

To: Clerk of the National Assembly
P.O. Box 41842-00100
Nairobi

From: Coalition of Civil Society Organizations

Date: January 7, 2022

RE: The Huduma Bill (National Assembly Bill No. 57 of 2021)

Dear Michael R. Sialai, Clerk of the National Assembly, & the Departmental Committee on Administration and National Security:

We submit this memo on The Huduma Bill as a coalition of Kenyan civil society organizations with expertise in issues of identification, civil registration, nationality rights, data protection and privacy, minority rights, children's rights, human rights, and other related issues.

The Huduma Bill is proposing the largest set of changes to the legal framework governing Kenya's identification system since before independence. If enacted, the Huduma Bill would become the single law anchoring birth and death registration, issuance of identification cards, issuance of passports, and governance of the National Integrated Identity Management System (NIIMS, also referred to as Huduma Namba). As such, the draft legislation, system design, and all other decision points around NIIMS must be considered very carefully, comprehensively, and transparently.

In addition to the detailed analysis and recommendations that follow, we would like to call the Committee's attention to several fundamental issues that must be addressed before determining whether or not to move forward with the Huduma Namba system.

- **Public Participation:** Given the extensive nature of NIIMS and that it will impact many areas of lives of all Kenyans, this bill and all related legislation and/or regulations require robust public participation across the country through which the government can receive and consider the views and suggestions of Kenyans and other residents of the country and incorporate them into the final version(s). At all steps in the legislative process, the government should provide full information by advertising opportunities to provide input into the Huduma Bill not only on print media and gazette notices, but also through social media, TV stations and radio to give room for more Kenyans to interact with the Bill and share their view. In-person public participation opportunities should be organized by the government in every county - in accessible locations, in vernacular languages, with sufficient notice, and with information (such as the latest copy of the bill) provided in advance to enable Kenyans to provide informed views. Following all public participation opportunities, including the current collection of memoranda, feedback should be provided to the public on what recommendations were received and how input has been taken into account in amending the bill or plans for NIIMS. The government must invest in building user trust and confidence on

digital ID, including through meaningful and robust engagement on the anchoring legislation, the system design, and with the governing body for NIIMS.

- **Risks of Exclusion:** The Government must ensure all Kenyans can access identification documents such as birth certificates and national identity cards **prior** to moving forward with Huduma Namba. The draft bill does not sufficiently address concerns of exclusion that have been repeatedly raised over the past three years. It is critical to avoid importing issues prevalent in the current system of accessing birth registration, ID cards, and passports into the system proposed in this Bill. Those at risk of exclusion from NIIMS enrollment include Kenyans without identification documents, people with biometric challenges (such as unreadable fingerprints), persons with disabilities, street families and street children, and stateless persons. The High Court, in January 2020, also imposed a requirement on the government to establish a comprehensive regulatory framework that addresses how Kenyans without identity documents and people with biometric challenges can enroll in NIIMS - issues yet to be addressed in this bill or any existing regulations. Beyond risks of exclusion at the point of enrollment, there are no safeguards in the current draft bill to ensure against denial of services either for persons not enrolled in NIIMS or for those who are enrolled but who face challenges in the authentication or verification process at the point of accessing services or conducting transactions. Without significant changes, this bill will lead to the exclusion of millions of Kenyans and other residents in the country.
- **Need for a Transition Period:** The law must provide for a multi-year transitional period between the current Registration of Persons Act and the Huduma Act. The transition period must also address initial enrollment into NIIMS, in particular for those without registration documents and for those in the process of obtaining an ID card under existing laws. A transition period in which the focus is expanding coverage of birth registration and ID card issuance, prior to NIIMS enrollment, will help address challenges of those likely to be excluded from the system. A transition period would also allow for taking the public through proper civic education and comprehensive training of all government officials in registration and related agencies that would use NIIMS.
- **Right to Privacy and Data Protection:** The Government must ensure Kenya has a financially independent and well-resourced data protection authority, capable of discharging its mandate under the Data Protection Act. The government ought to ensure the swift adoption of the draft Data Protection Regulations (2021). Shall an individual misuse the biometric or personal data of a registered person, it can result into discrimination, profiling, surveillance of the data subjects and identity theft. The government must also ensure protection of whistleblowers who expose data misuse incidents.
- **Policy Framework:** Civil registration and identification are critical functions in a country as they provide individuals with a unique legal identity throughout their lives. Transitioning to a digital identity system such as Huduma Namba in a country where there exists a fragmented civil registration system is a complicated matter. The success of the Huduma Namba programme will be hinged on addressing the gaps and bottlenecks that have plagued Kenya's civil registration and identification systems. There is a need for a holistic approach that is informed by evidence-based research, a comprehensive national policy on civil registration and identification, a robust strategy and an implementation plan with a clear road-map for the implementation of the Huduma Namba (NIIMS). The Bill, as currently drafted, is not informed by any of these foundational elements, which could portend challenges for the process of transition from paper-based

