amendment.

¹ Ministry of Interior and Co-ordination of National Government services, Department of Immigration services < <http://www.immigration.go.ke/civil-registration-services>> accessed 30th July 2019

² World Bank Group, The State of Identification Systems in Africa, A Synthesis of country assessments (2017) < <http://documents.worldbank.org/curated/en/156111493234231522/pdf/114628-WP-68p-TheStateofIdentificationSystemsinAfricaASynthesisofIDDAssessments-PUBLIC.pdf>> accessed 30th July 2019

1.2 Justification for Amendment

1.2.1 Nomenclature and definitions

The bill is referred to as the Huduma Bill 2019. Huduma is the Swahili word for services yet the main objects of the Bill are to establish a National Integrated Identity Management system for the purpose of legal Identification and facilitate the assigning of Unique Identification Number and Identity documents to facilitate registration of Births and Deaths. The title is thus misleading.

Lawful residence and Biographical data are not defined under the act. The act requires every lawful resident to mandatorily enroll for a Huduma Namba yet fails to describe what amounts to lawful residence specially to marginalized communities such as stateless persons living in Kenya who lack any documentation to prove their nationality in their country of residence i.e. Kenya and cannot establish any legal link to any other nation.

The act has failed to describe what Biometric Data is or means under the Bill which is important because of the sensitivity of the Data and the fact that the Data is a vital component of the ensuring efficiency of the NIIMS system.

1.2.2 Violation of Human rights

The Huduma Bill makes it mandatory to have a Huduma Namba in order to access Universal Healthcare, enroll into a public educational facility, access social protection services and benefit from the Government Housing Scheme³. The constitution is the supreme law in Kenya through which all laws including the bill draw their validity. Article 43 of the Constitution adopts a non-discriminatory approach by granting every Person and not every citizen a similar right to access the highest attainable standards of health including emergency medical services, accessible and adequate housing, social security and education.

³ The Huduma Bill 2019, s8

Human rights are by nature universal and granted to all persons by virtue of their humanity as is supported by natural and universalist theory of law⁴. Article 19 (3) takes a similar view and includes a positivist approach by restating the rights under the constitution belong to each individual and are not granted by the state. Kenya has also ratified the ICESR which further guarantees these rights and thus Kenya has a constitutional mandate to uphold them. The government cannot therefore be allowed to restrict access to essential services especially those relating to medical treatment and abrogate its duty to observe, promote and protect the rights of citizens under the constitution.

It thus pegs the question whether the denial of these rights by reason of non-enrolment for the Huduma Number is a reasonable and Justifiable limitation as envisaged by article 24 of the constitution. In recent decision by the Kenyan courts in the *John Kabui Mwai* case the court noted that education must be accessible to all without discrimination but especially to the most vulnerable groups⁵. The marginalized and minority communities such as the Nubian Community, and Kenyan Somalis and Kenyan Arabs who because of discrimination have been unable to acquire Identity documentation as easy as other Kenyan citizens. This places them at risk of further marginalization and exclusion.

CHILDREN

Children from these communities are further disproportionately affected as they run the risk of denial of basic education and healthcare. The state is under article 53 of the constitution, the Children's Act and the Convention on the Rights of the Child to which Kenya has ratified, obligated to work in the best interest of the child at all times. By requiring minors, the age of 6 to have access to a Minor's Huduma Card will potentially lock them out of accessing essential services leaving them continuously marginalized through no fault of their own. The state thus has to

⁴ All Answers Ltd, 'Universalism and Cultural Relativism In Human Rights International Law Essay' (Lawteacher.net, February 2019) <<https://www.lawteacher.net/free-law-essays/international-law/universalism-and-cultural-relativism-in-human-rights-international-law-essay.php?vref=1>> accessed 30th 2019

⁵ *John Kabui Mwai & 3others v Kenya National Examination Council & 2 others* (2011) e KLR

recognize the *de facto inequalities* suffered by these children and abolish the need for it to basic education and healthcare.

In addition, *minors of foreign nationals* who are 6 years and above are discriminated as there is no provision to issue a foreign nationals Minors' Huduma Card for resident minors while the law provides for Minor's card for Kenyan Minors, Adult card for Kenyans above the age of 18 and Foreign Nationals Huduma Card for Resident adult non-citizens.

Section 19 of the Bill requires the enrolment of a new born into the NIIMS system in order to grant them a Huduma Namba. The NIIMS system generally fails to cater for stateless persons who lack the necessary documentation to enroll under the system. This means children of stateless persons run the risk of further marginalization as their parents may be unable to enroll them under the system and ultimately lack access to essential Government services.

AGED

Ageism, the assumption of negative stereotypes about a particular age group is mostly related with the adoption of negative stereotypes of the aged. This is a growing demographic in Kenya and the government in the proposed Huduma Bill has failed to recognize the intersectionality of discrimination suffered by this marginalized group. Article 57 of the constitution places a duty on the state to ensure older persons receive reasonable care and assistance from the state and the family. General Comment no 6 of the Committee on Economic Social and Cultural Rights on the economic, social and cultural rights of older persons of the ICESR regarding older persons and the 1991 UN principles for older persons have interpreted care to include healthcare and social security. The government thus needs to consider the aged population who may potentially be locked out of the system and vital access to these essential services.

In light of the above the limitation may thus be unjustified and un-proportional in relation to the services denied and thus ultimately unconstitutional.

REFUGEES

Kenya is a host of close to 477000 refugees some of whom a number of whom have resettled and continue to live in Kenya⁶. In the recent case challenging the Government directive to close down Refugee Camps and repatriate refugees back to Somalia by the KNCHRC against the Government, submissions were given by refugees living in urban areas in Nairobi who wished to remain for they needed healthcare services. The court recognized the need for Kenya to respect its obligation under the 1951 Refugee Convention and protocol relating to the status of Refugees and nullified the directive to forcefully repatriate refugees⁷. In the same manner, Kenya has under the 1951 Convention an obligation to give refugees similar treatment as nationals with regard to access to public education, social security, and healthcare.

The Huduma Bill fails to meet these requirements as section 11 of the Bill fails to state what documents refugees and asylum seekers should use to acquire a Huduma Namba. Noting that the process of Refugee Status Determination and issuance of Refugee Identity Cards takes as long as one year or more⁸ in which they will need access to essential services such as housing, healthcare and education for which it is mandatory to present a Huduma Namba to access. Moreover, the Huduma Namba is the recognized form of identification which refugees ought to have as per the Third Schedule of the Bill. Noting the long period, it takes for refugees and refugee minors to acquire identity documents, they will continue to be subject to harassment and arrest from state officials⁹.

