

ANNEX 2: SERVICE ACT



LAWS OF KENYA

KENYA CITIZENS AND FOREIGN NATIONALS MANAGEMENT SERVICE ACT

No. 31 of 2011



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NO. 31 OF 2011

**KENYA CITIZENS AND FOREIGN NATIONALS
MANAGEMENT SERVICE ACT**

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NO. 31 OF 2011

**KENYA CITIZENS AND FOREIGN NATIONALS
MANAGEMENT SERVICE ACT**

[Date of assent: 30th September, 2011.]

[Date of commencement: 4th October, 2011.]

An Act of Parliament to establish the Kenya Citizens and Foreign Nationals Management Service; to provide for the creation and maintenance of a national population register and the administration of the laws relating to births and deaths, identification and registration of citizens, immigration and refugees; and for connected purposes

[Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Citizens and Foreign Nationals Management Service Act, 2011.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Board**” means the Kenya Citizens and Foreign Nationals Management Service Board established under section 5;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for citizens and foreign nationals management matters;

“**Director**” includes the Director-General and any of the persons appointed under section 16;

“**Director-General**” means the Director-General appointed under section 13;

“**foreign national**” has the meaning provided under the Kenya Citizenship and Immigration Act and includes asylum seekers and refugees as defined in the Refugee Act, 2006 (No. 13 of 2006);

“**national population register**” means a register developed under this Act for the purpose of capturing registration information on all Kenyans and Foreign Nationals resident in Kenya;

“**Service**” means the Kenya Citizens and Foreign Nationals Management Service established under section 3.



(2) Until after the first elections under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

PART II – THE KENYA CITIZENS AND FOREIGN NATIONALS MANAGEMENT SERVICE

3. Establishment and composition of the Service

(1) There is established the Kenya Citizens and Foreign Nationals Management Service which shall be a body corporate with perpetual succession and a common seal.

(2) The Service shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) charging fees for services rendered by it;
- (e) entering into contracts; and
- (f) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

(3) The headquarters of the Service shall be in the capital city, but the Service may establish branches at any place in Kenya to ensure reasonable access to its services.

4. Functions of the Service

(1) The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws and any other matter relating to citizenship and immigration, births and deaths, identification and registration of persons, issuance of identification and travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register.

(2) Notwithstanding the generality of subsection (1), the service shall—

- (a) in relation to the national population register and for the purpose of collecting and compiling information concerning the distribution and composition of the population in Kenya, the scope and direction of migration, labour resource utilization, and other connected purposes have the following functions—
 - (i) receiving, storing and updating information from primary registration agencies;
 - (ii) generating of appropriate unique identifier for individuals and groups in accordance with this Act;
 - (iii) subject to the Constitution and in consultation with other relevant institutions, regulating the sharing of information by the various registration agencies and other users;
 - (iv) implement the relevant policies and guidelines and provide the cabinet secretary with the necessary information to guide the



- formulation of new policies, review of existing policies and guidelines;
- (v) in consultation with the Cabinet Secretary, coordinate and mobilize resources for the implementation of the relevant policies;
 - (vi) undertake the task of data collection and dissemination in a manner that ensures consistency and accuracy in accordance with set national standards and guidelines; and
 - (vii) facilitate access to information and data to national population registration information in accordance with this Act, any other relevant law or policy and the Constitution;
- (b) administer the Acts of Parliament set out in the First Schedule and any other written law;
 - (c) advise the Government on the matters provided for in this section;
 - (d) collaborate with other state agencies for effective discharge of its mandate; and
 - (e) perform such other functions as may be directed by the Cabinet Secretary.

[Act No. 12 of 2012, Sch.]

5. Establishment of the Board

(1) There shall be a Board of the Service which shall be the governing body of the Service.

(2) The Board shall consist of—

- (a) the Chairperson to be appointed by the President;
- (b) the Principal Secretaries or their representatives appointed in writing in the Ministries for the time being responsible for matter relating to—
 - (i) Immigration and Population registration;
 - (ii) Foreign Affairs;
 - (iii) Internal security;
- (c) the Director-General who shall be an *ex officio* member;
- (d) the Secretary to the Board to be appointed by the Board who shall be an *ex officio* member; and
- (e) five other persons with expertise or experience in matters relating to this Act who are not public officers, to be appointed by the Cabinet Secretary.

Provided that the membership of the Board shall not comprise more than two-thirds of either gender.

[Act No. 12 of 2012, Sch.]

6. Responsibilities of the Board

(1) The Board shall be responsible, through Cabinet Secretary, to the people of Kenya for—

- (a) formulation and review of the policies of the Service in accordance



- with constitutional values and principles including the principle on public participation;
- (b) monitoring of the performance of the Service;
 - (c) appointment training, discipline and removal of members of staff of the Service;
 - (d) establishing departments within the Service and allocate responsibilities to such departments; and
 - (e) reviewing and recommending for review laws and regulations for the better management of the Act.

(2) The Board shall ensure that all its appointments conform to the values and principles of the Constitution including the principles of affirmative action for gender equality, regional balance and inclusion of the marginalized populations at all levels of employment in accordance with Articles 27, 54, 55, 56, 232 and other relevant provisions of the Constitution of Kenya.

7. Committees of the Board

(1) The Board shall establish a Citizenship Advisory Committee, a Permits Determination Committee and such other committees as it shall deem necessary for the efficient and expedient disposal of the business of the Board.

(2) A committee of the Board shall have authority to deliberate on and make resolutions or recommendations over such matter as shall be referred to it by the Board.

(3) A committee of the Board shall be chaired by a member appointed by the Board and in the absence of the member, the members of committee present shall appoint one member from among themselves to chair the meeting.

(4) The quorum for each meeting of a committee shall be two-thirds of its membership inclusive of its chair.

(5) No resolution of a committee of the Board shall become a decision of the Board until it has been tabled before the Board and adopted by the Board.

8. Tenure of office of the chairperson, and members of the Board

(1) The chairperson of the Board and every member of the Board shall hold office for a single term of five years but for transitional purposes, the first chairperson shall hold office for a term of six years.

(2) The term of office of the chairperson and members of the Board as first constituted and at every reappointment or change in membership shall commence on the date of publication in the Kenya Gazette.

(3) The chairperson or a member of the Board may resign his office by written notification under his hand addressed to the President in the case of the chairperson and to the Cabinet Secretary in the case of a member of the Board.

9. Termination of appointment of chairperson, and members of the Board

The appointment of the chairperson or of a member may be terminated by the appointing authority on any of the following grounds—

- (a) for his inability to perform the functions of his office by reason of medical infirmity;



- (b) if he or she is declared or becomes bankrupt or insolvent or if they have been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) violation of Chapter Six of the Constitution;
- (d) if he or she has been convicted for any offence related to corruption including money laundering;
- (e) if, without reasonable cause to the satisfaction of the Cabinet Secretary, he or she is absent from the minimum number of meetings of the Board in any financial year as provided for in the Second Schedule;
- (f) if in any particular case, he fails to comply with the provisions of section 11;
- (g) for such other sufficient cause as the appointing authority may, by notice in the *Gazette*, specify.

10. Meetings of the Board

(1) The provisions of the Second Schedule shall apply to the meetings of the Board and other matters provided for in that Schedule.

(2) Five members of the Board shall constitute a quorum for the transaction of any business of the Board.

(3) The Board may co-opt any person to participate in such of its deliberations as it shall deem necessary, but a person so co-opted shall have no right to vote.

(4) The Cabinet Secretary may, after consultation with the Board, amend the Second Schedule.

11. Confidentiality

(1) No member of Board, Committee, employee or agent of the Service shall disclose information acquired under this Act except—

- (a) for the purpose of an investigation of a cognizable offence;
- (b) in the course of an inquiry into matters, of national security;
- (c) in the course of his duties subject to the consent of the Director-General being sought and obtained by the officer; or
- (d) under such other lawful circumstances as the Director-General shall either generally or with regard to any particular circumstances authorize:

Provided that justification for such authorization shall be put in writing.

(2) Notwithstanding subsection (1) the service may disclose information that it is holding pursuant to Article 35 of the Constitution and subject to Article 31 of the Constitution.

(3) No person who receives information in contravention of subsection (1) shall disclose or publish the information.



(4) A person who contravenes any provision of this section commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding four years or both such fine, and imprisonment.

12. Disclosure of interest by the chairperson, and member

(1) No person sitting on the Board shall be allowed to transact any commercial business with the Service.

(2) The chairperson or member of the Board who has any other direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as practicable after the relevant facts concerning the matter have come to his knowledge disclose the nature of his interest to the Board.

(3) A disclosure of interest made by the chairperson or member of the Board under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not unless the Board otherwise determines in respect of that matter—

- (a) be present during any deliberations on the matter by the Board; or
- (b) take part in the decision of the Board on the matter.

(4) For the purpose of the Board making a determination under subsection (2) in relation to the chairperson or member who has made a disclosure under subsection (1), such member shall not—

- (a) be present during the deliberations of the Board nor take part in the making of such determination by the Board; or
- (b) influence any other member in the way they will take part in the making of such determination.

13. Appointment of the Director-General

(1) There shall be a Director-General of the service who shall be appointed by the Cabinet Secretary upon the recommendation of the Board after a competitive recruitment process, on such terms and conditions as are specified in the instrument of appointment.

(2) The Director-General shall be the Chief Executive Officer of the Service and, subject to the general supervision and control of the Board, shall be responsible for—

- (a) the day-to-day operations of the Service;
- (b) the management of funds, property and affairs of the Service; and
- (c) the administration, organization and the control of the staff of the Service.

(3) The Director-General shall hold office for a single term of six years.

(4) To qualify for appointment as a Director-General, a person shall possess a degree in either law, economics, immigration matters, refugee affairs, administration, management, population studies or demography and such other additional qualifications as the Board may prescribe.

[Act No. 12 of 2012, Sch.]



14. Removal of the Director-General from office

The Cabinet Secretary may subject to recommendations by the Board terminate the appointment of the Director-General for—

- (a) misconduct in contravention of the code of conduct and discipline as developed by the Service;
- (b) the Director-General's inability to perform the functions of his office for medical reasons;
- (c) violation of Chapter Six of the Constitution;
- (d) if he or she is declared or becomes bankrupt or insolvent or if they have been convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) if he or she has been convicted for any offence related to corruption including money laundering;
- (f) if, without reasonable cause to the satisfaction of the Cabinet Secretary, he or she is absent from the minimum number of meetings of the Board in any financial year as provided for in the Second Schedule;
- (g) if in any particular case, he fails to comply with the provisions of section 12; or
- (h) for such other sufficient and lawful cause.

15. Delegation of powers of the Director-General

The Director-General may, with the approval of the Board, delegate in writing, any of his powers or functions under the Act or any other written law to a Director, an immigration officer, a registrar, a registration officer or any other officer or member of staff on the terms specified in the instrument of delegation.

16. Appointment of directors and other members of staff

(1) The Service may upon such terms and conditions appoint such Directors and other members of staff as may be necessary for carrying out its functions.

(2) Any reference to a Director or Head of a department or any member of the staff of the service by whatever reference adopted and in relation to the laws administered by the Service shall be construed as reference to the Director-General.

(3) Any reference to a department under the Acts set out in the First Schedule shall be deemed to be reference to the Service.

[Act No. 12 of 2012, Sch.]

17. Seal of the Service

(1) The seal of the Service shall be authenticated by the signature of the Director-General and the Secretary to the Board.

(2) In the absence of the Director-General an officer designated by him or her or by the Board for the purpose may authenticate the seal in his place, and in the absence of the Secretary to the Board, the person for the time being performing the functions of the Secretary may authenticate the seal in his or her place.



(3) Every document purporting to be an instrument issued by the Service and to be sealed with the seal of the Service authenticated in the manner provided by subsection (1) or (2) shall be deemed to be such an instrument and shall unless the contrary is proved be deemed to have been so sealed and authenticated and shall be received in evidence accordingly.

18. Funds of the Service

(1) The funds of the Service shall consist of—

- (a) monies provided by Parliament through the national government;
- (b) appropriations in aid or such other moneys as may be authorized to accrue to or vest in the Service in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (c) such grants, donations or endowments received by the Board on behalf of the Service; and
- (d) funds that may be received by the Service from any other sources authorized by the law.

(2) The Service may in the discharge of its functions levy such fees and charges as may be prescribed from time to time and administer it in accordance with the authority granted by this Act or any other law.

19. Annual estimates

(1) The Service shall, not later than four months before the end of a financial year, prepare an estimate of the income and expenditure of the Service for the next financial year. The financial year of the Service will be the same as the government's.

(2) The annual estimates shall make provisions for all estimated expenditure of the Service for the financial year and in particular shall provide for—

- (a) the payment of salaries, emoluments, benefits, allowances and other charges of the staff of the Service;
- (b) the acquisition, construction and proper maintenance of the buildings and the grounds of the Service as may be approved by the national government;
- (c) pension contributions, gratuities and other charges in respect of the staff of the Service in accordance with the relevant laws;
- (d) the proper maintenance, repair and replacement of the equipment and other property of the Service; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of such other matter as the Service considers appropriate in line with the public financial management laws.