systems, the current national identification card, and the various forms of identification under the numerous registration systems and government service providers.

- **Governance and Institutional Framework for NIIMS:** The NIIMS Committee proposed in section 65 is an oversight body and not sufficient to give effect to various rights that individuals have in the Constitution and in this draft bill (i.e., appeal a decision of a NIIMS Officer, update particulars, etc.). There is a need to establish an agency or commission as a competent, robust, and independent institution responsible for the planning, management, administration and implementation of NIIMS and the Bill. Such an agency would be in line with Sustainable Development Goal 16.6 to develop effective, accountable and transparent institutions.

Please find attached a more detailed analysis and recommendations of selected sections - improvements to which would vastly strengthen the Huduma Bill and the NIIMS / Huduma Namba system, should it move forward.

We would be glad to provide further input and perspectives on the bill and how best to establish an effective, inclusive, and privacy-respecting identification system in Kenya.

Sincerely,

- | | |
|---|-----------------------------|
| 1. Heraldng Development Organization | Info@heralding-dev.org |
| 2. Undugu Society of Kenya (USK) | |
| 3. The Nubian Rights Forum | nubianrightsforum@gmail.com |
| 4. ARTICLE 19 Eastern Africa | |
| 5. Kenya Human Rights Commission (KHRC) | admin@khrc.or.ke |
| 6. Kenya ICT Action Network (KICTANet) | |
| 7. Protection International Africa | |
| 8. Namati Kenya | namatikenya@namati.org |
| 9. Lawyers Hub Foundation | info@lawyershub.ke |
| 10. Defenders Coalition | info@defenderscoalition.org |
| 11. Haki na Sheria Initiative | info@hakinasheria.org |
| 12. Haki Centre | hakicentre@gmail.com |

Detailed Analysis and Recommendations

Section	Proposed Changes	Justifications
Title	Update the title of the bill to “Registration of Persons Bill”	The revised title will emphasize the objects, purpose, and content of the legislation. While identification efforts may aid in delivery of services, this bill is not a “service” bill and has little content on service delivery.
Long Title	Delete “to promote efficient delivery of public services”	Deleting this phrase will promote clarity on the content of the proposed legislation. The change will ensure the long title remains focused on the registration and identification purposes of the bill, which are similar enough to be contained in a single piece of legislation
2. Interpretation	<p>“Biometric data”: Define biometric data in a more technical sense without referring to specific biometrics.</p> <p>Another section could specify what types of biometric data are actually needed for purposes of identification; other types of biometric data should not be mandatory nor included in the bill.</p> <p>“Huduma Namba”: Add the word “personal” immediately before “unique”</p> <p>“Resident individual”: Expand the definition to include stateless persons</p>	<p>The current definition of biometric data is too broad and there is no limitation in the bill about what is necessary for identification versus other functions.</p> <p>The Data Protection Act, 2019 already provides a useful definition of the term in section 2, which is based on international standards. This definition could be adopted and adapted for the Huduma Bill. However, the definition should continue to exclude DNA or deoxyribonucleic acid as this has already been found to be excessive and unconstitutional by the High Court.</p> <p>The Huduma Namba is a personal identification number and as such it's definition should reflect this.</p> <p>The current definition of resident individual excludes stateless persons from NIIMS and the registration processes set out under this Act.</p>