⁶Registration, (UNHCR) <<https://www.unhcr.org/ke/registration>> accessed 31st July 2019

⁷ Kenya National Commission on Human Rights & another v attorney General & 3 others (2017) e KLR

⁸ RCK, Refugees, Asylum Seekers and Returnees (Refugee Consortium of Kenya) <

<https://www.rckkenya.org/refugees-asylum-seekers-and-returnees/>> accessed 31st July 2019

⁹ Lonah Kibet, Groups Decry Rise in Refugee Attacks, *Standard Digital* (Nairobi 23rd Jan 2013) <

<https://www.standardmedia.co.ke/article/2000075646/groups-decry-rise-in-refugee-attacks>> accessed 31st July 2019

INTERSEX

An intersex in Kenya is defined as ‘a condition in which a person has physiological characteristics which cannot be classified as exclusively fitting into the binary definition of male or female at birth¹⁰. The Huduma bill under section 9 and 23 requires the Huduma Card and the birth certificate respectively to have the Sex of an Individual. The bill fails to expressly describe sex to include Intersex Persons as well. A taskforce formed to compile comprehensive data on the number and challenges facing intersex persons in Kenya reports that,

“In terms of legal recognition and documentation, the study found that a majority of intersex persons in Kenya had birth certificates but their recorded sex conflicts with their self-recognized sex making it difficult for them to acquire Identity Cards. This is compounded by their changed physical appearance that conflicts with the recorded sex. As a result, those who have IDs have acquired them through use of sworn affidavits, baptism cards and assistance of third parties making the process longer and delaying or denying them opportunities, employment and voting. They also have conflicting identity as sex recorded on their birth certificates and educational certificates differ.”¹¹

In light of the above the taskforce recommended the inclusion of Intersex as a sex category within the NIIMS system and further inclusion in administrative and institutional forms such as birth notifications and medical documents¹² which the Bill has failed to expressly provide for leaving intersex persons at risk of further discrimination, exclusion and marginalization.

¹⁰ Taskforce on Policy, Legal, Institutional and Administrative Reforms Regarding Intersex Persons in Kenya, (KLRC Blog 27 November 2018) <<http://www.klrc.go.ke/index.php/klrc-blog/613-taskforce-on-policy-legal-institutional-and-administrative-reforms-regarding-intersex-persons-in-kenya-blog>> accessed 31st July 2019

¹¹ Office of the Attorney General and Department of Justice, *Report on the Taskforce of Policy. Legal, Institutional and Administrative Reforms regarding Intersex Persons in Kenya*, (2018) <<http://www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-KENYA.pdf>> accessed 31st July 2019

¹² Ibid pg. 200

CAUSE OF DEATH

Section 29 requires the registration of the cause of death in the death certificate where known. An argument is presented that death occurring in violation of dignity of the deceased and the survivors even where known should not be compulsory to include in the death certificate. An example is where the deceased dies of HIV/AIDS, HIV status is sensitive and protected data to the deceased and also the survivors who may later face discrimination on the disclosure of such information. Even where a child for example survives a HIV Positive parent, the disclosure of the parent's status may open them to discrimination as they would need to present the certificate to other offices.

1.2.3 Appeal

The bill under section 25 provides for the cancellation of an enrollment for a Huduma Namba where it was obtained by either fraud, false representation, bribery, concealment of material facts and on any other justifiable cause after giving such person an opportunity to be heard. The act however fails to provide the appeal procedures to the decision of the principal secretary. Article 48 of the constitution guarantees citizens the rights of access to justice which includes the right to fair administrative action. This is further supported by the overriding objective within the civil procedure act. Citizens thus have a right to appeal to a known appellate body and a right to have their dispute resolved within the shortest time possible.

On this matter another issue left unresolved is whether on revocation of the Huduma Namba, such person guilty of fraudulent activity would still be entitled for re-enrolment to get another Huduma Namba especially to access government services. Article 12 of the constitution states that every citizen is entitled to a Kenyan passport and any document of registration or identification issued by the state to citizens. Further a citizen by birth can't be deprived of their Kenyan citizenship thus their legal right to identity documents.

Further section 58 of the Bill requires the Principal Secretary to establish dispute resolution mechanisms which in our opinion ought to be established by the act due to the sensitive nature of data handled and issues arising out of denial of citizenship.

1.2.4 Citizens access

Article 35(1) guarantees all citizens the right to information held by the state while (2) grants every person the right to correction of untrue or misleading information that affects them. The bill similarly guarantees a person enrolled under the system the right to access their data and to correction of misleading information about them. The NIIMS System however is comprised solely of the NIIMS Database, The Huduma Namba and the Huduma Card. The system lacks the mechanism or platform for citizens to access their data and then correct it. Article 10 provides for transparency, integrity and public participation to be the core national values and principle of governance in Kenya. In *Robert Gakuru case*, the Court stated that public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfillment of constitutional dictates¹³. The public access portal should thus be a vital component of the NIIMS system.

1.2.5 Lack of Transitional provisions

The transitional provisions within the act fail to give proper direction on how long the enrolment shall take and how long it will take to acquire the new Huduma card on enrolment. The method used to enroll persons on the NIIMS database has also not been disclosed. Currently, minority communities such as the Nubians and other communities living along the border have to undergo vetting prior to the issuance of identity documents. Vetting though formally done was not a legal step of identity verification until the amendment via the security Laws (amendment) Act 2014 which introduced section 8 of the Registration of Persons Act which gives the director discretion to demand proof of any information required under the act via documentary and other evidence and to appoint an identification committee or an

¹³ Robert N. Gakuru & others v Kiambu County Government & 3 others [2014] e KLR

identification agent to assist in the authentication of the information provided. The minister similarly has power to make rules for the vetting applicants prior to issue or replacement of ID cards. Any person who has attained the age of 18 years is legally required to apply for an ID which may be used to grant any license or permit or for any legal consideration when required.

Section 67 of the Bill calls for the repeal of the Registration of Persons Act and as a result will lead to the abolition of vetting in law that has historically been discriminative and marred with maladministration as was recognized by the African Commission on Human and People's Rights in the Nubian children Minority decision¹⁴. The law should thus ensure that once outlawed the practice doesn't informally find its way in the system again.

1.2.6 Prohibition against automated decision making

There is general fear of abuse and misuse of the data collected under the NIIMS system. There is a general concern of the use of this information for profiling during elections. The concept isn't foreign having already witnessed the use of the concept of 'the Tyranny of Numbers' that is mostly used in Kenya to relate to oppression by those with numerical advantage over the minority such as in the Kenyan 12th Parliament. It however gained popularity in Kenya in the run up to the 2013 general election. Its main proponent is Professor Mutahi Ngunyi who assuming that Kenyans vote on ethnic lines, assumed who would win the upcoming 2013 general elections based on the number of registered voters within the Independent Electoral and Boundaries Commission (IEBC) Register.

There was a total of about 12.3 million registered voters by IEBC 6.2 of who belonged to the GEMA and Kalenjin Community, the communities of the contestants of the Jubilee Alliance and the largest tribes in Kenya by numbers. Approximately 2.9 million belonged to ethnic communities of the second contestant of the Coalition for Reforms and Democracy (CORD) and 1.8 million to the community of the third

¹⁴ Communication 317/2006- The Nubian Community in Kenya vs The Republic of Kenya
[http://www.achpr.org/files/sessions/17th-ecommunications/317.06/communication 317.06 eng.pdf](http://www.achpr.org/files/sessions/17th-ecommunications/317.06/communication%20317.06%20eng.pdf)

contestant. In his theory, the Professor analyzed the remaining voters as swing votes who could be swayed to vote for either communities based on certain factors. However, based on those numbers the majority tribes would have an easy time winning and would therefore oppress minority tribes as the leader would be an imposition on them thus the tyranny. This type of algorithmic calculation that leads to automated decisions also those that relate to a person's creditworthiness should be prohibited in order to avoid data abuse and misuse.