(3) The annual estimates shall be approved by the Board and shall be submitted to the Cabinet Secretary for final approval as provided by subsection (1) above before the commencement of the financial year to which they relate.



(4) No expenditure shall be incurred for purposes of the Service except in accordance with the annual estimates approved under subsection (3) or except upon the authorization of the Cabinet Secretary but subject to the parliamentary approved budget allocations.

20. Financial year of the Service

The financial year of the Service shall be the period of twelve months ending on the thirtieth June of each year.

21. Accounts and records

(1) The Service shall keep or cause to be kept proper books and records of its income, expenditure, assets and liabilities.

(2) The accounts of the Service shall be audited and reported upon in accordance with the Public Financial Management Laws.

22. Review of Director's decisions

(1) A person aggrieved by a decision of the Director made pursuant to any of the Acts specified in the First Schedule may apply to the Cabinet Secretary for review of the decision of the Director.

(2) The application under subsection (1) shall be in such manner as shall be prescribed.

23. Establishment of the Tribunal

(1) There is established a tribunal to known as the Kenya Citizenship and Immigration Service Appeals Tribunal.

(2) The Tribunal shall consist of the following members appointed by the Cabinet Secretary—

- (a) a chairperson who shall be a person qualified to be appointed a judge of the High Court;
- (b) two persons qualified and experienced in matters relating to public administration, immigration or demography.

(3) The Tribunal shall have the same powers as a subordinate court of the first class.

(4) Any person aggrieved by a decision of the Board or Director under this Act may appeal to the Tribunal in accordance with subsection (5).

(5) The Chief Justice shall prescribe the manner of appeal and rules of procedure for the Tribunal.

(6) A person aggrieved by a decision of the Tribunal under this section may appeal to the High Court in such manner and time as may be prescribed under subsection (5).

24. Vesting of assets

All assets whether movable or immovable registered in the name of or otherwise belonging to any of the departments referred to in the Acts of Parliament set out in the First Schedule or in Acts repealed by any of the Acts referred to in the First Schedule shall upon coming into effect of this Act vest in the Service.



25. Transition of staff

(1) Until the Board is constituted and has competitively recruited for all the positions in accordance with this Act, the staff of any department or public officer employed by the government for the purposes of providing the services under the laws specified in the First Schedule immediately before the commencement of this Act, shall continue to provide such services in their previous positions on the previous terms and conditions of employment.

(2) Subject to subsection (3), the member of staff or public officer referred to in subsection (1) shall, upon constitution of the Board and competitive recruitment by the Board for all positions in accordance with this Act, be redeployed in the public service.

(3) Notwithstanding subsection (2), the Board shall, before employing a member of staff or public officer referred in subsection (1)—

- (a) require such member of staff or public officer to make an application for employment to the Board; and
- (b) using the criteria determined by the Board, vet such a person to ensure that he or she is fit and proper to serve in the position applied for as a member of staff of the Service.

26. Regulations

The Cabinet Secretary, in consultation with the Board, may make such regulations as shall be necessary for the better carrying out of the provisions of this Act.

FIRST SCHEDULE

[Section 4(2)(b).]

ACTS TO BE ADMINISTERED BY THE SERVICE

The Citizenship and Immigration Act, 2011.

The Births and Deaths Registration Act (Cap. 149).

The Registration of Persons Act (Cap. 107).

The Refugees Act, 2006 (No. 13 of 2006).

[Act No. 12 of 2012.]

SECOND SCHEDULE

[Section 10.]

PROCEEDINGS OF MEETINGS OF THE BOARD

1. The Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year.

2. A meeting of the Board shall be held on such date and at such time as the Board shall decide.



3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board.
4. Unless the majority of the total membership of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
5. The Chairperson shall preside at every meeting of the Board at which he is present and in the absence of the chairperson at a meeting, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
6. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members.
7. No proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
8. Unless otherwise provided by or under any law, all instruments made by and decisions of the Board shall be signified under the hand of the Chairperson and the Secretary.
9. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.
10. Except as provided by this Schedule, the Board may regulate its own procedure.
11. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.
(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.
(3) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.



ANNEX 3: SECTIONS 1, 2 AND PART 5 OF IMMIGRATION ACT



THE REPUBLIC OF KENYA

LAWS OF KENYA

KENYA CITIZENSHIP AND IMMIGRATION ACT

NO. 12 OF 2011



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KENYA CITIZENSHIP AND IMMIGRATION ACT

ARRANGEMENT OF SECTIONS

NO. 12 OF 2011

KENYA CITIZENSHIP AND IMMIGRATION ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section



NO. 12 OF 2011

KENYA CITIZENSHIP AND IMMIGRATION ACT

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2. Interpretation.

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NO. 12 OF 2011

KENYA CITIZENSHIP AND IMMIGRATION ACT

[Date of assent: 27th August, 2011.]

[Date of commencement: 30th August, 2011.]

AN ACT of Parliament to provide for matters relating to citizenship; issuance of travel documents; immigration and for connected purposes

[Act No. 12 of 2011, Corr. No. 18/2012, Act No. 12 of 2012, Act No. 19 of 2014, Act No. 25 of 2015.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Citizenship and Immigration Act, 2011.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**application**” means a request in a prescribed form made under this Act;

“**Board**” means the Kenya Citizens and Foreign Nationals Management Service Board established under section 5 of the Kenya Citizens and Foreign Nationals Management Service Act;

“**border**” means the national borders of Kenya and includes the ports of entry, the coastlines and the outer margin of territorial waters;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for matters relating to citizenship and the management of foreign nationals;

“**carrier**” includes any ship, boat, aircraft, wagon, truck, or any other vessel of conveyance;

“**certificate of registration**” means a certificate of registration issued under section 18;

“**child**” means any human being under the age of eighteen years;

“**dependant**” means a person who by reason of age, disability or any status of incapacity is unable to maintain himself or herself adequately and relies on another person for his maintenance;

“**deportation**” means the action or procedure aimed at causing an illegal foreign national to leave the country either voluntarily or compulsorily, or under detention in terms of this Act and the verb ‘to deport’ has a corresponding meaning;

“**director**” means any person appointed as a director under section 16 of the Kenya Citizens and Foreign Nationals Management Service Act, 2011;

“**entry**” means admission into Kenya at a designated port of entry on the basis of the authority to do so validly granted under this Act;



"exit" means departing Kenya from a designated port of entry in compliance with this Act;

"foreign national" means a person who is not a citizen of Kenya;

"foreign nationals order" means an order made by the Cabinet Secretary under section 56;

"foreign national registration certificate" means a registration certificate issued under section 56;

"habitual residence" means stable, factual residence of a person, in Kenya;

"holding facility" means any place designated as a holding facility under section 50 of this Act;

"human smuggling" means the procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry (and exit) of a foreign national into and outside Kenya;

"immigration officer" means the Director and any of the persons appointed as an immigration officer under section 16 of the Kenya Citizens and Foreign Nationals Management Service Act (Cap. 174);

"inadmissible person" means a person declared under section 33(2) as an inadmissible person.

"Kenya mission" includes an office of a consular officer of the Government of Kenya and where there is no such office, such other office as may be prescribed;

"marriage" means a legally sanctioned conjugal relationship between a man and a woman intended to be permanent and recognized under the laws of Kenya;

"pass" means a pass issued pursuant section 36;

"passport" means a passport issued under this Act or issued by any lawful authority or government recognized by the Government of Kenya;

"permit" means a permit issued under section 40;

"permanent resident" means a person who has acquired permanent residence status under section 38 and has not subsequently lost that status;

"permanent residence" means a status granted to a person under section 37;

"piracy" has the meaning assigned under section 369 of the Merchant Shipping Act, 2009 (No. 4 of 2009);

"premises" means any building, structure, enclosure or tent together with or without the land on which it is situated and the adjoining land used in connection with it and includes any land without any building structure or tent and any vehicle, conveyance, vessel or ship;

"prohibited immigrant" means a person declared as a prohibited immigrant under section 33(1);



"port" means a designated place where a person has to report before he or she may move, sojourn, enter, exit or remain within the country;

"Service Kenya" means the Service Kenya Management Service established under the Kenya Citizens and Foreign Nationals Management Service Act, 2011;

"stateless person" means a person who is not recognized as a citizen by any state under the operation of the laws of any state;

"travel document" means a document issued under this Act or issued by any lawful authority or government recognized by the Government of Kenya for the purpose of travel;

"trafficking in persons" has the meaning assigned to it by section 3 of the Counter Trafficking in Persons Act, 2010 (No. 8 of 2010);

"visa" means a visa issued under this Act or issued by any lawful authority or government recognized by the Government of Kenya.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression **"Cabinet Secretary"** shall be construed to mean **"Minister"**.

PART V – PASSPORTS AND OTHER TRAVEL DOCUMENTS

3. Persons entitled to passports and other travel documents

(1) Every citizen is, subject to this Act, entitled upon application, in the prescribed manner, to be issued with a passport or other travel documents to facilitate international travel.

(2) A passport or travel document issued under this Act shall remain the property of the Government of Kenya.

(3) Notwithstanding subsection (2), a passport validly issued under this Act must remain in the possession of its holder until such time as there is lawful cause for its withdrawal, suspension or confiscation

(4) The Cabinet Secretary may subject to the Constitution and subject subsection (1), prescribe the information to be provided in a passport or travel document.

4. Types of passports and other travel documents

(1) The following types of passports and travel documents may be issued under this Act—

- (a) Ordinary passport, issued on application to any citizen of Kenya;
- (b) Diplomatic passport, issued to such persons as may be prescribed in Regulations;
- (c) East African Passport, issued to a citizen of Kenya who intends to travel within the Partner States in East African Community;
- (d) Temporary passport, issued to any citizen of Kenya who for special circumstances cannot travel on an ordinary passport;
- (e) Emergency Travel Document, issued to a citizen of Kenya who is stranded outside Kenya or is being deported;
- (f) Certificate of Identity and Nationality, issued to a person other than a citizen of Kenya who cannot obtain a passport from the country of citizenship for the purpose of traveling outside Kenya;



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- (g) Temporary Permit, issued to a citizen of Kenya who intends to travel within the East African Community Partner States or to such States as may be prescribed by the Cabinet Secretary; and
- (h) Travel Document issued subject to the provisions of the Refugee Act, 2006 (No. 13 of 2006), and any other Humanitarian Convention.

(2) The Cabinet Secretary may make regulations prescribing the form of passport and other travel documents.

(3) Notwithstanding the provisions of subsection (1), the Cabinet Secretary may after consultations with relevant agencies, by order, in the *Gazette*, declare any other document to be a travel document for the purpose of this Act.

5. Validity of passports and other travel documents

(1) An Ordinary or Diplomatic passport shall be valid—

- (a) for use in all countries in the world, except for any countries specified in the passport; and
- (b) for a period that does not exceed ten years from the date of issue, and in the case of children for a period not exceeding five years.

(2) An East African passport shall be valid for—

- (a) use in all Partner States in the East African Community or for such other countries as may be prescribed by the Cabinet Secretary;
- (b) a period not exceeding ten years from the date of issue, and in the case of children for a period not exceeding five years.

(3) A temporary passport shall be valid for—

- (a) use in all countries in the world, except for any countries specified in the temporary passport in respect of which it is stated not to be valid; and
- (b) a period not exceeding one year from the date of issue.

(4) An emergency travel document shall be valid for—

- (a) travel to Kenya and other countries of transit; and
- (b) a single journey for a period stated therein;

(5) A Certificate of Identity and Nationality is valid for travel to all countries stated therein and shall be valid for a period not exceeding two years from the date of issue.

(6) A Temporary Permit shall be valid for—

- (a) travel in all partner states in the East African Community or for such other countries as may be prescribed by the Cabinet Secretary; and
- (b) a period not exceeding one year from the date of issue.

(7) Travel Document issued to a refugee shall be valid for travel to all countries except the country of the holder's nationality and shall be valid for a period of five years.

6. Application for and issuance of passports and other travel documents

(1) An application for issuance or replacement of a passport or other travel document shall be in the prescribed form.

(2) A person who wishes to apply for a passport shall appear in person before an immigration officer and make an application in the prescribed manner:

Provided that in special circumstance the Director may use his discretion to dispense with personal appearance.



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(3) An application made under subsection (1) shall be accompanied by—

- (a) the birth certificate or adoption certificate of the applicant;
- (b) the national identity card of the applicant; or
- (c) a certificate of registration or naturalization, where applicable; or
- (d) service identity cards for members of the Defence Force;
- (e) passport size photographs as may be determined in Regulations;
- (f) in case of an applicant who is a child or with a disability that renders them dependent, the parent's or legal guardian's written consent; and
- (g) the prescribed fee.