	<p>“Authenticate”: Add definition</p> <p>“Identity”: Add definition</p>	<p>Despite repeated use of the terms “identity” and “authenticate” in the draft bill, the terms lack a definition. In addition, “authenticate” is used in a broad way (“authenticated by biometrics”) that could open up the use of various technologies including facial recognition due to the lack of a set definition of what authentication means.</p>
3. Objects	<p>Amend Section 3 on Objects of the Act to include to give effect to specific Constitutional and other rights the bill, including:</p> <ul style="list-style-type: none"> ● Right to a Kenyan passport and any document of registration or identification issued by the State to citizens ● Right to a nationality from birth (and proof of nationality) ● Registration of stateless persons ● Right to birth registration / Universal birth registration <p>Section 3 should include as an Object the establishment of a governing body that will be in charge of NIIMS.</p> <p>Section 3 should also mention that this Act limits the Right to Privacy and mention to what extent.</p>	<p>This Act should not focus on bringing in technology, but about enhancing access to identification and access to proof of nationality in the country. This focus should be reflected in the Objects of the Act.</p> <p>As written, the content of the bill goes beyond the stated objects (i.e., use of NIIMS for the voter register).</p> <p>Currently, none of the Objects reference governance of NIIMS, which is critical given how expansive the system is intended to be and how many areas of life NIIMS will affect.</p>
Add new section 4 in Part I	<p>Insert new clause specifying the principles of registration in Kenya. These could be adopted from the Principles on Identification for Sustainable Development¹:</p>	<p>Target 16.9 of the Sustainable Development Goals, calls for all UN member States including Kenya, to “provide legal identity for all, including birth registration” by 2030.</p>

¹ Principles on Identification for Sustainable Development

<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Guidance-on-Digital-Identity-Appendix-C.pdf>

	<ol style="list-style-type: none"> 1. Ensuring universal coverage for individuals from birth to death, free from discrimination. 2. Removing barriers to access and usage and disparities in the availability of information and technology. 3. Establishing a robust—unique, secure, and accurate—identity. 4. Creating a platform that is interoperable and responsive to the needs of various users. 5. Using open standards and ensuring vendor and technology neutrality. 6. Protecting user privacy and control through system design 7. Planning for financial and operational sustainability without compromising accessibility 8. Safeguarding data privacy, security, and user rights through a comprehensive legal and regulatory framework. 9. Establishing clear institutional mandates and accountability. 10. Enforcing legal and trust frameworks through independent oversight and adjudication of grievances. 	
Part II	<p>Establishing a governing body for NIIMS should be the first step, prior to the establishment of NIIMS in section 4.</p> <p>The NIIMS Coordination Committee as proposed in section 65 cannot be responsible for day to day implementation of NIIMS. The Committee, as constituted, is more for general oversight.</p> <p>The law should create an independent body responsible for NIIMS that can report to the NIIMS Committee and to Parliament. This governing body will be responsible for setting out implementation guidelines, establishing appeals</p>	<p>Normal practice is to establish a body then that body is in charge of the system – but part II first establishes a database/register and makes the technology higher than governance institutions and humans.</p> <p>It is not clear how individuals can exercise rights granted in this law. For example, where should one go to rectify or update data.</p> <p>If an individual has a problem related to NIIMS – how do they approach the system?</p>

	<p>and grievance redress mechanisms, and other functions prior to the start of NIIMS implementation.</p> <p>The law must also establish who is the registrar as the officer in charge of NIIMS (registers must have a registrar, as evidenced in other laws) as well as clearly define down to the lowest level of administration the other officials under NIIMS.</p>	
7. Huduma Card	<p>7(2) The Huduma Card should contain limited data on the face of the card. The Huduma Namba, nationality, and resident status of an individual may be excessive information for the card itself.</p> <p>Delete 7(3)(a) on the Minors' Huduma card, to be issued to a child who has attained the age of six years</p> <p>The birth certificate with Huduma Namba should be sufficient for children.</p> <p>7(3) should be amended to include issuance of Huduma Namba and Huduma Cards to stateless persons who are present in Kenya. The definition of resident individual must also be expanded accordingly.</p>	<p>Including all of this information on the face of the Huduma Card is a danger to identity theft or other breach of data.</p> <p>The need for a Minors' Huduma Card is not clear, as children will have been issued with a Huduma Namba and have the number on their birth certificates. What will a minor be using their Huduma Card for without their guardian, or in a way that the birth certificate is not already sufficient?</p> <p>At six years, reliable biometrics cannot be captured nor can informed consent be given by a child.</p> <p>Currently, millions of adult Kenyans lack documentation, and issuing Minors' Huduma Cards seems like a misapplications of funds rather than putting resources towards expanding coverage of Kenya's identification system.</p> <p>Currently stateless persons have no access to any form of identification documents such as an ID which is a requirement for enrollment in NIIMS. Hence, stateless persons are excluded from all aspects of the NIIMS system and will be further marginalized due to inability to access any services or rights linked to Huduma Namba.</p>