1.2.7 Mode of Data collection

The bill fails to give the methodology the government intend to use to collect the data. In the 2013 Kenyan Presidential electoral Petition, the Kenyan Supreme Court took judicial notice of the fact that technology isn't perfect and it's sometime prone to fail. This failure has been observed in India as well. There have been reports where there has to be physical persons to verify and deliver services to people generally when the technology itself doesn't work like the village revenue officer who helps beneficiaries access services¹⁵. Similarly, the elderly and many people living in rural areas have found themselves denied essential services as their fingerprints are unable to scan properly thus leading to Aadhaar linked starvation deaths.

The World Bank similarly reports the challenge in performance Huduma Centers outside Nairobi due to lack of proper ICT infrastructure systems. "Kenya has built nearly 300 Huduma centers around the country. Outside Nairobi, however, many lack regular connectivity and power reducing their inability to be used as potential points of access to digital identities. Authentication over mobile networks is a potential solution to reducing the problem made more feasible by growing internet connectivity in Africa¹⁶".

¹⁵ Mukherjee and Gelb, 'Beyond ID: Using Digital Identification to Transform Governance', (Centre For Global Development, September 20 2018) < <https://www.cgdev.org/blog/beyond-id-using-digital-identification-transform-governance>> accessed 30th July 2019

¹⁶World Bank Group, The State of Identification Systems in Africa, A Synthesis of country assessments (2017) < <http://documents.worldbank.org/curated/en/156111493234231522/pdf/114628-WP-68p-TheStateofIdentificationSystemsInAfricaASynthesisofIDDAssessments-PUBLIC.pdf>> accessed 30th July 2019

The most recent report from the communication Authority of Kenya shows at least 42 Million Kenyans actively make internet subscriptions¹⁷. Further the UNHCR similarly recognizes the need for connectivity to improve access to services and especially internet in remote areas¹⁸. Likewise, Kenya could borrow from the GSMA project which uses mobile connectivity and partnerships from Mobile Network Operators and Government to register births in remote areas in countries such as Pakistan using community workers¹⁹.

Delegated Powers

Section 63 leaves a lot open to interpretation and gives wide regulatory discretion on sensitive matters like the procedure of birth and death, particulars to be recorded in the NIIMS database and issuance of Huduma Card or any other Identification Document. Though the Kenyan Constitution gives anyone the legal mandate to challenge laws that are unconstitutional, this also involves a lot of time and expense. In order to reduce cases of abuse of discretion and over regulation, it is necessary to employ safeguards that will fetter the regulatory power of the Cabinet Secretary which includes legislating on the procedure of births and death and reduce overall speculation.

1.2.8 Offences

Some of the offences stated in the act are so punitive as to be considered unfair. Failure to register a birth attracts a penalty of 1 year in prison or 1, million fines. Failure to register a death within 30 days will ultimately attract a penalty of 2million Kenya shillings or two years in prison. Bearing in mind cases of failure to register births fall within poor and marginalized communities the government should seek more redress than punitive measures. 30 days to report a death is also unrealistic given it's a mourning period and various communities mourn for up to 2 weeks and

¹⁷ <https://ca.go.ke/wp-content/uploads/2018/12/Sector-Statistics-Report-Q1-2018-2019.pdf>

¹⁸ <https://www.unhcr.org/news/latest/2016/9/57d7d4478/mobile-connectivity-lifeline-refugees-report-finds.html>

¹⁹ https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2018/08/DBR_infographic.pdf

some may take even longer. Article 11 of the constitution recognizes culture as the foundation of the nation and the state has a duty to respect all forms of cultural expression.

SECTION 18 (4) requiring the mother to indicate their marital status may prove problematic during registration especially where the paternal father to the child is not her husband. Ideally, it's also discriminatory that the law requires the mother to state her status while the father is absolved of the same responsibility.

A general offence constitutes the Actus Reus and the Mens Rea but the offences as framed under the Bill assume a strict liability approach. Given the strict nature of the penalties under the Bill, it amounts to overly punitive sanctions and poor drafting.

1.2.9. Data Protection

Privacy and data protection are one of the major concerns of this system. The Huduma bill under section 8 makes registration mandatory in order to access certain services. The Government of India has already enrolled the Unique Identification Number for its citizens known as '**Aadhaar**' under the AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016. Initially enrolment for the Aadhaar number was voluntary however, after a Ruling by the Indian Supreme court that the number should be used to pay income tax in India, the number of enrolments rose to the current numbers of 1.15 Billion people. This then brings the voluntary nature envisaged by the act to an involuntary stalemate²⁰.

It's thus can be inferred that as long as certain government services mandatorily require a Huduma Namba citizens will have no choice but to enroll. The government thus has to be able to properly safeguard the data given by its citizens.

²⁰ Gelb, Navis and Mukherjee, 'What India's ruling on Aadhaar Means for the future' <<https://www.cgdev.org/blog/what-india-supreme-court-ruling-aadhaar-means-future>> accessed 24th July 2019

1.2.9.1 Lack of Data protection Laws.

Kenya has not yet enacted the data protection billed 2018 that is worrying especially now when we intend to roll out this new system. Though the bill attempts to restate and reconcile certain provisions it fails to:

a) Give proper definitions

Unlike the data protection Bill, The Bill leaves open to interpretation who is the data subject, the data controller and data processor. Secondly, this being sensitive data, the Bill ought to speak to the conditions to be satisfied to be selected as a data processor.

b) Restrictions on use

To prevent abuse, the bill must clearly define what use the Government is either allowed to use it to or prohibited from. The bill doesn't speak to prohibition of use of sensitive data and prohibition against profiling or automated decision making.

c) Data minimization

The Bill describes **biometric data** to include fingerprint, iris and retina scan, hand and earlobe geometry, toe impression, voice waves, blood typing, photographs and other biometric information or such other biological attributes of an individual obtained by way of biometrics.

To begin with the interpretation is too broad and creates room for arbitrary exercise of power to collect additional and at times unnecessary data like DNA. Secondly, this is sensitive data whose breach could lead to significant loss of identity to many Kenyans. From this fact alone, the Government ought to have adopted the Data minimization approach. Borrowing from the GDPR, data minimization could be said to include use of the least minimal data possible to accomplish a task. Therefore, minimal data should be collected, stored and processed²¹. The High court Interim Ruling on the Petition challenging the Constitutionality of the NIIMS system, the court stated that collection of DNA is not

²¹ <https://www.dataguise.com/gdpr-compliance-data-minimization-use-purpose/>

mandatory for the system. The government ought to restrict or limit the biometric collected and only use alternative biometrics like DNA or Earlobe geometry when the primary Biometric data is unavailable e.g. for persons living with Disabilities.

d) Liability

To ensure more data protection, liability should be personal for government officers should be personal while that for corporates should be pegged to their annual turnover to reduce data breaches.

e) Third party

The bill under section 38 prohibits the publishing, display or posting publicly of any biometric data under the NIIMS System. The questions remain if the Government is alive to the possibilities this type of system brings. The Aadhaar database is ideally open source software that allows for other developers to develop on this database and is comparable to android or IOS Software.²² Therefore, it is generally used as a verification tool. The benefits of open source software are just evident as it makes developing easier, cheaper, and even improves the system as the developer also releases the improved code to the software. There are growing concerns however that the use of the Aadhaar in various databases that may collect sensitive data e.g. cast, religion and the databases are open to attack²³. The challenge of the system remains similar and thus the government when drafting the bill ought to seek to learn from various jurisdictions, emulate and adapt.

f) Right to be forgotten

Concerned that the Huduma Namba collects data on children, it is likely that the information of minors collected especially relating to any criminal offences maybe available and susceptible to misuse by other entities. Further, there is question of the role of the right to be forgotten and deletion of data in such a system.