(4) An immigration officer shall, subject to this Act, issue or replace passports and other travel documents to any applicant.

(5) A passport or a travel document issued under this Act shall contain information prescribed by the Cabinet Secretary.

7. Application for replacement of a passport and other travel document

(1) Where the holder of a passport or other travel document requires a replacement of the passport or travel document or wishes to change the particulars in the passport or travel document, the holder shall apply in the prescribed manner.

(2) An application made under subsection (1) shall not be considered unless accompanied by the passport or travel document that is being held by the applicant.

(3) Upon issuance of a new passport or travel document the previously issued passport or travel document shall be cancelled.

8. Lost, stolen mutilated or damaged passport

(1) Where a passport or travel document is lost or stolen, the holder shall report the loss or theft to the nearest police station and immigration office or if outside the country, to the nearest Kenya mission.

(2) The immigration officer shall upon receiving information of the loss or theft of the passport or travel document, notify all immigration offices, Kenya missions abroad and other relevant authorities, of the loss or theft of the passport or travel document.

(3) Any person whose passport or travel document is lost, stolen, mutilated or damaged may apply for replacement, in the prescribed form and pay the prescribed fee.

(4) An application under subsection (3) shall be accompanied by a statutory declaration or a sworn affidavit of the circumstances surrounding the loss, theft, mutilation or damage of the passport or travel document.

(5) The immigration officer may, where a passport or travel document is lost, stolen, mutilated or damaged outside Kenya, issue or cause to be issued a passport or travel document upon the applicant complying with the provisions of subsections (3) and (4) as far as is reasonably possible.

9. Rejection of an application for a passport or other travel document

(1) An immigration officer shall reject an application for a passport or other travel document where the applicant—

- (a) is not a citizen in the case of an application for passport;
- (b) does not qualify under the provision of this Act in the case of other Travel Documents;
- (c) gives false material information for the purpose of obtaining a passport



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or other travel document; or

(d) submits an incomplete application. **011**

(2) Where an application for passport or other travel document has been rejected, the immigration officer shall within fourteen days give the reasons for rejection to an applicant, in writing.

10. Confiscation or suspension of a passport or travel document

(1) An immigration officer or any other law enforcement officer may suspend or confiscate a passport or other travel document where—

- (a) the holder permits another person to use his passport or travel document;
- (b) the holder has been deported or repatriated to Kenya at the expense of the Government;
- (c) the holder is convicted for drug trafficking, money laundering, trafficking in persons and smuggling, acts of terrorism or any other international crime;
- (d) a warrant of arrest has been issued against the holder and there is a risk of absconding;
- (e) the holder is a person against whom there is a court order restricting movement or authorizing denial, confiscation, or suspension of the passport or travel document;
- (f) the holder is involved in passport or document fraud, passport or document forgery or transnational crimes; and
- (g) it is necessary to examine the passport or travel document for a period not exceeding seven days.
- (h) subject to the Constitution, any other circumstances which in the opinion of the Director would be prejudicial to the interest of the State or holder of the passport.

(2) The immigration officer shall, on suspending or confiscating the passport or travel document in accordance with subsection (1), inform the holder, in writing, within seven days, citing the reason, and may require him to surrender the passport or travel document.

(3) Upon being served with a notice under subsection (2), the holder shall within twenty one days of service, surrender the passport or travel document to the nearest immigration office or an authorized agent.

(4) Where the holder of a passport or travel document fails to surrender the passport or travel document as required under subsection (3), it shall become null and void after the expiry of twenty-one days from the date of service of the notice to surrender the passport or travel document.

(5) A person who is aggrieved by the decision to suspend or confiscate the passport may, within fourteen days of the receipt of written notice of such suspension or confiscation, file an appeal to the High Court.

[Act No. 19 of 2014, s. 77.]

11. Passports and travel documents to be evidence of citizenship and domicile.

(1) A passport shall be *prima-facie* evidence of the citizenship or domicile of the



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holder, as the case may be, and of their entitlement to state protection.

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(2) Notwithstanding subsection (1), possession of a passport or travel document does not bar inquiry, investigation or judicial proceedings pertaining to the validity of the passport.

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**ANNEX 4: NO 18 OF 2018 STATUTE LAW AMMENDMENTS
ACT OF 2018IZENSHIP AND IMMIGRATION ACT**



SPECIAL ISSUE

Kenya Gazette Supplement No. 161 (Acts No. 18)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2018

NAIROBI, 4th January, 2019

CONTENT

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The Statute Law (Miscellaneous Amendments) Act, 2018 315



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**THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) ACT, 2018**

No. 18 of 2018

Date of Assent: 31st December, 2018

Date of Commencement: 18th January, 2019

**AN ACT of Parliament to make various amendments to
statute law**

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) Act, 2018.

Short title.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner respectively specified in the third column.

Amendment of
written laws.

SCHEDULE

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Judicature Act, (Cap.8).	s.2.	Delete the definition of the word "judge" and substitute therefor the following new definition— "Judge" means the Chief Justice or any other judge appointed under Article 166 of the Constitution.
	No. 20 of 2011.	Insert the following new definitions in proper alphabetical sequence — "Employment and Labour Relations Court" means the Employment and Labour Relations Court established by the Employment and Labour Relations Court Act, 2011.
	No. 19 of 2011.	"Environment and Land Court" means the Environment and Land Court established by the Environment and Land Court Act, 2011.
	s.3(1)	Delete the words "the High Court, the Court of Appeal" and substitute therefor the words "the Supreme Court, the Court of Appeal, the High Court, the Environment and Land Court, the employment and Labour Relations Court"



Delete the expression "Commissioner of Police" wherever it appears and substitute therefor the expression "Inspector-General of the National Police Service".

No.11A of 2011. Delete the definition of the expression "police station" and substitute therefor the following new definition-

"police station" means a place designated by the Inspector-General as a police station under section 40 of the National Police Service Act, 2011.

s.26(1) Delete the words "Commissioner of Police" and substitute therefor the word "Inspector-General of National Police"

s.386(1) Delete the words "Commissioner of Police" and substitute therefor the word "Inspector-General of National Police"

Extradition
(Contiguous
and Foreign
Countries)
Act. (Cap.76).

s.3(3) Delete the expression "House of Representatives" and substitute therefor the words "National Assembly".

s.11(2) Delete the expression "House of Representatives" and substitute therefor the expression "National Assembly".

s.15(1)(b) Delete the words "Commissioner of Police or chief officer of the police of the district, city, town or area where the prisoner is in custody" and substitute therefor the words "Inspector-General of Police or the Officer Commanding the respective Police Division or Police Station".



The
Registration of
Persons Act
(Cap 107)

s.3 Insert the following new definitions in proper alphabetical sequence-

"Biometric" means unique identifiers or attributes including fingerprints, hand geometry, earlobe geometry, retina and iris patterns, voice waves and Deoxyribonucleic Acid in digital form;

"Global Positioning System coordinates" means the unique identifier of precise geographic location on the earth,

expressed in alphanumeric character being a combination of latitude and longitude;

"physical form" means existing in a form that one can see and touch; and

"Principal Secretary" means the Principal Secretary in the ministry responsible for matters relating to registration of persons.

s.5(1)(d) Delete the and substitute therefor -

(i) county of birth; or

(ii) county of residence.

(1)(g) Delete paragraph (g) and substitute therefor the following new paragraph -

(g) place of residence and postal address, Global Positioning Systems coordinates, Land Reference Number, Plot Number or House Number, if any;

(1)(h) Insert the words "in physical form" immediately after the words "toe impressions".

Insert the following new paragraph immediately after paragraph (h) -

(ha) biometric data.

New. Insert the following new section immediately after section 9 -

Establishment of the
National Integrated
Identity
Management
System

9A. (1) There is established a National Integrated Identity Management System.

(2) The functions of the system are -

(a) to create, manage, maintain and operate a national population register as a single source of personal information of all Kenyan citizens and registered foreigners resident in Kenya;



- (b) to assign a unique national identification number to every person registered in the register;
- (c) to harmonise, incorporate and collate into the register, information from other databases in Government agencies relating to registration of persons;
- (d) to support the printing and distribution for collection all national identification cards, refugee cards, foreigner certificates, birth and death certificates, driving licenses, ~~work permits, passport and foreign travel~~ documentation, student identification cards issued under the Births and Deaths Registration Act, Basic Education Act, Registration of Persons Act, Refugees Act, Traffic Act and the Kenya Citizenship and Immigration Act and all other forms of government issued identification



NRB
ISSUING
PERMITS &
PASSPORTS
TRAVEL DO

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documentation as may be specified by gazette notice by the Cabinet Secretary;

- (e) to prescribe, in consultation with the various relevant issuing authorities, a format of identification document to capture the various forms of information contained in the identification documents in paragraph (d) for purposes of issuance of a single document where applicable;
- (f) to verify and authenticate information relating to the registration and identification of persons;
- (g) to collate information obtained under this Act and reproduce it as may be required, from time to time;
- (h) to ensure the preservation, protection and security of any information or data



person or on its own initiative to ensure that the information is accurate, complete, up to date and not misleading; and

- (j) to perform such other duties which are necessary or expedient for the discharge of functions under this Act.

(3) The Principal Secretary shall be

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REPUBLIC OF KENYA

ANNEX 5

MINISTRY OF INTERIOR AND COORDINATION OF
NATIONAL GOVERNMENT

INTEGRATED POPULATION REGISTRATION SYSTEMS (IPRS) DRAFT POLICY FRAMEWORK



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July 2013



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Term	Long Form
KNBS	Kenya National Bureau of Statistics
CRD	Civil Registration Department
DOI	Department of Immigration
IEBC	Independent Electoral and Boundaries Commission of Kenya (IEBC)
ERS	Economic Recovery Strategy for Wealth & Employment Creation
GITS	Government Information Technology Services
HQs	Headquarters
ICT	Information & Communication Technology
ID	Identity
IPRS	Integration of Population Registration Systems
KRA	Kenya Revenue Authority
LAN	Local Area Network

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MIRP	Ministry of Immigration & Registration of Persons
NESC	National Economic & Social Council
NHIF	National Health Insurance Fund
NPR	National Population Register
NRB	National Registration Bureau
NSSF	National Social Security Fund
OOP	Office of the President
PC	Personal Computer
PIN	Personal Identification Number
PRA	Primary Registration Agency
RAD	Refugee Affairs Department
RDBMS	Relational Database Management System
RG	Registrar-General
SRA	Secondary Registration Agency
TRA	Tertiary Registration Agency
UNHCR	United Nations High Commission for Refugees
WAN	Wide Area Network



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The Integration of Population Registration Systems (IPRS) strategy is Government of Kenya's endeavor to increase efficiency and effectiveness in public service delivery by streamlining population registration processes. The system will facilitate achievement of Government development goals as outlined in the Kenya's Vision 2030, and the Harmonized Jubilee Manifesto policy documents. The initiative of IPRS came up as early as 1989 when the need for a unique personal identification number for Kenya citizens to link each individual's personal information in the various population registers was identified. The number was to be incorporated in the second-generation identity card to replace the registration numbers in the current Registration of Persons and in Birth and Death Registration Acts.

The Government has several disparate agencies all undertaking population registration functions under independent legislation, leading to un-necessary duplication of efforts, increased operational costs, limited, incomplete data and other multifaceted problems. These

problems have a negative impact on the Government planning, population surveillance, public administration and formulation of policies. Further, there is low utilization of data, data redundancy and inability to update data among other issues. The agencies include Civil Registration Department, National Registration Bureau, Department of Immigration, Registrar General, National Social Security Fund, and the National Hospital Insurance Fund.

This IPRS Policy Paper is premised on the following specific objectives: -

- To develop a centralized national population register that will contain information of all Kenyans and foreigners resident in Kenya
- To improve data storage and access in all population registration agencies
- To facilitate efficient coordination and linkages of registration agencies
- To improve overall registration capacity within the registration agencies

A **national population register** is an updated register of the whole residential population, which includes at least sufficient information to identify the individual uniquely, and which is used for approved purposes.

The introduction of a unique Personal Identification Number (PIN), which will be assigned to all Kenyans and foreigners applying to become Kenya citizens, will assist in identifying all citizens and non-citizens resident in Kenya. The PIN will also serve as a common identifier in all subsequent registrations. Some of other benefits to be accrued from the implementation of IPRS will be: -

Accurate, reliable and comprehensive population registration database containing civil status details of entire resident population
 Optimal utilization of resources
 Provision of a mechanism to government agencies for convenient and timely access to information held by primary registration agencies.

The central database, in an electronic form, will contain Personal Identification Number, names, date and place of birth, sex, nationality, marital status, residence/physical address, occupation, biometrics, date of death and ethnicity/race of an individual. The database will have a linkage that will allow access and agency-to-agency data sharing while the respective population registration agencies will continue maintaining information related to their core function. All the primary population registration agencies will need to be automated in order to facilitate internal and external linkages and establish a common platform for information sharing. Initial ICT infrastructure will emphasis on the primary population registration agencies.