	<p>7(4) should clearly state who is responsible to consider advances in technology and decide if a non-physical digital identity should be issued, as well as what guidelines may be appropriate for such decisions.</p>	<p>As written, 7(4) is broad and difficult to implement.</p>
<p>8. Proof of Identity</p>	<p>The language in section 8 should be amended to be more clear that while Huduma Namba may be sufficient proof of identity to access a public service or conduct a private transaction, it is not mandatory for one to access goods and services.</p> <p>Related sections, such as section 9, may also need similar adjustment.</p> <p>Similarly, add a provision that individuals who might have enrolled in NIIMS but face difficulties with authentication of their data should not be denied services.</p>	<p>Lack of proof of identity should not deny anyone access to services, especially emergency services. In addition, the right to healthcare, education, voting, etc. are universal rights and thus related public services should not be contingent on a Huduma Namba or Huduma Card.²</p>
<p>9. Primacy of the NIIMS database.</p>	<p>The Bill should provide a procedure for the verification and authentication of information from the Database by 3rd party entities that are either government and non-government.</p> <p>There should be an accreditation process for institutions that seek to verify and authenticate information from the database, and the fees for doing so, if any, clearly prescribed.</p> <p>Further, the bill should create a system for horizontal integration of existing government databases e.g. IPRS,</p>	<p>The procedure for access to the database, including who is permitted to access is not provided for in the bill.</p> <p>Currently, telecoms e.g. Safaricom, Mpesa, banks, financial and e-commerce institutions that will need to authenticate institutions already verify details in the IPRS register/database.</p>

² <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

	<p>NHIF, NSSF, NTSA etc. to facilitate the transmission of information and to enhance coordination. This should enable all eGovernment services to access the existing information that is already collected or requested by other services.</p> <p>The Bill should provide procedure, circumstances and limitations on the access, use, retention and disclosure of personal information by 3rd parties accessing the database. Or permit the making of rules to facilitate the same.</p> <p>The Bill should provide the framework for the management of the eCitizen Portal (ecitizen.go.ke) which is the public window for enabling online access to e-government services. The portal should be managed by the proposed Huduma Authority.</p> <p>The bill should put in place a mechanism for the cooperation of relevant institutions and the integration and interoperability framework of the various government databases with NIIMS. These may include on aspects such as:</p> <ul style="list-style-type: none"> a) technology neutral standards b) privacy by design c) compliance with Data Protection Act d) minimum technical requirements e) minimum personal identification data available f) procedures for accessing databases g) dispute resolution h) operational security standards 	<p>Currently, the eCitizen portal³ and Huduma Centres have no legal framework for their operations, yet their services are central to the envisaged purpose of the Huduma Namba Bill. These services should be centralized and managed by a single institution offering the Huduma Namba services.</p>
--	--	---

³ ECitizen <https://www.ecitizen.go.ke/>

<p>Part III</p>	<p>Add a section on initial enrollment and a 3 to 5 year transition period, as NIIMS is a new system.</p> <p>The current draft bill does not adequately acknowledge the existing registration and identification laws and systems and what is required to transition from one system to the next effectively.</p> <p>The law must provide for a transitional process and period for enrollment into NIIMS, in particular for those without registration documents and for those in the process of obtaining an ID card under existing laws. The law should reference existing documents and how people holding birth certificates and ID cards can automatically transition into NIIMS, with appropriate safeguards. Likewise, the law should provide the period for the phasing out of all previous personal identification numbers issued by government institutions.</p> <p>The bill should articulate the status of the Integrated Population Registry System (IPRS) in regards to the NIIMS system. It should indicate whether the two systems shall operate concurrently, or whether one shall subsume the other. Also, provide for how the personal data in the IPRS shall be handled, stored or destroyed.</p>	<p>Need a multi-year (3 to 5 year) transition from the current Registration of Persons Act to the Huduma Act.</p> <p>A transition period in which the focus is expanding coverage of birth registration and ID card issuance, prior to NIIMS enrollment, will help address challenges of those likely to be excluded from the system.</p> <p>The government must also be responsible for ensuring everyone is registered, including through conducting outreach and implementing mobile registration campaigns at the village level, as opposed to expecting people to avail themselves. Expanding coverage first is particularly important given the heavy time, distance, and cost burden that exists in the current registration and identification system plus additional obstacles faced by persons with disabilities, people in remote areas, families and children living on the street, among others – leading many Kenyans to lack proof of identification at present. The transition period will also allow for intensive public education on NIIMS and the process of enrollment and using the new Huduma Namba.</p>
<p>10. Enrolment of Adults</p>	<p>10(1)(b) delete “such documentary proof as may be required”</p>	<p>The law must allow flexibility in how an applicant can prove his or her identity for enrollment into NIIMS, including non-documentary forms of proof, in order to improve inclusion of the most vulnerable Kenyans. Alternatives can include flexibility on what documents are accepted (i.e., an adult with a birth certificate but no ID should be able to use that document to enroll) and a recommender system in which chiefs or other trusted members of the society can identify</p>