²² Al Jazeera, 'Aadhaar The world's Largest biometric identification system', (June 16 2017) <
<https://www.youtube.com/watch?v=MNr2t-6Ab7E>> accessed 30th July 2019

²³ Ibid

g) Right to privacy and threat of increased surveillance

The right promotes autonomy of an individual and ability to exclude others from accessing certain information about them such as their health status, sexual orientation or political and religious beliefs²⁴. In ***Kenya Human Rights Commission v Communication Authority of Kenya & 4 others***²⁵, the court developed substantive interpretation of the right to privacy as the area of autonomy and liberty of a person, the right to be left alone. It recognizes the increased use of telecommunication technologies e.g. smart devices which hold sensitive data relating to one's sexuality, health, communication with lawyers and loved ones even their personal and religious beliefs as a great threat to privacy where abused, and emphasizes on its protection and limitation only as justifiable by law.

In the case, the CAK attempted to introduce a Device Management System that would access information on the IMEI, IMSI, MSISDN and CDs of the subscribers of Mobile Network Service Providers in Kenya. However, the petitioners contended that this would amount to unlawful interference with subscriber's privacy first because it's possible to obtain this information without intruding on privacy of the subscribers and secondly that this is an attempt to spy on Kenyans as the CAK would have unfettered access to confidential information. In any case the plaintiff alleged that the CAK was not the body mandated to install the DMS system.

The court held that any limitation to right to privacy has to be justifiable under article 24 thus should be rationale and proportionate. The DMS system was not appropriate as there were less restrictive that could be employed which don't violate subscribers right to privacy. Example is the Mobile Network Owners, as they had previously done, could block use of any black listed devices.

It's a matter of great concern that information collected by the government could be used for unlawful surveillance including information about primary residence, email address and contact mobile. This information could help online activity and physical activity and have the potential to lead to a surveillance state which has the power to limit enjoyment of rights and freedoms for citizens.

²⁴ Black Laws Dictionary (8th edn, Thomson West, 2004)

²⁵ n 10

1.2.10 Voter Registrations

Elections are generally an issue of contention in Kenya with electoral disputes leading to violence among citizenry. The worst form of post-election violence followed the 2007 elections where their complaints of electoral theft and ballot stuffing. In 2013 CORD (Coalition on Reforms and Democracy) challenged the election results from the IEBC citing electoral manipulation. In 2017 the Kenyan Supreme Court nullified the first presidential elections for election irregularities. It's a matter of public notoriety that calls for electoral reforms have not been adhered to by Government enough to satisfy Kenyans of free and fair elections. With this in mind, the automatic registration of persons within the voter register creates a potential heaven for electoral manipulation where there is no way to verify the people who actually vote against those registered as those who don't vote may still be manipulated to appear like they did.

1.2.11 Administration

Currently, the Bill proposes the establishment of the NIIMS Committee to be responsible for the coordination and implementation of the NNIMS System. There should be established the National Integrated Identity Management Authority that should be a body corporate capable of being sued and suing. This will enable the citizens sue the authority in cases of breach of their data arising from their act or omission. In India, one of their major challenges is that the Aadhaar Authority is the only body mandated to sue for breach of data meaning the citizens cannot sue on their own behalf.

Secondly, an independent authority will promote accountability and transparency as they are easily accountable and promotes better governance as the administration of the authority will involve stakeholders from various departments including the Refugee Affairs Secretariat.

1.2.12 Repeal of laws

The Bill proposes the repeal of The Births and Deaths Registration Act without properly appropriating its provisions. Section 8 of the Act for example extends the period for compulsory registration to 6 months as opposed to 90 days as in the Bill and allows for late registration on payment of a fine.

RECOMMENDATIONS

In order to strengthen the NIIMS system and delivery of services in general we recommend adoption of the current Huduma Bill to include:

- a) The bill ought to be renamed to the National Integrated Identity Management System Act.
- b) Lawful residence and Biometric Data ought to be clearly defined under the Act.
- c) Section 9 of the bill ought to be amended to include Foreign Nationals Minor's Huduma Card for foreign minors who have attained 6 years of age.
- d) Section 8 should be amended to abolish requirement of the Huduma Namba for medical attention and access to basic education in public facilities to ensure each child has access to education and healthcare. Thus, are able to contribute adequately within society.
- e) The Bill ought to allow enrolment and issuance of Birth Certificates for children born to Stateless parents living in Kenya in line with UNHCR plan to end statelessness.
- f) The Government ought to identify and allow alternative forms of Identification for refugees, asylum seekers and stateless persons in Kenya to enable them access services under section 8 of the Bill.
- g) The definition of sex under the bill be expressly expanded to include intersex so as to lead to the inclusion of intersex persons and allow them easily access identification documents and essential services.
- h) Requirement for cause of death on the death certificate be optional even where known.
- i) Affirmative action measures to ensure the aged population is actively enrolled in the NIIMS system. Legal provisions to cater for older persons who may have resided within Kenya but who may have either lost their identification documents, have them mutilated or never acquired them.
- j) There should be established an appeal tribunal dedicated to settle issues of identity and other related disputes emanating from the NIIMS system. In addition, there should be clear procedures for appeal. The time taken to determine petitions should also be very minimal and be clearly defined in law as deprivation of identity relate to deprivation of services.

- k) The NIIMS system should contain the citizens' access portal as a component of the system through which citizens can access their portal and information held by government on their behalf. The portal should further allow for correction of data.
- l) The Bill should expressly outlaw vetting that is abolished by repeal of the Registration of Persons Act to ensure it doesn't informally re-occur.
- m) Prohibition against automated decision making and profiling.
- n) Enact data protection laws to guarantee maximum protection of data and privacy. The laws should include principles of data minimization, gives proper definition of actors in the system and establish liabilities for corporates.
- o) The IEBC should still register and maintain its own separate voter register.
- p) There should be established a NIIMS Authority capable of being sued and is accountable and responsible for the administration of the NIIMS system.

MEMORANDUM

The suggestions expressed herein reflects sections that in our opinion would better the provisions in the bill and enhance protection of citizen’s data and privacy.

In our view the following sections would be best suited if they were amended to be construed as follows.