In order to have a successful implementation of IPRS an elaborate institutional and legal framework will be put in place. While the primary population registration agencies

will continue with normal duties, minimum amendments to their respective Acts may be made to provide for information sharing. Recruitment and training based on human resource needs assessment will be undertaken to ensure that there is adequate human resource capacity. In addition, a monitoring and evaluation mechanism will be established to guide the implementation of the initiative.

The Ministry for the time being responsible for immigration and Registration of Persons is the Implementing Ministry, which in consultation with other ministries and agencies will conduct an accelerated registration programme to capture unregistered population and assign PIN numbers.

The implementation will adopt a phased approach as follows: -

- Phase 1: Strategy Formulation
- Phase 2: System Design & Automation of Primary Registration Agencies
- Phase 3: Pilot Project
- Phase 4: Full IPRS Deployment

The project financing shall be met by the exchequer.



Chapter 1

1.0 Background

The Government of Kenya has several disparate agencies all undertaking population registration functions under independent legislation. This has led to un-necessary duplication of efforts across all the registering bodies and increased operational costs. Similarly, inadequate linkages have resulted in delayed service delivery, non-effective utilization of data necessary for population surveillance and evidence-based policy and programme formulation. Since these services are not automated there is manual sharing of information through paper-based documents resulting to an increased risk of fraud and forgery.

The need for production of multiple Identity documents further compounds the problem as the same information is duplicated due to lack of a unique identifier to link them to an individual.

These multifaceted problems in the existing population registration system have a negative impact on the Government planning, population surveillance, public administration and formulation of policies.

Arising from this, the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service appointed an Inter-ministerial Taskforce on Integration of Population Registration Systems (IPRS) on 19th September 2005. This was in line with the National Economic and Social Council (NESC) recommendation on fast tracking of the integration of the registration systems. It's also a response to the National e-Government Strategy that stresses the need for integration as a basis for successful delivery of Government services.

The Inter-ministerial Taskforce was mandated to come up with recommendations geared towards fulfilling the following IPRS objectives:

1. Provide a common reference model to facilitate efficient and effective coordination of registration systems, processes and information flow;
2. Enable convenient, equitable and innovative access to integrated Government registration services through information technology services and;
3. Evolve existing systems and implement new systems in order to promote interoperability, scalability and security.

In order to realize the above-mentioned objectives, the Taskforce operated under the following Terms of Reference: - **NO. 12 OF 2011**

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1. Review the current information flows and management relating to Government registration services and systems and identify opportunities for reducing repetitions and redundancies, streamlining information access, and increasing consistency and accuracy of information.
2. Review the various laws, statutes and inter-departmental relationship and processes governing registrations with a view to harmonization.
3. Identify institutional, technical, structural, commercial, legal or other constraints or impediments for efficient operations of registration activities and prepare an action plan for creating opportunities, eliminating barriers and promoting efficient operations.
4. Assess the level of skill and human resource requirements and put in place the institutional framework for bridging existing gaps.
5. Explore and recommend models for financing including direct exchequer funding, contributions from other bodies and project-based income (e.g. Public-private partnerships) and advise on the implications of each model including possible changes in legislation.
6. Prepare recommendations for strategic development and implementation of the integrated registration systems including organizational structures and the implementation matrices linking these with ministerial processes.

Guided by the Terms of Reference, the Taskforce developed a Concept Paper and presented it to the NESC on 14th February 2006, with the following recommendations:

1. Introduction of a unique national number - Personal Identity Number (PIN), for all individuals resident in the country. That the number be assigned at birth for all residents and serve as the control number for all registration systems
2. Establishment of a National Population Register, containing information of all residents and serve as a central reference for other population registration systems
3. A central database be established to facilitate operations of the National Population Register;
4. Develop ICT related human capacity across all Population Registration departments.

5. Funding for computerization of Primary Registration Agencies (PRAs), whose operations are not fully computerized, to the Civil Registration Department, National Registration Bureau, Immigration and Refugees, in readiness for electronic linkages.

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6. Civil Registration Department and the National Registration Bureau undertake accelerated registration programmes.
7. Development of a Nation wide ICT Infrastructure backbone to link government agencies for purposes of information sharing and verification.

The National Economic and Social Council adopted the paper and recommended that:

- 1 The Ministry of State for Immigration and Registration of Persons co-ordinate the planning and implementation of IPRS
- 2 The Ministry of Finance to provide funds for the project

Based on these recommendations, the IPRS Technical Committee to the Taskforce undertook best practices research on Integration of Population Registration Systems in Israel and Malaysia. This formed the basis for the development of an IPRS Strategy Paper, which was premised on the following specific objectives: -

- To develop a centralized national population register that will contain information of all Kenyans and foreigners resident in Kenya
- To improve data storage and access in all population registration agencies
- To facilitate efficient coordination and linkages of registration agencies
- To improve overall registration capacity within the registration agencies



1.1 Past Initiatives

The principles of population registration recognizes the basic role of the Government to establish, operate and maintain a reliable population registration system that produces legal documentation on vital events and their characteristics for the entire population. The Government has in the past attempted to harmonize the various population registration activities with a view to achieving the above.

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The need for a unique personal identification number for Kenya citizens to link each individual's personal information in the various population registers was identified in 1989. The then Minister in charge of Population Registration and the Attorney General made a recommendation to the cabinet, in a joint memorandum, for the introduction of the PIN. The number was to be incorporated in the second-generation identity card to replace the registration numbers in the current Registration of Persons and also Birth and Death Registration Acts. Consequently, a National Population Register was to be compiled, maintained and updated to replace registration registers under the two Acts. However, these proposed initiatives were never effected.

In the year 2000, the Office of the President (OOP) constituted a working committee to develop a concept paper on IPRS for Cabinet approval based on the following terms of reference.

- To organize a leaders conference on IPRS;
- To develop a policy framework on IPRS;
- To develop a harmonized format for collecting information on application;
- To automate the exercise of the registering agencies and;
- To create an enabling legal framework.



In the year 2001, the concept paper was completed and a Cabinet Memorandum was forwarded to the Cabinet, which approved and directed the Office of the President and Ministry of Finance to undertake the following tasks:

- To organize a leaders conference on Integration of Population Registration.
- To develop a policy framework paper on Integration of Population Registration.
- To develop a programme for acceleration of registration of births and deaths and computerization of the vital registration system.

However, these activities never took off.

In the year 2002, the Office of the President (OOP) initiated the development of its Information Communication Technology (ICT) Policy Framework and Strategic Implementation Plan (2002-2005). The plan prioritized the creation of an ICT infrastructure linking all departments within it.

In December 2003, the Permanent Secretary, Secretary to the Cabinet and Head of Public Service appointed a taskforce on IPRS whose mandate was to:

- Develop a policy framework
- Define an enabling legal framework
- Develop a strategic implementation plan

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On 14th February 2005, four primary registration agencies namely the National Registration Bureau, the Immigration Department, Civil Registration Department and the Refugees Department, were brought together to create the new Ministry of Immigration and Registration of Persons.



Chapter

2

2.0 Introduction

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This chapter gives the situational analysis of the various Population Registration Agencies (PRAs). **KENYA CITIZENSHIP AND IMMIGRATION ACT** Each Department and the shortcomings manifested by absence of internal and external linkages, and uncoordinated and duplicated efforts.

2.1 Institutional Analysis

An institutional analysis of the organizations undertaking population registration in Kenya is as follows: -

(a) Civil Registration Department (CRD)

The Department is mandated by the Births and Deaths Registration Act, Cap.149 to register all births and deaths occurring in Kenya and those of Kenyans abroad. The Department also effects re-registration upon legitimation under the Legitimacy Act, Cap. 145. The Department gets its data from health institutions, assistant chiefs and our missions abroad. The particulars required during registration of births and deaths include name, date of birth /death, place of birth/death, marital status, physical address, signature of informant, parents' names, sex and age of the deceased or of mother in case of birth amongst others.

Currently, the registration coverage of birth is at less than 80% of the projected births countrywide. In addition, this low registration coverage renders the statistics produced by the department partially reliable.

Some efforts are currently being made to automate the operations of the department, including digitization of historical records.

(b) National Registration Bureau (NRB)

The National Registration Bureau (NRB) operates under the Registration of Persons Act, Cap.107. The Department registers and issues national identity cards to Kenya citizens, aged 18 years and above. The NRB collects data from applicants based on their birth certificates, baptismal/religious certificates and confirmations from the Provincial Administration. The particulars supplied by applicants include; name, parentage, date of birth, place of birth, sex, photo image, signature and thumbprints amongst others.

While NRB has automated the production of Identity cards, the collection of data from the field stills remains manual. Although NRB hold data for registered persons aged 18 years and above,

the department is not linked to major stakeholders. This therefore means that there is under utilization of the information held by NRB. At the moment there is linkage between NRB and Immigration department, and the IPRS which facilitates the access of the alien database at the NRB, and also facilitates the sourcing of population data to the IPRS.

(c) Immigration Department

The Department of Immigration registers foreigners acquiring Kenyan citizenship, and other Immigrants. It also issues passports, and other travel documents .It operates under the Kenya citizenship and Immigration Act (2011) and Chapter 3 of the Constitution of Kenya.

The department processes and issues passports to Kenyans and alien cards to resident non-citizens. Applicants are supposed to furnish an immigration officer with supportive documents such as identity card, birth certificates and photographs for issuance of passport.

Information requested which is similar to that required by other registering departments/organizations include; name, date and place of birth, address, marital status and signature. Other data sets required include the applicant's height, marital status, profession, colour of eyes and hair, and any special peculiarities amongst others.

Lack of linkages with other registration agencies makes it difficult for the department to authenticate birth certificates and national identity cards when produced by applicants as evidence of particulars required for the issuance of passports.

Some effort has been made to computerize the operations of the department, including the passport issuing system.

(d) Refugee Affairs Department

Following a Cabinet decision, the Refugee Affairs Department was established in 2003. The functions of the department are:

- Coordination and management of refugee matters in liaison with UNHCR
- Documentation, registration, protection, settlement and repatriation of refugees

Information required for registration of refugees as in other departments include, name, sex, age, country of origin and residence. There is no linkage between the department and other



stakeholders. Refugee registration is done within refugee camps. Due to recent instability in the countries neighboring Kenya, the number of refugees has proliferated both within and outside the camps. This poses registration challenges including identification and monitoring of their status.

KENYA CITIZENSHIP AND IMMIGRATION ACT

(e) Registrar of Marriages

The Registrar of Marriages operates under the Marriages Act Cap. 150, and the African Christian Marriages and Divorce Act Cap 151 of the Laws of Kenya. The registration requirements include; information in the identity card, passport, birth certificate and death certificate.

Information required for verification, which is common in other registration agencies, include date of birth, place of birth, sex and name of the applicant. Lack of linkage to other stakeholders makes it difficult for the department to verify documents and authenticate information. In addition, there is no linkage between the marriage register and the divorce register to update data when marriage and divorce events occur.

(f) Kenya Revenue Authority (KRA)

(i) Registrar of Motor Vehicles Department

The registration for issuance of driving licenses is operated under the Traffic Act, Cap.403. An applicant is supposed to produce a copy of Identity Card (ID), Photograph and certificate of competency from the Traffic Police among other requirements. This information is manually processed but is later stored in a computer system at the Registrar's offices.

The particulars, which are common to those required by other registration agents include; names of the applicant, sex, age, signature or thumbprint, postal address and application date.

The manual system is incapable of updating the records in the event of death of a driving license holder. In addition, the department is not linked to the traffic police department and it has been difficult to enforce the traffic code because it has no access to information relating to traffic offenders. Currently, there is no linkage between KRA–Department of Motor Vehicle and other registration departments/organizations such as National Registration Bureau (NRB) and Civil Registration Department (CRD).



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(ii) Income Tax Department**KENYA CITIZENSHIP AND IMMIGRATION ACT**

The Income Tax Department operates under the Income Tax Act, Cap. 470. It registers persons for purposes of tax collection and assigns a Personal Identification Number (PIN). Taxpayers are required to submit a copy of their ID card or registration certificate as proof of name, address, sex, residence and identity/alien card number.

Some efforts to computerize the Authority have been made through the development and installation of the Integrated Tax Management Information System (ITMIS), but lack of linkages with major stake holders such as Civil Registration Department, Immigration Department and National Registration Bureau has made the Department unable to immediately update its records on taxpayers when they die or on potential taxpayers

(f) Independent Electoral and Boundaries Commission of Kenya (IEBC)

The Independent Electoral and Boundaries Commission of Kenya (IEBC) undertakes registration of voters, maintenance and revision of voter's register under the Constitution of Kenya.

In order to register as a voter, citizens are required to produce a national ID Card or a valid Kenyan Passport. The details required by IEBC are similar to information required by other registration agencies: name of the applicant, constituency, registration center, address, National ID Card Number, sex, date of birth and signature or thumbprint of the applicant.