	<p>10(1) If an applicant meets the requirements set out in section 10, the bill should state “the NIIMS Officer shall enroll” the adult applicant.</p> <p>10(2) Add that applicants will be informed also about the Data Protection provisions of the Huduma Act, and that they should be informed about data storage and use</p>	<p>individuals for enrollment. This latter option has been used in other countries with large numbers of people without documentary proof of identification to promote coverage and inclusion as they transitioned to digital systems – and is important in a country like Kenya that has a history of discriminatory treatment in its identification system and many undocumented citizens due to reasons of distance and cost to register.</p> <p>“Any documentary proof as may be required” is very broad and can lead to exclusion of certain groups that struggle to obtain documents as the vague language can lead to arbitrary questions, requests, and other barriers. Under the current identification system, unchecked discretion - especially during the “vetting” process - allows different standards to be applied to different ethnic and religious groups, which could be easily and dangerously replicated with the broad language in section 10. If arbitrary or inconsistent requirements are imposed on applicants under section 10, it will lead to an increase in unregistered Kenyans, undermining the goals set for NIIMS in this Act.</p> <p>Duties must also be placed on civil servants.</p> <p>Applicants should also be aware of the safeguards in the same Act. How people will be informed may also need to be specified in the law – so that it’s not just providing a piece of paper but genuine education about data protection, privacy, and the workings of the system.</p>
--	---	---

	<p>10(4) The so-called ‘special administrative arrangements’ should also be clearly defined for purposes of accountability. Add “Kenyans without identity documents” as an explicit group that will need special administrative arrangements.</p>	<p>Better defined requirements for special arrangements will eliminate vagueness and arbitrariness that might contribute to further marginalization of already vulnerable groups.</p>
<p>12. Assigning of Huduma Namba</p>	<p>Add a time limit of 30 days in both Section 12(1)(b) and 12(2)</p> <p>Add specific grounds on which someone’s application for enrollment may be declined</p> <p>Add more information on how to exercise right of appeal</p>	<p>Without a time limit, applicants may seek enrollment into NIIMS and be left pending for months or years while waiting for a response.</p> <p>The bill includes grounds for revocation but not grounds for denial of enrollment.</p> <p>Given that Huduma Namba may be a primary way through which people can access services and transactions, denial of enrollment may have severe material and tangible consequences for individuals.</p>
<p>13. Issuance of Huduma Card</p>	<p>In 13(3) delete “to a citizen” and delete (13)(4)</p>	<p>As written, the initial issue of the card is only free for citizens – not for foreigners, refugees, or stateless persons – which may put an undue burden on vulnerable populations to be able to obtain a Huduma Card under NIIMS. Initial issuance should be free for all enrollees.</p>
<p>14. Transitioning Minors’ Huduma Card</p>	<p>Delete section 14, in line with recommendations above on section 7, to eliminate the Minors’ Huduma Card.</p> <p>If the Minors’ Huduma Card remains, this section should be improved by:</p> <p>In 14(a), remove “verify and update”</p>	<p>Given that children will already have a Huduma Namba and birth certificate from birth, the rationale for a Minors’ Huduma Card is not clear.</p> <p>“Verify and update” is too vague and allows too much unregulated discretion to NIIMS Officers</p>