HUDUMA BILL 2019	PROPOSED AMENDED SECTIONS	COMMENTS
Amend the title of the bill THE HUDUMA BILL, 2019	Amend to read THE NATIONAL INTERGARTED IDENTITY MANAGEMENT SYSTEM BILL,2019	Huduma means service, the title is misleading and it does not constitute provisions of any services. Let the bill be given the name of what it is about which is identification of persons.
	Remove by deleting the term “mandatory obligation” whenever it appears in the bill.	
Section 2 insert new definition of biometric data	Amend by defining biometric data as. “Personal data resulting from specific technical processing relating to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of that natural	Before you profess what biometric data include, it should be well elaborated what is biometric data.

<p>Amend by deleting the following words immediately after the word “photograph” “Or such other biological attributes of an individual obtained by way of biometrics.</p>	<p>person, such as facial images or dactyloscopic (fingerprint) data.”</p> <p>Amend to read “Biometric data” include fingerprint, hand geometry, earlobe geometry, retina and iris patterns, toe impressions, voice waves, blood typing and photograph.</p>	<p>The inclusion of an ambiguous term that does not explain exactly what other biological attributes include is open to sneaking in DNA through the back door which has been highly opposed.</p>
<p>Insert a definition of what is basic personal data as per the GDPR.</p>	<p>Basic personal data means any information relating to an identified or identifiable natural person.</p>	<p>Before defining foundational data, it is important to define what basic personal data include.</p>
<p>Define what lawful residence is</p>	<p>Lawful residence means a person who is allowed to be in Kenya lawfully.</p>	<p>The act should use an unequivocal declaration of what constitutes lawful residence.</p>
<p>Section 6 6. (1) The NIIMS database is an integrated digital population register and a repository of foundational data and functional data of every resident individual.</p>	<p>Amend Section 6 by adding a newer sub-section immediately after 6 (2) (e) to read</p> <p>6. (1) The NIIMS database is an integrated digital population register and a repository of foundational data and functional data of every resident individual.</p>	<p>Refugees being vulnerable persons need to be incorporated in the NIIMS. This is because they need access to government services of which if one doesn't have the Huduma Namba then they will not be able to access any government services.</p>

<p>(2) The NIIMS database shall contain—</p> <p>(a) foundational data outlined under the First Schedule; and</p> <p>(b) other functional data generated by a public agency responsible for a function requiring use of the Huduma Namba.</p> <p>(3) The purpose of the NIIMS database is to –</p> <p>(a) serve a single source of both foundational and functional data for enrolled resident individual;</p> <p>(b) enable use of fingerprints and other biometric data to identify an enrolled person;</p> <p>(c) facilitate the use of the data in the database to assign the Huduma Namba and issue of the Huduma card;</p> <p>(d) support access and generation of downloadable copies of birth and death certificates or any other identity document; and</p>	<p>(2) The NIIMS database shall contain—</p> <p>(a) foundational data outlined under the First Schedule; and</p> <p>(b) other functional data generated by a public agency responsible for a function requiring use of the Huduma Namba.</p> <p>(3) The purpose of the NIIMS database is to –</p> <p>(a) serve a single source of both foundational and functional data for enrolled resident individual;</p> <p>(b) enable use of fingerprints and other biometric data to identify an enrolled person;</p> <p>(c) facilitate the use of the data in the database to assign the Huduma Namba and issue of the Huduma card;</p> <p>(d) support access and generation of downloadable copies of birth and death certificates or any other identity document; and</p> <p>(e) support access by an individual to their academic certificate issued</p>	
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<p>(e) Support access by an individual to their academic certificate issued under any education law in Kenya.</p> <p>(4) No government agency shall collect foundational data from an individual who has enrolled under this Act.</p>	<p>under any education law in Kenya.</p> <p>(f) Support the access and integration of Refugee data into the NIIMS.</p> <p>(4) No government agency shall collect foundational data from an individual who has enrolled under this Act.</p>	
<p>Section 7</p>	<p>Insert Section 7(4) immediately after Section 7(3) to read</p> <p>Section 7(4) The Huduma Number shall not be proof of nationality.</p>	<p>It is good to state outrightly that despite foreign nationals being given access to Having Huduma Number does not make them Citizens.</p>
<p>Section 8 (1) Every resident individual shall have a mandatory obligation to present the Huduma Namba in order to—</p> <ul style="list-style-type: none"> (a) be issued with a passport; (b) apply for a driving licence; (c) register a mobile phone number; (d) register as a voter; (e) pay taxes; 	<p>amend by deleting the following words and the following subsections</p> <p>8. (1) Every resident individual has an obligation to present the Huduma Namba in order to</p> <ul style="list-style-type: none"> (a) be issued with a passport; (b) apply for a driving licence; (c) register a mobile phone number; (d) register as a voter; (e) pay taxes; 	<p>The government is not in a war with the people to make citizen obligations as threats. Delete the words “Shall have Mandatory”</p> <p>In addition Article 43 of the Constitution provides for Social and Economic rights which if otherwise limited would amount to a violation of the constitution.</p> <p>You cannot require mandatory registration to Huduma Namba and then have such basic rights</p>

<p>(f) transact in the financial markets;</p> <p>(g) open a bank account;</p> <p>(h) register a company or a public benefit organisation;</p> <p>(i) transfer or make any dealings in land;</p> <p>(j) register for electricity connection;</p> <p>(k) access universal health care services;</p> <p>(l) benefit from the government housing scheme;</p> <p>(m) register a marriage;</p> <p>(n) enrol into a public educational facility;</p> <p>(o) access social protection services;</p>	<p>(f) transact in the financial markets;</p> <p>(g) open a bank account;</p> <p>(h) register a company or a public benefit organisation;</p> <p>(i) transfer or make any dealings in land;</p> <p>(j) register a marriage;</p> <p>(k) access social protection services;</p> <p>(l) register or transfer a motor vehicle; or (q) any other specified public service.</p>	<p>such as access to education universal health care being limited because a person does not have Huduma Namba.</p>
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<p>(p) register or transfer a motor vehicle; or</p> <p>(q) any other specified public service.</p>		
<p>9. (1) Subject to this Act, every resident individual who has enrolled into the NIIMS shall be issued with a Huduma card.</p> <p>(2) The types of Huduma card that may be issued include—</p> <p>(a) Minors’ Huduma card, for minors who have attained the age of six years;</p> <p>(b) Adults’ Huduma card, for citizens who have attained the age of eighteen years; and</p> <p>(c) Foreign nationals Huduma card, for resident adult non-citizens.</p>	<p>Amend section 9 (2) by deleting the following words under section 9 (2) (a) after the word “minors” immediately before who. To read</p> <p>9 (2) (a) Minor’s Huduma card for minors.</p> <p>Insert new section 9 (2)(d) immediately after section 9 (2)(C) to read</p> <p>9(2) (d) Minor foreigners Huduma card, for minors non-citizens.</p> <p>Amend section 9 (3) to include intersex on the huduma card details.</p>	<p>Children below the age of six should not be excluded in the NIIMS system as they also need access to government services such as health care and education.</p> <p>This should really be captured so that treatment of all children including foreigners is equated.</p> <p>This would be discriminatory and against section 27 of the Constitution of Kenya 2010, if such persons are not allowed to have such of their details on the Huduma card.</p>