Lack of linkages with the CRD and the NRB makes it difficult to update the voter's register continuously in case of death or to register a person upon attaining 18 years of age.

(g) National Hospital Insurance Fund (NHIF)

The NHIF operates under the NHIF Act Cap.255. Currently the organization has three categories of members; salaried workers, self-employed persons and voluntary contributors, all of whom are required to produce a National ID Card for registration. Each registered member is allocated an individual membership number.

The Information required include; the contributors ID or passport number, date of birth, thumbprint and signature, PIN, company certificate of registration among others.



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NHIF is unable to verify various registration documents like birth and marriage certificates and identity cards that are presented in support of medical claims due to lack of linkage with other relevant registration bodies. This makes it difficult to detect fake claims.

(h) National Social Security Fund (NSSF)

The organization operates under the NSSF Act Cap.258 of the Laws of Kenya and collects Social Security contributions for non-pensionable workers.

The registration requirements include; letter of introduction from the employer, National Identity Card and fingerprints of the contributors.

The similarities in information required, like in other registration agencies, include date of birth, place of birth, sex and name of the applicant. The lack of linkage between NSSF, NRB and CRD makes the department unable to detect fake death certificates resulting into wrongful payment of benefits.

**(i) Other Registration Agencies and Users**

The other registration agencies and users include Kenya National Bureau of Statistics, Judiciary, Kenya Police, Public Service Commission, Teachers Service Commission and Directorate of Personnel Management.

The Kenya Police undertakes investigations and holds records on criminals but have no linkage to any other registration agencies. The Ministry of Labour, Public Service Commission, and the Teachers Service Commission who have no linkages amongst themselves register public servants in Kenya.

The Kenya National Bureau of Statistics collects, collates, publishes and disseminates socio-economic and demographic data for analysis and conducts population censuses, and has no external linkages to population registration agencies.

2.2 Justification of the Initiative**NO. 12 OF 2011**

From the above analysis, it is notable that the current registration institutional setup contributes to inefficiency. The fragmented data under the different registration agencies is limited, incomplete, and in most cases not up to date. While agencies may have data for a particular person, the data may seem different but refers to the same person. This scenario has therefore led to inherent problems such as: -

- Low utilization of data
- Duplication of efforts in data collection
- Data redundancy
- Poor data management
- Inability to update data
- Protection and security of data
- High costs of operation

The following are the benefits that will accrue from the implementation of IPRS.

- Accurate, reliable and comprehensive population registration database containing civil status details of entire resident population
- Optimal utilization of resources
- Verification, validation, authentication and update of primary data source will be enabled
- Accurate population data necessary for effective planning and governance will be available
- Provision of a mechanism to government agencies for convenient and timely access to information held by primary registration agencies by computer linkage to enable informed decision making.



Chapter 3

3.0 Introduction

Population registration in Kenya has been carried out in a piecemeal and uncoordinated manner resulting in poor service delivery. **NO. 12 OF 2011**

KENYA CITIZENSHIP AND IMMIGRATION ACT

In an effort to address this and other development challenges, the Government has formulated various strategies including the Economic Recovery Strategy, National e-Government strategy, a public financial management reform that includes the Integrated Financial Management Information System (IFMIS) and Integrated Personnel and Payroll Database system (IPPD). The most recent initiative is the proposed Integration of Population Registration Systems (IPRS).

Under the IPRS, a Common Reference Model (CRM) is proposed that will enable efficient and effective coordination of primary and secondary registration systems, data processes and information flows. The CRM will contain a **National Population Register**, which will facilitate convenient, equitable and secure information access between the various registration agencies and other users.

It is proposed that existing systems be upgraded to enable creation of a centralized database of all Kenya citizens, and foreigners living in Kenya. In this case, each individual will be assigned a **unique personal identifier** that will enable linking of the individuals' information as they access services in various registration systems. In order to achieve this, various laws, statutes and inter-departmental processes governing registration need to be reviewed with a view to creating an enabling legal framework.

It is proposed that an appropriate ICT infrastructure be developed specifically in the areas of network layout, software and hardware to support the system.

For the successful implementation and operation of an Integrated Population Registration System, the following policy framework needs to be put in place:

3.1 Common Reference Model

The proposed common reference model will be a framework, which will contain a centralized national population register linked to the various registration agencies and other users.

For purposes of data capture in this model, it is recommended that the primary registration agencies be strengthened to capture consistent and accurate primary data and update the population register.

NO. 12 OF 2011**3.2 National Population Register****KENYA CITIZENSHIP AND IMMIGRATION ACT**

The National Population Register, which will contain information on all Kenya citizens, and foreigners resident in Kenya shall be created and maintained under an appropriate Act of Parliament. An independent institution whose responsibilities will be specified under the Act will manage the register. The managing institution shall have the legal mandate to manage the data.

3.3 Unique Personal Identifier

In order to link personal data of an individual to other population registers, a unique personal identifier will be created. The identifier will be an intelligent number unique to an individual and shall be assigned at birth.

3.4 Centralised Electronic Data Base

In the common reference model, information shall be received, verified, stored, disseminated and retrieved in a central database. Standards will be set up and guidelines developed for data collection and dissemination to ensure consistency and accuracy of information. Similar standards and guidelines will be enforced to ensure interoperability, security and scalability in ICT infrastructure.

3.5 Legal Framework

An Act of Parliament shall provide for an enabling legal framework for the creation of a National Population Register. It will provide for the establishment of an overseer authority, registration particulars, and registration procedures, utilization of information, the rights and duties of agencies to provide and use the information.

3.6 ICT Infrastructure

An elaborate ICT infrastructure shall be developed that will facilitate information access to all the distributed registers of the primary registration agencies. Secondary registration agencies and authorized users will link to the network for information access on a read only basis. As a matter of uniformity it will be necessary to bring every population agency to the same level of



automation so as to allow usage of compatible software, hardware and other resources as required.

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3.7 Institutional Framework

The National Population Register will be managed by an independent institution whose responsibilities will include:

1. Receiving, storing and updating information from primary registration agencies and disseminating the same to various registration agencies and other users.
2. Policy formulation, setting of guidelines, coordination and mobilization of resources for the national population registration system.
3. Setting up of standards and development of guidelines for data collection and dissemination to ensure consistency and accuracy of information.
4. Ensuring that there is adherence of the set up ICT standards and guidelines by the various population registration agencies and users to facilitate interoperability, security and scalability.
5. Formulation of a framework for absorbing and coordinating the activities of agencies joining the population registration system.
6. Operation and maintenance of the ICT infrastructure
7. Human resource capacity building
8. Setting up of monitoring and evaluation mechanism



3.8 Human Resource Requirements

In order to implement and sustain the Integrated Population Registration System, there is need to train the existing staff in the various Population Registration agencies in relevant skills such as ICT, monitoring and evaluation, registration, statistics, economics, and management.

3.9 Policy recommendations

1. All Primary Registration Agencies to be upgraded through automation of their operations to be able to link to the National Population Register

2. Set up a legal framework to facilitate creation and operationalization of a Centralized National Population Register

KENYA CITIZENSHIP AND IMMIGRATION ACT

3. Create a Unique Personal Identifier for Kenya citizens and foreigners resident in Kenya. This number shall be used for subsequent legal and administrative purposes.
4. Create an office with the necessary legal mandate to oversee the establishment and implementation of the National Population Register.
5. All Primary registration Agencies to be compelled by the government to source primary registration data into the National Population register, and continuously update the same when need arises
6. The National Population Register be considered and recognized as the only reference point and single source of truth of information of registered individuals in Kenya
7. Strengthen the capacity of the existing registration agencies in terms of ICT, Human Resource, and Finance.
8. Create national awareness and advocate for the need and importance of a unique personal identifier.
9. The Treasury to fund the implementation and operationalization of IPRS. Additional funds for the operations and sustainability of IPRS to be generated from A In A. through the levying of charges for to agencies using IPRS services
10. Retrain the existing staff and improve staffing levels in the registration departments.
11. An accelerated registration program be undertaken to capture all unregistered citizens for purposes of assigning the unique personal identifier and source the information to the National Population Register.
12. All historical manual records held by registration agencies be digitized to facilitate their sourcing to the National Population register



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Chapter
4

4.0 Introduction

Successful Implementation and management of IPRS requires elaborate strategies and coordination mechanisms of the various processes involved. This chapter presents various strategies that have been

identified for meeting the specific IPRS objectives mentioned earlier.

NO. 12 OF 2011**4.1 Introduction of a Unique Personal Identification Number (PIN)****KENYA CITIZENSHIP AND IMMIGRATION ACT**

Introduction of a unique Personal Identification Number (PIN) will assist in identifying all citizens and non-citizens resident in Kenya. In addition the number will facilitate the operation of a National Population Register.

A unique Personal Identification Number will be assigned, to all Kenyans at birth. Foreigners applying to become Kenya Citizens and residents will be assigned the PIN on registration. The number will enable one to differentiate Kenyans from non-Kenyans, for administrative purposes and will serve as a common identifier in all subsequent registrations. For example, upon reaching the age 18 years, the PIN will be the basis of ID registration. It will also facilitate the Government in the administration of Taxes, form the bases for voter registration, data verification and updating of personal data in the national population register.

Structure of the proposed Personal Identification Number

The Personal Identification Number (PIN) will be a 14-digit number consisting of 5 parts as follows:

Part 1 Sex, part 2 Year of Birth, part 3 District of Birth, part 4 Serial number of Birth and part 5 Check Digit



Table 1: **PIN Structure**

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Part	Position	Content	No. of Digits	Description
1.	1	Century of Birth	1	The centuries shall be assigned numbers as follows: 1) for the period between 1900 and 1999; 2) for the period between 2000 and 2099; 3) for the period between 2100 and 2199, and so on.
2.	2-7	Date of Birth	2	The second part of the Personal Identification Number shall have six digits, from the second to the seventh, denoting the date of birth of an individual. The six digits denote the year, month and date in the YY-MM-DD format.
3.	8-10	District of Birth	3	The districts shall be assigned numbers from 001 to 998 for Integrated Personal Number issued in any district of Kenya. The third part of the Integrated Personal Number shall have three digits, from the eighth to the tenth, denoting the district of birth of an individual Foreign nationals shall be assigned the numbers 000. In the case of Kenyans born outside the country, they shall be assigned the numbers 999.
4.	11-13	Serial No. of Birth	5	The fourth part of the Integrated Personal Number shall have three digits, from the eleventh to the thirteenth, denoting a sequential serial number of births in a single district on a single day. The three digits shall range from 000 to 999 and shall also denote the sex of the individual. An odd sequential serial number shall denote a female person and an even sequential serial number shall denote a male person The sequential serial number shall be re-initialized at the start of each day
5.	14	Check Digit	1	The fifth part of the Integrated Personal Number shall have a single digit, the fourteenth, which shall be a check digit that ensures the security of the Integrated Personal Number. The computation of this check digit shall be based on the International Standard Book Number standard.

		Total	14	
			NO. 12 OF 2011	

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The structure for the Integrated Personal Number shall be a 14-digit number consisting of 5 parts, as shown below—

1	2	3	4	5	6	7	8	9	1	1	1	1	1
									0	1	2	3	4
Century		Date of birth			District of birth				Check digit				

4.2 Conduct a Nation-wide Accelerated Registration Programme

To ensure that the proposed National Population Register has up to date information of all Kenyan citizens, there is need to carry out an accelerated registration programme. The implementing Ministry in consultation with other Ministries and agencies will conduct an accelerated registration programme to capture unregistered population and assign PIN numbers.

The registration will be preceded by a publicity campaign to sensitize the public on the importance of IPRS involving all stakeholders including Civil Society, Religious Organizations and Community Based Organizations. This will be carried out through different forums such as, workshops, media, seminars, consultative forums etc.

4.3 Create a Central National Population Database

Creation and maintenance of population information in electronic form is critical to the success of the effort. This will ensure that registration agencies as well as other stakeholders are able to access basic information on an individual. The central database will contain basic information pertaining to an individual while respective population registration agencies will continue maintaining information related to their core function. Apart from accessing the central database, there will also be provision for agency-to-agency data sharing.