	Consider adding a mechanism for informed consent as a minor transitions to an adult, otherwise children, once adults, have no choice in this process.	There should be a separate decision making process as the child becomes an adult in regards to their enrollment and data
15. Replacing a lost Huduma card	Consider adding a section 15(3) indicating the waiting period/time for replacement of lost/worn out cards.	With no clear timelines, individuals might wait forever for the replacement of the very vital document.
16. Update of Particulars	<p>Add timeframe in which updates must be done</p> <p>Specify which particulars require updating</p>	<p>A timeframe will better guide both individuals (such as parents and guardians) and NIIMS Officers in following their respective duties</p> <p>Schedule 1 lists a wide range of data; this places an unnecessary burden on both individuals (on whom the duty is placed) and the state for lack of clarity on how to administer such a broad provision.</p>
17. Cancellation of Enrollment	<p>Remove Section 17(1)(c)</p> <p>In 17(4)(b) change “may” to “shall”</p> <p>The law should specify what happens to data of individuals whose registration is cancelled – is it kept, archived, deleted?</p>	<p>“Any other justifiable cause” invites arbitrary action. The other provisions sufficiently cover justifiable cases for cancellation and adequately safeguard against fraud and corruption.</p> <p>There should be a very high threshold to cancel someone’s enrollment, due to the severity of impacts that would result.</p> <p>There must be an internal review mechanism or other grievance redress mechanism set up in order to deal appeals on enrollment and cancellation decisions.</p>

18. Linking functional data into the NIIMS	Add specific limitations on how long data can be stored and on access to data	The provision currently gives an extremely broad allowance for agency access
19. Universal registration of births & 20. Particulars of birth	<p>There are inconsistencies in Section 19 and 20 that must be clearly addressed in order to support universal birth registration.</p> <p>The government should register the birth of all children born in Kenya – not only those who are resident individuals and/or whose parents have a Huduma Namba.</p>	<p>NIIMS is a register of ‘resident’ individuals but not everyone in Kenya is captured under that term. While here the bill states in section 19 the births all children in Kenya will be registered under NIIMS, the definition of resident individual in section 2 and the particulars for registering a birth in section 20 limit whose birth can actually be recorded. These provisions undermine universal birth registration.</p> <p>As this Act would repeal the Births and Deaths Registration Act, there would be no basis of registering the birth of children of stateless persons, foreigners temporarily in the country, or undocumented persons, including those without Huduma Namba.</p>
20. Particulars of Birth	What happens if the nationality of parents is not known or cannot be proven? The law should provide options or alternatives to ensure the birth is still registered properly.	As the particulars require the nationality of the father and the mother, section 20 could impact the ability of a child to receive a birth certificate and/or have their own nationality questioned, should the nationality of one or both parents be unknown or unproven.
23. Late Enrolment of Child	Section 23 should allow late registration with no penalty if there is a reason.	A penalty or denial of late registration punishes a child for something that is not their fault and locks the child out of the system. In most cases these penalties are paid by parents and guardians only without recognizing the fact that some delays are caused by the administrative system - such as currently when birth notification returns from a health facility arrive at Civil Registry late - and the applications become late applications despite the parent/guardian completing all steps on time.

	<p>23(2) Remove the graduated penalty</p> <p>23(3) Remove “any relevant information” and “any further requirement”</p>	<p>A penalty – and especially a graduated penalty – could be a deterrent to completion of birth registration.</p> <p>Kenya has not yet achieved universal birth registration. Given NIIMS is a new system, it’s not clear how births that are currently unregistered will be incorporated into the system. This further supports the need for a section on a multi-year transition period from the current system to NIIMS.</p> <p>Section 23(3) is too broad and leaves too much discretion to the NIIMS Officer.</p>
25. Registering a foundling	<p>Amend 26 so that the person who found the child should give information they have to police or those in whose charge the child is placed, but not necessarily have burden to register them in NIIMS</p> <p>Add a provision to waive the fee, time limitation, and other requirements for late registration so that section 23 does not apply in full to foundlings.</p>	<p>Shifting responsibility for registration to the person who found the child is too high of a burden, and may lead to less assistance for foundlings and/or result in unregistered foundlings.</p> <p>Without a waiver, section 23 may prevent the late registration of a foundling.</p>
27. Update of Particulars of a Child	<p>Refine this provision to specify which particulars require updating and in what timeframe, in order to better guide parents of enrolled children and NIIMS Officers. Refer to First schedule or even more narrowly defined set of particulars if possible.</p> <p>Remove “continuous basis”</p>	<p>This language of “attainments and other specified vital events” is usually used in clinic cards – and does not appear in the first Schedule.</p> <p>The phrases “developmental milestones and other specified vital events” as well as “on continuous basis” are vague and impose an unclear and impractical duty on parents and guardians.</p>
29. Biometrics of a child	Remove section 29	The need for a Minor’s Huduma Card is not clear enough to justify another NIIMS registration at age six. Birth