<p>Section 9</p>	<p>Insert new section 9(7) to read 9 (7) Only authorized governmental agents shall use such identification in the absence of the Huduma Card.</p>	<p>This is in aid of protection of data to make sure that other entities including but not limited to private entities are now allowed to access to this data.</p>
<p>Section 11 11. (1) Upon the commencement of this Act, every resident individual shall personally attend before a designated NIIMS registration officer at a specified location to enroll into the NIIMS. (2) An individual seeking to enroll shall – (a) provide particulars outlined under the First Schedule; and (b) permit their fingerprints and other biometric data to be taken. (3) A citizen residing out of the country shall enrol into NIIMS at the Kenyan Embassy in their country of residence or any other designated centre.</p>	<p>Amend section 11 (1) to incorporate refugees and further amend by inserting a new subsection to include documentation that refugees will need so that they can be enrolled in the NIIMS. Amend the section to read Section 11 (1) Upon the commencement of this Act, every resident individual or a refugees shall personally attend before a designated NIIMS registration officer at a specified location to enroll into the NIIMS.</p> <p>Insert new sub-sections under Section 11 (6) to read; (6) At the time of enrolment, the NIIMS registration officer</p>	<p>Refugees being vulnerable persons need to be incorporated in the NIIMS. This is because they need access to government services of which if one doesn't have the Huduma Namba then they will not be able to access any government services.</p> <p>It is in the best interest of the citizens to know who is responsible to keep their data, the use of their data</p>

<p>(4) The Principal Secretary shall make special arrangements, including availing mobile registration, for the enrolment of minors, persons with disability, persons incapacitated by illness, elderly citizens, or individuals in institutional households.</p> <p>(5) An individual seeking to enrol shall furnish the designated NIIMS registration officer with such documentary proof of identification as may be required.</p> <p>(6) At the time of enrolment, the NIIMS registration officer shall inform a person enrolling –</p> <p>(a) the purpose for collecting their personal data;</p> <p>(b) the manner in which personal data collected shall be used;</p>	<p>shall inform a person enrolling –</p> <p>(a) the purpose for collecting their personal data;</p> <p>(b) the scope and method of personal information processing;</p> <p>(c) the manner in which personal data collected shall be used;</p> <p>(d) how personal data collected shall be protected;</p> <p>(e) the person in charge of the data; and</p> <p>(f) right of access to their personal data.</p>	<p>and the systems used to process their data. This is because data is sensitive and if not handled carefully can cause citizens both financial and social harm.</p>
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<p>(c) how personal data collected shall be protected; and (d) right of access to their personal data.</p>		
<p>Section 12. The Principal Secretary, upon examining of the information provided, shall enroll the applicant into the NIIMS and assign the applicant a Huduma Namba.</p>	<p>Amend the section to read Section 12. The NIIMS registration Officer acting for the PS, upon examining of the information provided, shall enroll the applicant into the NIIMS and assign the applicant a Huduma Namba</p>	<p>There should be a clear delamination of roles and its unnecessary to have the principal secretary examining documents and deciding whether to issue Huduma Namba or not. There should be many</p>

		NIIMS registration officers acting on behalf of the PS.
<p>Section 13. (1) The Principal Secretary shall issue a Huduma card to an individual who has been assigned a Huduma Namba within sixty days from date of such assignment.</p> <p>(2) Despite subsection (1), a minor shall be issued with minors' Huduma card only upon attaining the age of six years and after capturing the required biometric data.</p> <p>(3) The initial issue of Huduma card to citizens shall be free of charge.</p>	<p>Amend to read</p> <p>Section 13. (1) The NIIMS registration officer acting for the PS shall issue a Huduma card to an individual who has been assigned a Huduma Namba within sixty days from date of such assignment.</p> <p>(2) Despite subsection (1), a minor shall be issued with minors' Huduma card only upon attaining the age of six years and after capturing the required biometric data.</p> <p>(3) The initial issue of Huduma card to citizens shall be free of charge.</p>	<p>The explanation under 12 above should apply mutatis mutandis.</p>
<p>Section 18(4)</p> <p>(4) For the purpose of sub-section (2), the particulars of record of birth include—</p> <p>(a) in regard to a birth, name of the new-born, sex, date, type of</p>	<p>Amend section 18 by deleting the word Marital status wherever it appears and;</p> <p>Insert new sub-section 18(4) (d) to read</p> <p>(2) For the purpose of sub-section (2), the particulars of record of birth include—</p> <p>(a) in regard to a birth,</p>	<p>It is immaterial to indicate the marital status of the mother. It will be in contravention of the right to dignity where the mother is does not have a partner.</p>

<p>delivery, any disability, weight at birth, and place of birth;</p> <p>(b) in regard to the mother, name, age, marital status, usual residence, nationality, Huduma Namba, and previous births;</p> <p>(c) in regard to the father, name, age, usual residence, nationality, and Huduma Namba;</p> <p>and</p> <p>(d) in regard to any informant, name, capacity, and date of notification.</p> <p>(5) Registration of a birth is compulsory and free of any charge.</p>	<p>name of the new-born, sex, date, type of delivery, any disability, weight at birth, and place of birth;</p> <p>(b) in regard to the mother, name, age, usual residence, nationality, Huduma Namba, and previous births;</p> <p>(c) in regard to the father, name, age, usual residence, nationality, and Huduma Namba;</p> <p>(d) if the information about the father of the baby are not known at the time the same</p>	<p>As the reality may remain in special circumstances and in other cases such as where after rape the mother is unable or unwilling to terminate the pregnancy. Once such a baby is born the mother is not able to determine the father of such a baby and thus such details may not be readily available as a result the section should consider such circumstances and give</p>
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	<p>maybe suspended but for not later than ninety days upon the registration of the baby on NIIMS; and</p> <p>(e) in regard to any informant, name, capacity, and date of notification.</p> <p>(5) Registration of a birth is compulsory and free of any charge.</p>	<p>the mother the leeway to make an informed decision on who the father of such a child will or should be.</p>
<p>Section 20 (b)</p> <p>20. An applicant seeking to enroll into NIIMS a child whose birth was not registered within ninety days shall be required to –</p> <p>(a) furnish the NIIMS registration officer with such further information as the Cabinet Secretary may specify;</p>	<p>Amend Section 20 to read</p> <p>20. An applicant seeking to enroll into NIIMS a child whose birth was not registered within ninety days shall be required to –</p> <p>(a) furnish the NIIMS registration officer with such further information as the Cabinet Secretary may specify;</p>	<p>If there is a justifiable cause to the reason for non-registration of birth then such penalties are punitive in nature and should not be imposed. As we, all know we are not a country that can boast of decent healthcare and other social amenities and as a result, it might be practically impossible to have all births happen in</p>