This information will include: -

Kenya Citizenship and Immigration

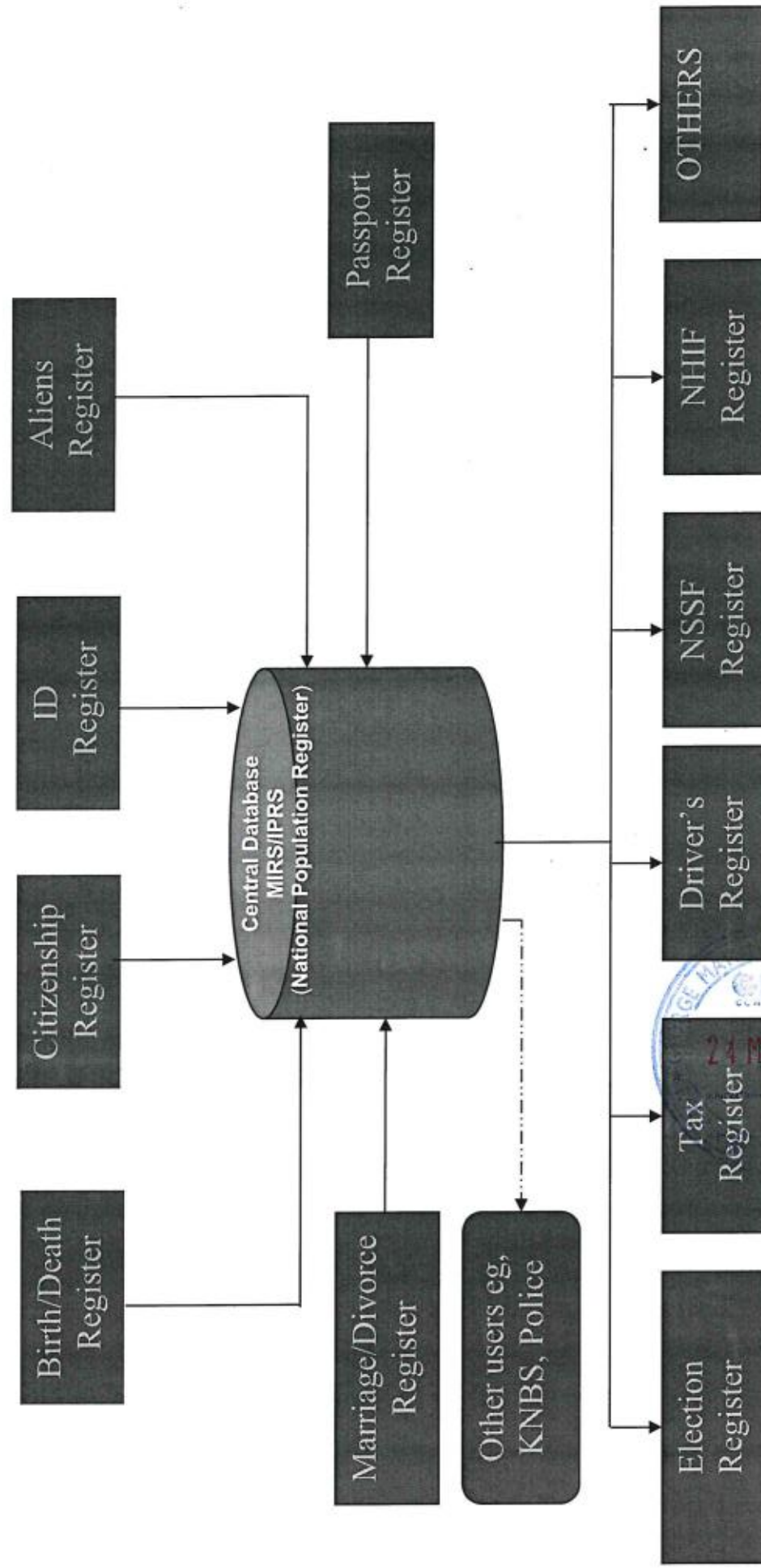
-
- Personal Identification Number
 - Names
 - Date of birth
 - Place of birth
 - Sex
 - Nationality
 - Marital status
 - Residence/Physical address
 - Occupation
 - Biometrics
 - Date of death
 - Ethnicity/Race
- KENYA CITIZENSHIP AND IMMIGRATION ACT**

The implementing ministry will be responsible for the operation and maintenance of the population register, including development of guidelines on data privacy and access.



Figure 1: System Architecture

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4.4 Computerization of Population Registration Agencies NO. 12 OF 2011

Currently, the population registration agencies are either partially automated or virtually manual. To realize IPRS, therefore, all the primary population registration agencies need to be automated. This will facilitate internal and external linkages within the registration agencies, and establish a common platform for information sharing. For purposes of this policy Primary registration agencies are the agencies for the time being responsible for Registration of Births and Deaths (Civil Registration Department) the Registration of Persons (National Registration Bureau), Issuance of Passports and other travel documents (the Immigration department), the department of Refugees' Affairs, and the Registrar-General. The agencies that will use the data/information in the NPR and sometimes update the register are referred to as Secondary Registration Agencies, e.g., NSSF, KRA NHIF. An appropriate Act of Parliament will be enacted to provide for more Primary and Secondary registration agencies as the need arises

4.5 Establishment of an ICT Infrastructure

An ICT infrastructure will be established to facilitate linkages amongst Government agencies, with specific emphasis on the primary population registration agencies for purposes of information sharing and enhancement of data integrity. These linkages will be through local and wide area networks extending to the district level.

The National Population Register will need to be supported by the following infrastructure:

- Network layout
- Database
- Servers and clients

Network Layout

The National Population Register will need a robust and resilient communication network to facilitate its access to all the relevant offices of the primary registration agencies.

Database

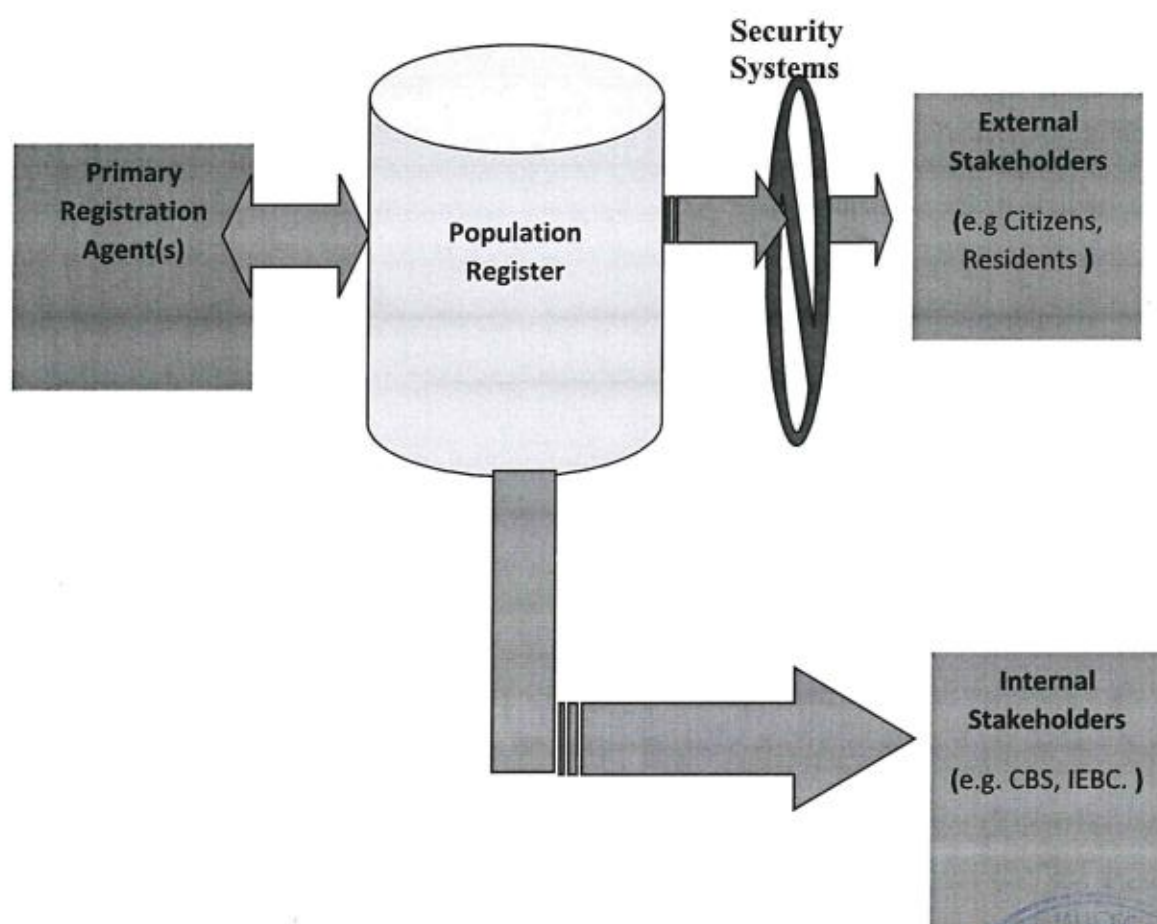
A proposed database will run on a powerful, reliable and robust Relational Database Management System (RDBMS). A similar or equivalent RDBMS is recommended for use by the individual primary registration agencies to facilitate easy and seamless update of the National Population Register. This will ensure the register is current, complete and accurate.



Access to information in this database will be made possible to the wider public via a secure and auditable means whilst ensuring confidentiality and privacy of data.

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Figure 2: IPRS Linkages

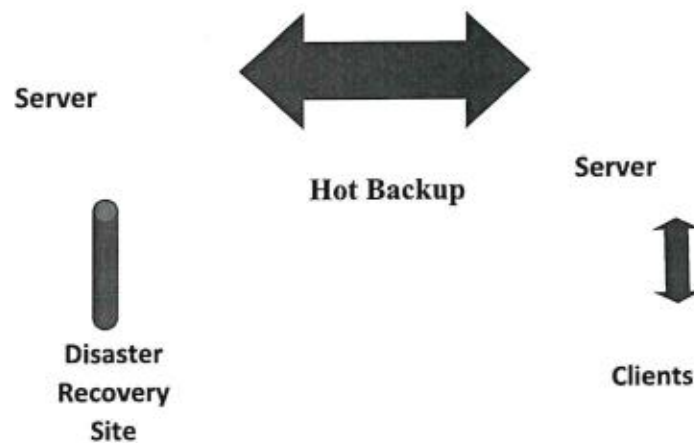


Servers and Clients

High-end multiple-processor servers are recommended to host the National Population Register. The servers will be fully backed, as it will be a mission critical system. The National Population Register will allow access with any client readily available in the market.

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Figure 3: Business Continuity Server Scheme



4.6 Strengthening Human Resource**NO. 12 OF 2011**

Effective management and sustainability of an integrated population registration system requires human resource with appropriate skills and competencies. Recruitment and training based on human resource needs assessment will be undertaken to ensure that there is adequate human resource capacity to support IPRS. Further, to maintain human resource competencies within the registration agencies, a retention policy will be formulated.

4.7 Creation of Archival Systems

Appropriate archival systems will be put in place to ensure that paper-based records are preserved in secure archival environment for back-up purposes. This will ensure safety and enhance accessibility and easy retrieval of records whenever a need arises. In addition, this action will liberate office space thereby improving the work environment leading to effective and efficient service delivery to customers.

4.8 Information Security

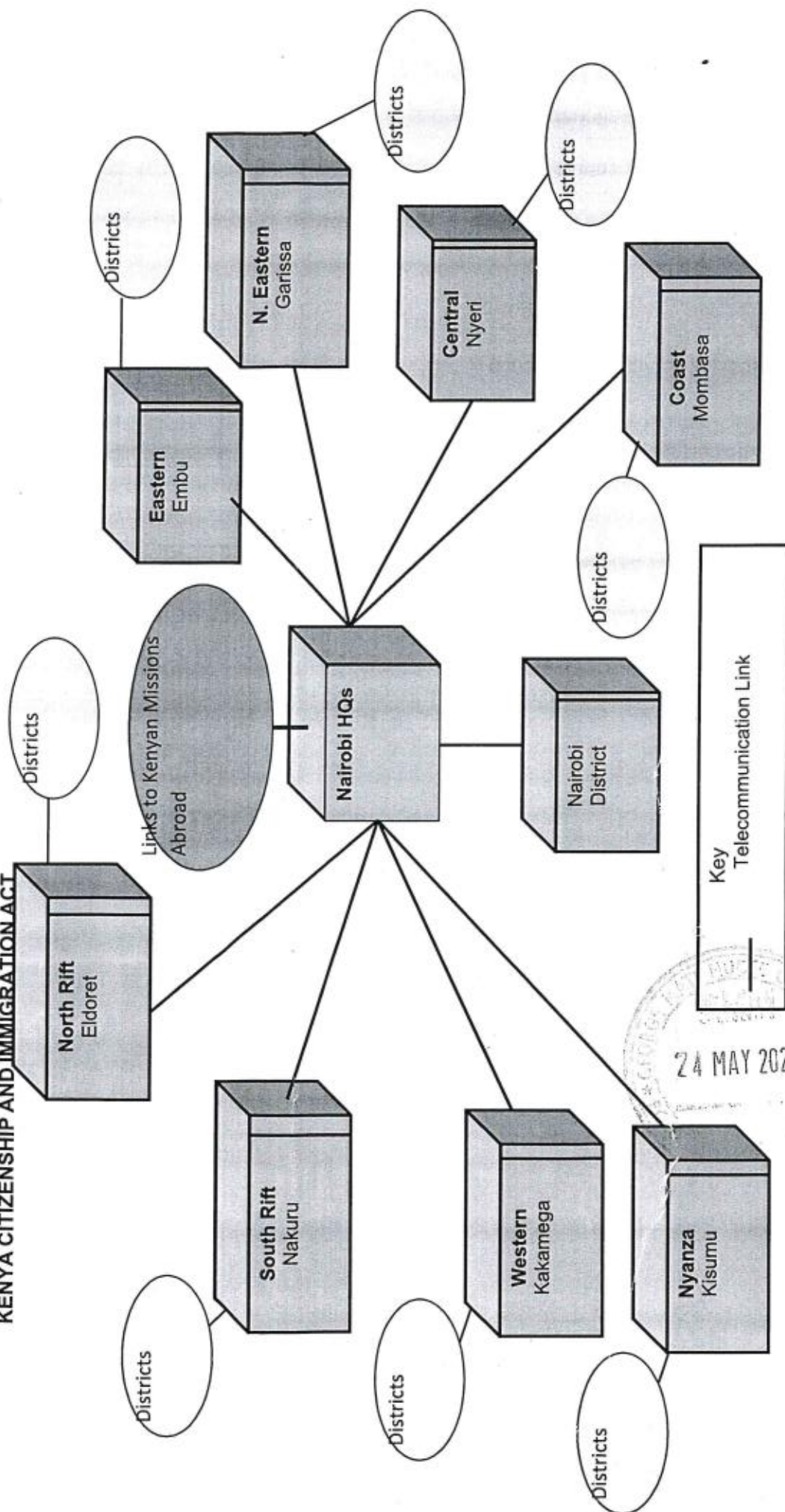
While diverse utilization of the population information demand high availability and wide access, its sensitivity and vulnerability requires formulation and deployment of an elaborate security policy. The policy will address all aspects of system and information security including physical security, application access, data encryption and protection of the IPRS ICT infrastructure.