<p>(b) pay a prescribed penalty, which shall be graduated with the number the period of delay after expiry of stipulated period.</p>	<p>(b) pay a prescribed penalty, which shall be graduated with number the period of delay after expiry of stipulated period unless the applicant can show cause that under all the prevailing circumstances it was not practically possible to register the birth within the ninety days</p>	<p>areas where the same can be reported immediately.</p>
<p>Section 22. (1) Where any living new-born is found exposed, it shall be the duty of any person finding such child, and of any person in whose charge such child may be placed, to provide particulars required to register such birth as the informant may possess.</p>	<p>Amend section 22(1) to read Section 22(1) Where any living new-born is found exposed it will lie upon the person or any other person in whose charge such child may be placed and upon proper care having been given to the child to provide particulars to have such birth registered as the informant may possess as maybe practically possible.</p>	<p>We have to be a bit lenient to a person who is trying to help a child. Making provisions that might encourage neglecting such a child is contrary to the provisions of Article 53 of the Constitution of Kenya. Further, the article states that in all matters concerning the child the best interests of the child are of paramount importance and thus care should be given priority to</p>

		such a child before registration.
Section 24	Amend section 24 by inserting a new sub-section 6 to read 24 (6) necessary	
<p>Section 25</p> <p>25. (1) The Principal Secretary shall cancel the enrolment into NIIMS of any individual where it was done through—</p> <p>(a) fraud, false representation, bribery or deceit;</p> <p>(b) concealment of material facts; or</p> <p>(c) any other justifiable cause.</p> <p>(2) Before cancellation of the enrolment, the Principal Secretary shall provide the individual, or in case of a child their parent or guardian, with reasonable opportunity and forum to show cause as to why their enrolment should not be cancelled.</p> <p>(3) The Huduma Namba and the Huduma card of a person whose</p>	Amend by deleting the entire section 25.	<p>Cancellation and revocation of Huduma Number in the Huduma Number era such be such a severe action as one will not be able to transact into any activity without the Huduma Number. Otherwise, this will lead to serious constitutional violations, for instance one cannot lose his citizenship by birth thus in any such unlawful acquisition of Huduma Number, a penalty would suffice. Additionally, the section is ambiguous and open to arbitrariness if malicious government officers want to frustrate your operations in this country they will likely use this avenue. A good example is what happened to Miguna Miguna even if the Huduma number was nor still in operation.</p>

<p>enrolment has been cancelled shall be revoked.</p>		
<p>26. (1) Every death occurring within Kenya shall be registered through the NIIMS as soon as practicable on its occurrence but not later than thirty days.</p> <p>27. The designated NIIMS registration officer shall, immediately after entering the particulars of death in the NIIMS—</p> <p>(a) retire the Huduma Namba of the deceased; and</p> <p>(b) revoke the Huduma card.</p>	<p>26. (1) Every death occurring within Kenya Shall be registered through the NIIMS as soon as practical on its occurrence but not later than ninety days.</p> <p>27. The designated NIIMS Registration officer shall immediately after entering of particulars of death in the NIIMS</p> <p>(a) retire the Huduma Number of the deceased, and</p> <p>(b) lock the account of the deceased person without having to delete any data</p>	<p>Death is a tragic happening to anyone and at times people are in severe pain such that they are not able to Immediately report the occurrence, some other people take long periods of mourning and thus a reasonable time should be given to allow for the registration of the death.</p> <p>The information of the dead person shall be used in succession and thus, it should be kept intact and only the account of the deceased person should be locked to curtail unauthorized access.</p>
<p>Section 36.</p> <p>36. An individual enrolled under the NIIMS has a right to —</p>	<p>Amend section 36 by inserting the following sub-sections and to read</p>	<p>Data protection is not an option that any institution holding personal sensitive data should be given give</p>

<p>(a) be informed of the use to which their personal data collected is to be put;</p> <p>(b) access their personal data in the NIIMS database;</p> <p>(c) object to any sharing of all or part of their personal data; and</p> <p>(d) correction of any false or misleading data about them without delay.</p>	<p>36. An individual enrolled under the NIIMS has a right to —</p> <p>(a) be informed of the use to which their personal data collected is to be put;</p> <p>(b) be informed on the description of the personal information to be entered into the system;</p> <p>(c) be informed on the purposes for which they are being or are to be processed;</p> <p>(d) be informed on the recipients or classes of recipients to whom their data are or may be disclosed to;</p> <p>(e) access their personal data</p>	<p>to exercise as a choice but should be mandatory. As a result the data subject must not object so as not to have their data shared but they should have their data not shared even before they object to the sharing of the data. The description of the personal information needed is as good as the data being collected and how it will be used. The most Important of all this is knowing the persons likely to come into contact with the personal data. A person shall be asked to consent to sharing of their data with any third party due to the sensitivity of personal data.</p>
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	<p>in the NIIMS database;</p> <p>(f) not have any sharing of all or part of their personal data without their consent.</p> <p>(g) Correction of any false or misleading data about them without delay.</p>	
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Section 43	<p>Amend the errors on section 43(2) to read as follows</p> <p>A NIIMS registrar shall without delay, notify the Principal Secretary upon becoming aware of any personal data breach</p>	<p>Change the word registration to registrar to have the clause make sense.</p>
<p>Section 43 (1)</p> <p>Where personal data in the NIIMS database has been accessed or acquired by an unauthorized person, and there is a real</p>	<p>Amend section 43 to read</p> <p>Section 43 (1) Where personal data in the NIIMS database has been accessed or acquired by an unauthorized person, and there is a real risk of harm to the enrolled person whose personal data has been subjected to the unauthorized access, the Principal Secretary shall communicate to the</p>	<p>The data subject should be given priority in all matters concerning the sensitive personal data. It is the duty of</p>

<p>risk of harm to the enrolled person whose personal data has been subjected to the unauthorized access, the Principal Secretary shall communicate to the enrolled person in writing within a reasonably practicable period of becoming aware of such breach.</p> <p>(2) A NIIMS registration shall without delay notify the Principal Secretary upon becoming aware of any personal data breach.</p> <p>(3) The Principal Secretary may delay or restrict communication to the</p>	<p>enrolled person in writing within seventy(72) hours of becoming aware of such breach.</p> <p>(2) A NIIMS registrar shall immediately, notify the Principal Secretary upon becoming aware of any personal data breach.</p> <p>(3) The Principal Secretary may delay or restrict communication to the enrolled person, as necessary and proportionate for purposes of prevention, detection or investigation of an offence by any relevant agency.</p> <p>(4). The communication to enrolled person shall provide sufficient information to allow the enrolled person to take protective measures against the potential consequences of the data breach, including –</p> <ul style="list-style-type: none"> (a) description of the nature of the data breach; (b) description of the measures that the Principal Secretary intends to take or has taken to address the data breach; (c) recommendation on the measures to be taken by the enrolled 	<p>the data holder to always promptly inform the data subject of any attempted breach whether it actually occurred or not.</p>
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<p>enrolled person, as necessary and proportionate for purposes of prevention, detection or investigation of an offence by any relevant agency.</p> <p>(4) The communication to enrolled person shall provide sufficient information to allow the enrolled person to take protective measures against the potential consequences of the data breach, including –</p> <p>(a) description of the nature of the data breach;</p> <p>(b) description of the measures that the Principal Secretary</p>	<p>person to mitigate the adverse effects of the breach;</p> <p>(d) where applicable, the identity of the unauthorised person who may have accessed or acquired the personal data; and</p> <p>(e) the name and contact details of the data protection officer or other contact point where more information could be obtained.</p> <p>(5) The communication of a breach to the data subject shall be communicated notwithstanding appropriate security safeguards such as encryption of affected personal data having been implemented.</p>	
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<p>intends to take or has taken to address the data breach;</p> <p>(c) recommendation on the measures to be taken by the enrolled person to mitigate the adverse effects of the breach;</p> <p>(d) where applicable, the identity of the unauthorised person who may have accessed or acquired the personal data;</p> <p>and</p> <p>(e) the name and contact details of the data protection officer or other contact point where more information could be obtained.</p>		
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<p>(5) The communication of a breach to the data subject may not be required where appropriate security safeguards such as encryption of affected personal data have been implemented.</p>		
<p>Section 49 49. A person who— (a) gives false information or makes a false statement when providing information for an entry into the NIIMS database; (b) forges an identity document to enrol into NIIMS; or (c) Illegally influences the decision of a NIIMS</p>	<p>Amend section 49 by adding a new sub-section 2 to read 49 (2) Any person who does any act to constitute an act of impersonation, commits an offense</p>	<p>Impersonation is the act of concealing identity to appear or to be construed as someone else. This should therefore be a major concern in the Digital Identity setting as this is likely to be a very common occurrence.</p>