Figure 4: WAN Connectivity

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Chapter

5

5.0 Introduction

Successful implementation of IPRS involves various levels of activities, which need to be undertaken in a logical sequence. This therefore calls for IPRS to be implemented in phases taking in consideration the prioritization of activities to be undertaken and the annual budgetary provision. It is on this basis that the implementation of IPRS adopts a phased approach as follows:

- Strategy Formulation
- System Design & Automation of Primary Registration Agencies
- Pilot Project
- Full IPRS Deployment

(See Figure 5: Project Implementation Plan)

5.1 Phase 1: Strategy Formulation

This is the planning stage and entails problem identification, project conceptualization and strategy formulation. The activities to be carried out in this phase include: -

- Preparation and review of the concept paper,
- Benchmarking for best practices,
- Development, approval and dissemination of the strategy.



5.2 Phase 2: System Design & Automation of Primary NO. 12 OF 2011

Registration Agencies

The automation of registration agencies will be the priority given in this phase. This will ensure that the registration agencies are brought to a level of automation that will enable inter-linkages. There will also be harmonization of data across all population registration agencies through cleansing in order to maintain accurate information on individuals already registered.

The designing of the system architecture for IPRS will be carried out in this phase. Due to the technical nature of the initiative, consultancy services will be engaged where appropriate. Technical capacity building including human resource development will also be undertaken.

The system and PIN design will be undertaken preceding the solution identification. Public awareness campaign will also be carried out in this phase.

5.3 Phase 3: Piloting

Due to the magnitude and complexity of IPRS, it is necessary that piloting of the system design be undertaken so as to test the efficacy of the design and functionality of the system on a small scale. The human resource technical capacity will also be put to test to ensure effectiveness before rollout of the project. A national accelerated registration programme to capture all the unregistered persons will commence during this phase.

5.4 Phase 4: Full IPRS Deployment

The success of the pilot phase will lead to full deployment of the integrated population registration system through the installation of appropriate systems and establishment of linkages at all levels, commissioning, user training and process improvement. The national accelerated registration programme will continue to be undertaken.

5.5 Monitoring and Evaluation

The main focus of Monitoring and Evaluation will thus be to assess the commitment and compliance to the IPRS strategic objectives. Information generated from the monitoring and evaluation process will be used for making strategic policy decisions necessary to undertake improvements in the implementation strategy.

To that end, a monitoring and evaluation mechanism will be established to guide the implementation of the project with emphasis on the following: -

Monitoring indicators
Reporting channels

Responsibilities

Timelines

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Data collection instruments

KENYA CITIZENSHIP AND IMMIGRATION ACT

Evaluation of the IPRS strategic implementation plan activities will be undertaken at agreed time intervals to assess objectives, strategies against expected outputs, outcome and impact of interventions.

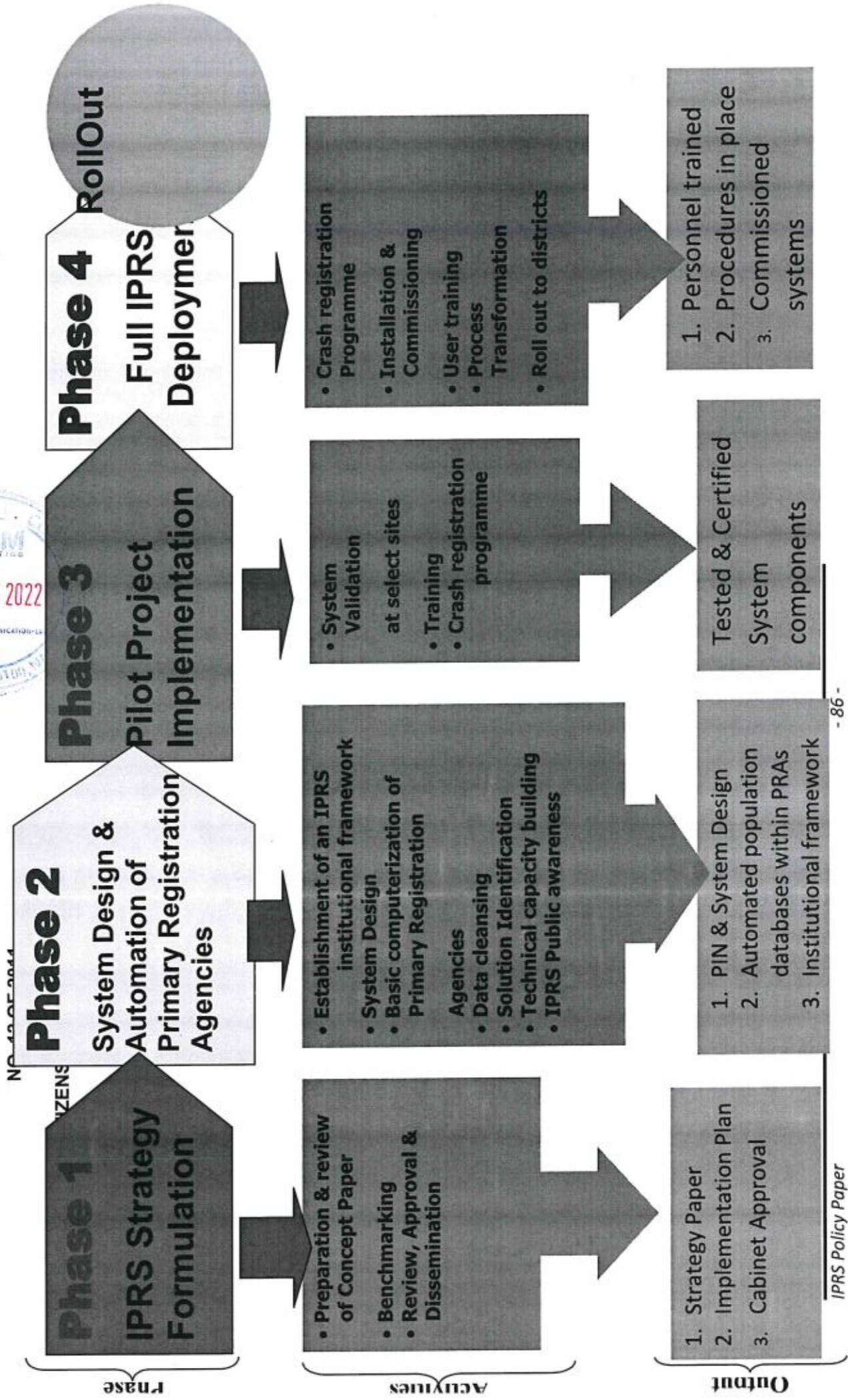
5.6 Financing

Resource mobilization and allocation are essential elements in financing of any project and more so to a project of the magnitude of the Integration of Population Registration Systems (IPRS). The financial requirements for some of this project's components are large in nature.

The total cost for the successful implementation of IPRS is estimated to cost Kshs1, 258.67 million. The IPRS financing shall be met by the exchequer. Once fully operational some of the operational costs will be generated from A in A through the use of IPRS services by other organizations.



[Re Figure 5: Project Implementation Plan



Chapter
6

The IPRS Initiative is therefore a Government endeavor to increase efficiency and effectiveness in public service delivery by streamlining population registration processes. This will be achieved through agency automation; harmonization of registration systems and facilitation of information and data sharing through inter-agency collaboration and linkages. This initiative will improve access to registration services to the general public through provision of online services.

Integrated registration system will also go a long way in improving the quality of Government socio-economic planning, reducing the cost of overall delivery of public services and enforce equity in resource distribution as a result of increased accuracy on population information. Thus, the system will facilitate achievement of Government development goals as outlined in the Vision 2030, and the Harmonized Jubilee Manifesto

Further, population register forms an important pillar in provision of social services. To this end therefore, IPRS will therefore facilitate expeditious achievement of e-government.

This Policy Document therefore will provide the much needed policy framework for effective implementation of the IPRS initiative.





MEMORANDUM PRESENTED BY

ALEXANDER MUTESHI IMBENZI, CBS, OGW, 'ndc' (K)
DIRECTOR GENERAL
DIRECTORATE OF IMMIGRATION SERVICES

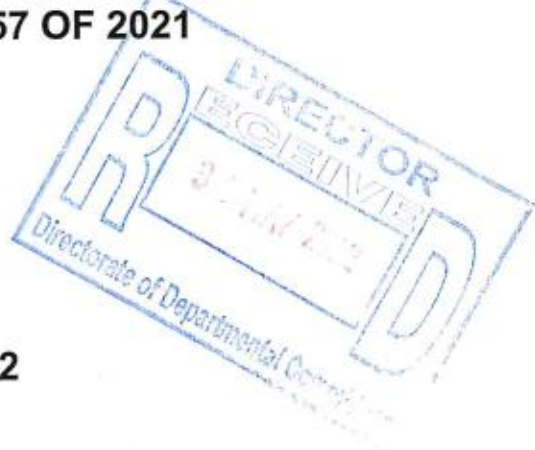


SUBMISSIONS PURSUANT TO ARTICLE 118(1) (b) OF THE
CONSTITUTION OF KENYA, 2010 AND NATIONAL
ASSEMBLY STANDING ORDER 127(3)

AND

Adan Gudiha
pls facilitate
31/5/22

IN THE MATTER OF CONSIDERATION BY THE NATIONAL
ASSEMBLY OF THE HUDUMA BILL (NATIONAL
ASSEMBLY BILL NO. 57 OF 2021



27TH MAY 2022

DIRECTORATE OF IMMIGRATION SERVICES SUBMISSIONS BEFORE
THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON

ADMINISTRATION AND NATIONAL SECURITY ON PROPOSED AMENDMENTS TO THE HUDUMA BILL, 2021

From the outset we would like to extend our sincere gratitude to Chair and members of the Departmental Committee on Administration and National Security for their effort to ensure that the Huduma Bill, 2011 that will eventually be passed by Parliament is acceptable to majority of stakeholders and Kenyans and is enacted for prosperity.

The Directorate would however wish to make the following observations with regards to the call for public and stakeholders' participation on the proposed amendments;

1. That there was no sufficient notice between the time for call for public participation and the date scheduled for the public participation. The Advert by the Clerk of National Assembly was put out on Friday 20th May, 2022. Considering that Saturday and Sunday was a weekend this meant that persons who wished to take part in the Public participation had only 2 days to prepare.
2. That up to the day of the scheduled public participation, Wednesday 25th May, 2022 the said proposed amendments had not been availed or uploaded on the official website of Parliament.
3. Therefore, our submission shall be limited to amendments that the Directorate managed to receive, since some of these proposed amendments are not available nor have they been uploaded on the official website of parliament as required; these proposed amendments are:
 - a. The Chair's, Hon. Peter Mwathi MP amendments.
 - b. Hon. Aden Duale MP amendments
 - c. Hon. Mohamed Abdihakim Osman MP amendments
 - d. Hon. George Kaluma MP amendments

THE CHAIR'S HON. PETER MWATHI MP AMENDMENTS

The Directorate of Immigration Services (DIS) is in support of a majority of the Chair's proposed amendments which is in line with the views of stakeholders and the public received during public participation, however, the Directorate has reservations with some of the proposed amendments and therefore request the same to be amended and or deleted. i.e

CLAUSE 60B (1)

This clause be amended by deleting the word "Immigration" appearing before Integrated Population Registration System.