<p>registration officer, commits an offence.</p>		
<p>Section 66</p>	<p>Amend Section 66 by deleting section 66(2)</p>	<p>There is no justification as to the person or body that determines the valid of such actions as shall be deemed to be validly carried out this the provision is open to abuse.</p>
<p>Third Schedule Section 68 Consequential Amendments</p>	<p>Under the Elections Act Delete the newly introduced sub-section 4 (4) and (5) that require the commission to use information under NIIMS to update the register of voters by adding persons who have attained the age of 18. And further the registration by default of all voters who have attained the age of 18 and has been issued with Huduma Namba.</p>	<p>The sceptic aspect of this idea is that Elections will be open to manipulation giving regard to the fact that, people who do not wish to be registered as voters and those that do not turn out to vote might still find their identity being</p>

		used to rig the elections since there is no control as to the data of the current registered voters.
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Further additional amendments not contemplated in the bill.

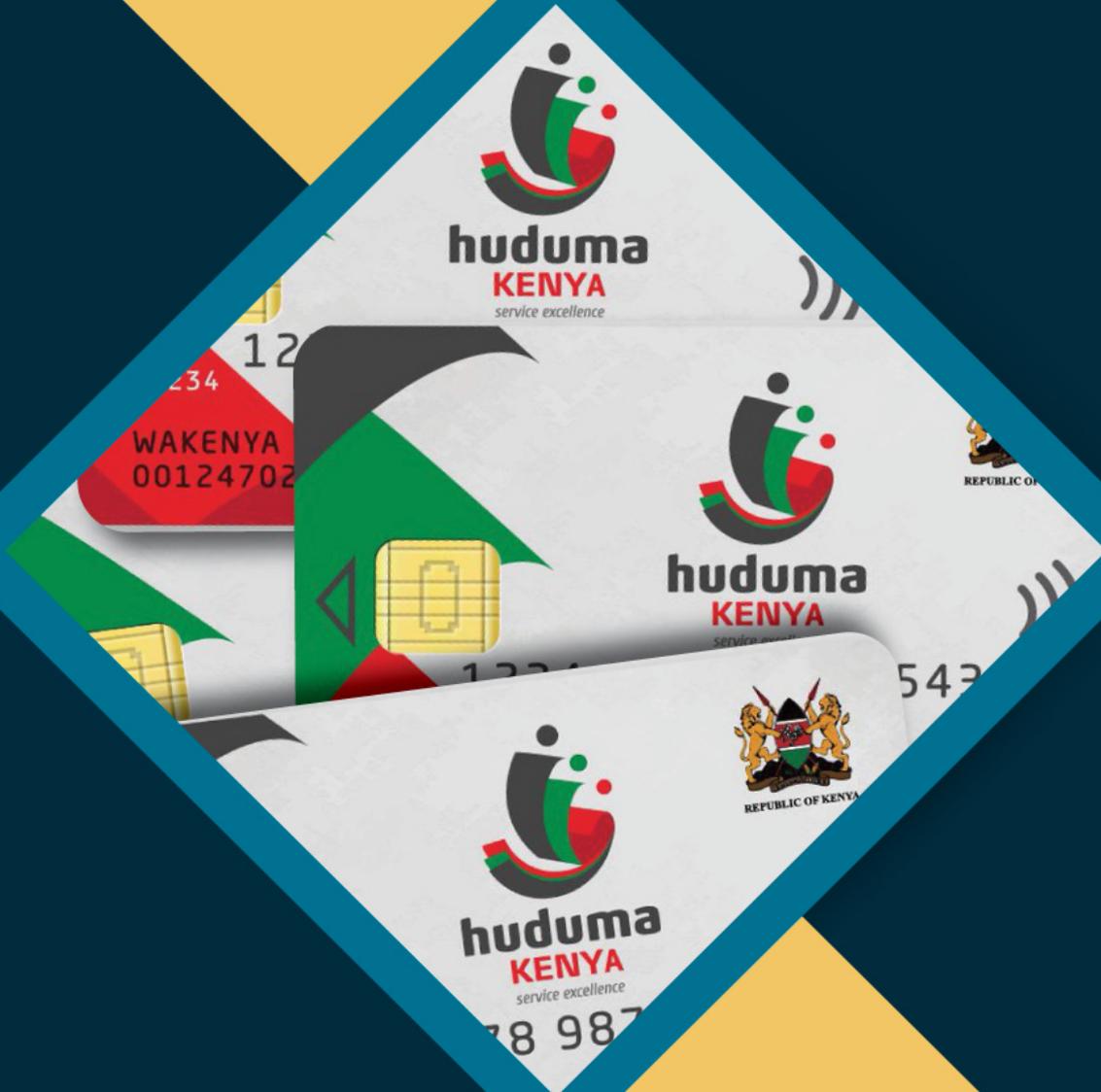
1. The bill should also be amended accordingly to capture what should happen to the persons receiving unauthorized data from the persons who have access to the data. Both the juridical and the natural persons receiving the data should be subjected to some penalties. This should also include having their organizations data processing systems searched, blocked, and have the data removed and cleared from the system and to have such imposed penalties tagged on their turnover, to restrain them and make them more vigilant when they think of accessing such personal data. Further, such persons should be required to compensate the persons of whom data was illegally acquired.
2. The Bill should also explain as to how it has been possible to repeal Cap 149 with only two sections in the Bill. Cap 149 being a bulky registration that had defined processes and procedures should not just be amended by two sections. There should be clear guidelines as to how the Manual Cap 149 registration has been harmonized with the Digital NIIMS registration.
3. There should be an Authority that will govern the operations of the NIIMS. The committee that has been established under the authority has no clear guidelines as to how it shall operate and the selection process. The committee does not guarantee transparency and accountability, which would be an automatic dispensation if we have an authority in place, as we are able to know who is held accountable in case things go wrong.

4. The issue of stateless persons and their children has not been addressed in the bill and it is of paramount importance that such a provision should be in the bill.

POLICY ANALYSIS OF HUDUMA BILL 2019

Kenya's Draft Digital Identity Law

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