CLAUSE 60B (4)

That Clause 60B (4) clause be deleted

SECOND SCHEDULE

THAT the Bill be amended in the second schedule by deleting the proposed consequential amendments to the Kenya Citizenship and Immigration Act, 2011.

Justification

These clauses propose to merge the Directorate of Immigration Services as a Department under the National Integrated Information Management System (NIIMS) commissioner; our submission is that the Directorate of Immigration (no longer a Department) to remain a stand-alone institution and not under NIIMS.

Our justification is that the proposed amendments create a behemoth institution headed by the Commissioner for NIIMS. In this arrangement the DIS is relegated into a small section under the NIIMS ecosystem.

Furthermore, we submit that this proposed structure will result in operational challenges where functions of immigration, which mostly touch on National Security and has little or no relations to civil Registration will not get proper attention and this may compromise national security. The Security Laws Amendment Act, 2014 mainstreamed the Directorate of Immigration into the Security sector of this Country. This was after Parliament and Government realised the important role Immigration plays in national Security. An attempt to relegate this important agency as a mere department in the NIIMS will erode gains made thereof.

Furthermore, world over and based on international best practice, immigration services are stand-alone institutions which have linkages with other institutions like police, Revenue authorities, Civil Registration authorities and Intelligence Services. Immigration services have their own functional databases that are linked to National population databases (NIIMS) which is the foundational database. A case in point is Estonia where the committee was privileged to have visited.

Consequently, the Directorate, while being a stand-alone institution shall utilize foundational data in the NIIMS database to process passport and other travel documents. Furthermore, the DIS will link its functional database to the NIIMS to enable interoperability of the two systems.

HON.ADEN DUALE MP AMENDMENTS

The Directorate reiterates that the Hon Aden Duale has raised fundamental constitutional issues that we believe are important that the committee considers. In view of the above, the Directorate supports the following proposed amendments by Hon. Duale.MP

CLAUSE 2

THAT, clause 2 of the Bill be amended—

- (a) in the definition of the term “NIIMS officer” by deleting paragraph (b); and
- (b) by deleting the definition of the term “passport”.

CLAUSE 40

THAT, clause 40 of the Bill be deleted

CLAUSE 41

THAT, clause 41 of the Bill be deleted

CLAUSE 42

THAT, clause 42 of the Bill be deleted.

CLAUSE 43

THAT, clause 43 of the Bill be deleted.

CLAUSE 44

THAT, clause 44 of the Bill be deleted.

CLAUSE 45

THAT, clause 45 of the Bill be deleted.

CLAUSE 68

THAT, Clause 68 of the Bill amended in subclause (2), by deleting the word “passport” appearing in paragraph (b);

CLAUSE 70

THAT, clause 70 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (i)—

- (ia) issuance of passports and other travel documents;
- (ib) registration of foreign nationals;

CLAUSE 72

THAT, clause 72 of the Bill be amended—

- (a) by deleting sub clause (3); and
- (b) in subclause (4) by deleting the words “the Department of Immigration and the Integrated Population Registration Services”.

Justification

These proposed amendments by Hon, Duale MP ensure that the Directorate of Immigration remains as a stand-alone institution and not merged under the NIIMS ecosystem (CLAUSE 2(a) and (CLAUSE72). Our reason for this as earlier elaborated is that by merging all these institutions, the DIS is relegated into a small section under the NIIMS ecosystem, this will result in operational challenges where functions of immigration, which mostly touch on National Security and has little or no relations to civil Registration will not get proper attention and this may compromise national security.

Furthermore, amendment at CLAUSE 2(a) ensures that Immigration Officers retain their title as such and not be renamed as NIIMS officers.

The reason for our support to this amendment is that the role of Immigration Services and in particular Immigration officers in National security cannot be underscored, this is the reason Parliament in its wisdom granted Immigration officers **police powers** to conduct investigation and also **prosecute offences** including smuggling, human trafficking and document fraud under the Kenya Citizenship and Immigration Act.

Immigration Officers undergo rigorous training in immigration operations including paramilitary training, unlike the other civil registration officers who do not undergo similar training, therefore immigration officers have specialised skills and perform specialised function just like the police, customs, and therefore can only be performed by officer called IMMIGRATION OFFICERS or IMMIGRATION POLICE BUT NOT NIIMS OFFICERS

Furthermore, Immigration officers are seconded and form part of the staff to the National Counter Terrorism Centre, Joint Task Force on Terrorism, the Coast Guard owing to their specialized skills while officers from the other civil and national registration Bureau are not seconded to this security organs because they lack the requisite skills and training.

NIIMS being a system, it is therefore misnomer to call a person performing immigration function a “system officer” since in his day to day operation an Immigration officer performs other functions that have no relations to the NIIMS database.

The proposed changes will impact negatively on careers of Immigration officers by taking away the gains made in professionalizing Immigration practice. The use of the

term Immigration Officer/Immigration Police is also in line with International Best Practices.

In addition, we support CLAUSE 2(b), CLAUSES 40, CLAUSE 41, CLAUSE 42, CLAUSE 43, CLAUSE 44 and CLAUSE 45, CLAUSE 68 and CLAUSE 70(ia) that will ensure that passports continue to be issued under the Kenya Citizenship and Immigration Act, 2011.

It is our submission that there already exists a passport law in Kenya that was enacted in 2011, i.e the short title of the Kenya Citizenship and Immigration Act, clearly states

“ “it’s an Act of parliament to provide for matters relating to citizenship issuance of **travel documents**, immigration and for connected purposes.”

There is no justification therefore to lift the entire PART V of the Huduma Bill from PART V of the Kenya Citizenship and Immigration Act leading to mutilation of the Kenya Citizenship and Immigration Act. We submit that the committee out to undertake a minimalist approach by aligning the issuance of passport to NIIMS database by requiring the use of Huduma card or Huduma Namba to be used in processing of Passports and other travel documents and consequently scraps other onerous requirements. This achieves the desired outcome of ensuring efficient service to Kenyan delivery without mutilating the Kenya Citizenship and Immigration Act, 2011 and the institutions therein.

CLAUSE 8

THAT, clause 8 of the Bill be amended by—

- (a) renumbering the existing section as subsection (1); and
- (b) by inserting the following new subsection immediately after the renumbered subsection (1) —

“(2) Despite subsection (1), a person shall not be denied access to any public service for failure to produce a Huduma Card issued under this Act.”

We are in support of this amendment by Hon. A Duale MP since it will ensure that no Kenyan/resident individual will be denied services by virtue of not possessing a Huduma Card.

HON. MOHAMED ABDIKHAIM OSMAN MP AMENDMENTS

Consequently, the Directorate supports the following amendments by Hon. Mohamed Osman MP for the same reason that have been earlier on stated that they seek to have Directorate of Immigration Services remain a stand-alone institution and not merged in the NIIMS ecosystem (CLAUSE 2(a), CLAUSE 72 and SECOND SCHEDULE).

Furthermore, it ensures that Immigration Officers retain their title as such and not be renamed as NIIMS officers ((CLAUSE 2(a)) and SECOND SCHEDULE);

(CLAUSE 2c), CLAUSES 5(c) iii, CLAUSES 40, CLAUSE 41, CLAUSE 42, CLAUSE 43, CLAUSE 44 and CLAUSE 45, CLAUSE 68, CLAUSE 70(ia) and SECOND SCHEDULE seeks to ensure that passport and travel documents continues to be issued under the Kenya Citizenship and Immigration Act,2011

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

- (a) in the definition of the term “Cabinet Secretary” by deleting the word “immigration” appearing immediately after the words “registration of persons”;
- (b) in the definition of the term “NIIMS officer”, by deleting paragraph (b); and
- (c) by deleting the definition of the term “passport”;

CLAUSE 5

THAT, Clause 5 of the Bill be amended in sub clause (3), by deleting subparagraph (iii) of paragraph (c).

PART V

THAT, Part V of the Bill be deleted.

CLAUSE 68

THAT, Clause 68 of the Bill amended in subclause (2), by deleting the word “passport” appearing in paragraph (b);

CLAUSE 70

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

- (ia) issuance of passports; and
- (ib) registration of foreign nationals.

CLAUSE 72

THAT, Clause 72 of the Bill be amended—

- (a) by deleting sub clause (3);
- (b) in sub clause (4), by deleting the words “the Department of Immigration”;

THE SECOND SCHEDULE

The Directorate is in support of the entire proposed amendments to the second schedule by Hon. Osman MP since it seeks to strengthen the Directorate of Immigration by providing for the appointment of a Director General by the president in consultation with the Public Service Commission (Para.b); in line with the new establishment by the Public service commission and the Salaries Renumeration Commission. The Director general shall work under the supervision of the Cabinet Secretary (Para. e)

Under the proposed amendment the Public Service Commission will continue to appoint Immigration Officers and Not NIIMS officers.

Furthermore, it retains the various committees that are key in the operations of the Directorate of Immigration following the proposal by Huduma Bill to repeal the Kenya Citizens and Foreign National management Service,2011(Para.5E)

It further aligns Huduma (NIIMS database) with immigration by providing for the use of Huduma Card or Huduma Namba as the only requirement for issuance of passport and does away with all other onerous requirements, without mutilating the Kenya Citizenship and Immigration Act,2011. (Para.J).

In addition, it does away with obsolete travel documents that are no longer in use due to advancement in technology (Para.h)

SECOND SCHEDULE

THAT, the Second Schedule be amended in the proposed amendments to the Kenya Citizenship and Immigration Act—

- (a) in the proposed amendments to section 2 (1) paragraph (1)—
 - (i) by deleting the proposed deletion of the definition of “Immigration Officer”;
 - (ii) by deleting the proposed deletion of the definition of “Passport”;
- (b) by deleting the proposed amendments to section 2 (2) and substituting therefor the following—

2 (2) Insert the following new definitions in their proper alphabetical sequence—

“Director General” means a person appointed as a Director General under section 4(1) of the Act;

“Immigration Officer” means the Director General and any persons appointed as Immigration officers under section 5 of the Act;

- (c) by deleting the proposed amendments to “No. 12 of 2011” and substituting therefor the following new paragraphs—

“(2) Delete the word “Director” wherever it appears and substitute therefor the words “Director General”;

- (d) in the proposed amendments to section 4(1), by deleting the words “The Principal Secretary shall” and substituting therefor the following words “The President shall, in consultation with the Public Service Commission, appoint a Director General to”;

- (e) by deleting the proposed amendments to section 4(2), and substituting therefor the following —

“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—”

Delete the word “Service” appearing in paragraphs (h) and (j) and substituting therefor the words “Cabinet Secretary”

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

New section	Insert the following section immediately after section 5D—
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5E. (1) The Cabinet Secretary responsible for matters relating to immigration shall establish the Citizenship and Permits Determination Advisory Committee, Permanent Residency Advisory Committee and such other committees as it shall be deemed necessary for effective administration of the Act’.

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

- (g) by deleting the proposed amendments to section 24;

(h) by deleting the proposed amendments to section 25 and substituting therefor the following—

s.25 “Delete subsection (1)(c);”

(i) by deleting the proposed amendments to section 26 and substituting therefor the following—

s.26 “Delete subsection (2);”

(j) by deleting the proposed amendments to section 27 and substituting therefor the following—

s.27 (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 issue or replace a passport to an 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.”;

(k) by deleting the proposed amendment to section 28;

(l) by deleting the proposed amendment to section 29;

(m) by deleting the proposed amendment to section 30;

(n) by deleting the proposed amendment to section 32;

HON.PETER KALUMA MP AMEMNDMENTS

The Directorate is in support of the following amendments by Hon, Peter Kaluma MP:

Clause 2, Part V (Clause 40-45) Clause 68, Clause, Clause 70, Clause 72 and proposed amendments to Second schedule for the same reasons that the amendments seeks to ensures that the Directorate of Immigration Services remains a stand-alone institution and not merged in the NIIMS ecosystem. Furthermore, it ensures that Immigration Officers retain their title as such and not be renamed as NIIMS officers and that passport continue to be issued under the Kenya Citizenship and Immigration Act,2011.

It provides for a minimalist approach by aligning the NIIMS database to Immigration and issuance of passport without necessarily mutilating the Kenya Citizenship and Immigration Act,2011, nor collapsing institutions. (Para.j of the second schedule)

CLAUSE 3:

The directorate is in support of this amendment as it clearly defines and expands the scope of what constitute an official Identification documents, this will ease service delivery to Kenyans.

CONCLUSION

In conclusion, we reiterate our gratitude to the esteemed committee for the support you have continued to give the directorate and for that we are forever grateful, we have faith in the committee and believe that it shall consider our submissions and incorporate them in the final Bill.



ALEXANDER MUTESHI IMBENZI, CBS, OGW, 'ndc' (K)
DIRECTOR GENERAL