		<p>certificates and Huduma Namba issued at birth can still be used for proof of identity by children below 18 years.</p> <p>At six years, reliable biometrics cannot be captured nor can informed consent be given by a child.</p>
37. Huduma Namba of a Deceased Person	Add content in section 38 to specify what happens to the data of a deceased individual after their death is registered in NIIMS	The current bill does not specify whether a person's data is kept, archived, deleted, or handled in another way after they are registered in the system as deceased. It is also not clear who would be able to access the certificate of death mentioned in section 39 and for how long access to the certificate would be possible.
39. Failure to register death	In practice, what will it mean to seek out a NIIMS Officer to register a death? Is it feasible within just 30 days?	<p>Current practice is that one can seek a burial permit at a very local level, then proceed to bury a body and use the burial permit to process a death certificate.</p> <p>The bill would require one to seek out a NIIMS Officer. How decentralized will the NIIMS administration be? Will this requirement put a burden on an applicant – particularly concerning as failure to register a death is an offence.</p>
40. Entitlement to a Passport	Clarify in the bill if other documents (birth certificate, Huduma Card) are also evidence of citizenship – this is not yet explicit in the bill	In the bill, only a passport (in section 40(3)) is explicitly noted as evidence of citizenship. Given the cost of a passport and the fact that many Kenyans do not possess a passport, it would be useful to clarify in the bill if other documents – such as a birth certificate or a Huduma Card, both of which will include the person's nationality on the face of the document – are also evidence of citizenship, as they will be more accessible.
41. Issuance and Replacement of a Passport	Remove 41(4)(b)	“Make any further verification as may be necessary” is too vague and allows too much unregulated discretion to NIIMS Officers in processing an application or a passport.

		Considering someone is already producing their Huduma Namba in applying for a passport (under 41(2)) there is no need to conduct further verification.
45. Rejection of a passport application	Remove 45(1)(a)	<p>While we do not yet know how simple or burdensome updating particulars in the NIIMS database will be in practice – the bill states passports can be rejected for lack of updates.</p> <p>The Constitution emphasizes bringing services closer to people – but through this language new barriers are introduced: if you haven't updated your particulars as an individual, your passport is rejected.</p> <p>These kinds of requirements may also create an avenue for corruption.</p>
46. Application of No. 24 of 2019.	Substitute section 46 with the following: “The processing of personal data shall be carried out in accordance with the Data Protection Act, 2019.”	
47. Access to Information	<p>Legitimate interest of collecting and storing data must be stated</p> <p>Provide all individuals the right to access personal information about themselves, including how the information has been used or disclosed.</p> <p>Add time for response to a data request for a copy of particulars e.g. upon request, or within 30 days.</p> <p>Add a time limitation for data storage</p> <p>Define and limit who has authority to access data</p>	<p>This Act should state what the legitimate interest is for keeping data as this is a limitation to the right to privacy. (and whether it's all data or some data like biometrics or data of the deceased will continue to be stored), sharing of data with third parties</p> <p>Is data held in perpetuity? If so, is all data treated the same or are there different categories of data? (For example, foundational data versus Record History and Registration History as included in Schedule 1)</p>

	<p>Limit the collection/storage and access to metadata – no metadata should be collected</p> <p>Provide a procedure for obtaining the prior, informed consent of the individual prior to the collection and processing of their personal data. The procedure should include a process for withdrawing consent.</p> <p>Provide for circumstances and the procedures where the information of the data subject may be disclosed with their consent, or without their consent by the government agency responsible for the NIIMS database.</p> <p>Limit how the body responsible for the NIIMS database may use, or disclose the personal data it has collected, and the purposes that it may use the data. Have a general restriction on the use of the data for any other purpose other than that the data was collected for; where the data subject has consented to other uses; required by law; enforcement of a court order etc.</p>	<p>Metadata is generated when someone uses a Huduma Namba (i.e., information on who is authenticating someone’s identity, when, where, how often) and collecting such data without limiting access and use could lead to severe violations of the right to privacy. In addition, without limitations on metadata, private entities could store data and form their own databases.</p>
<p>48. Restriction on data sharing</p>	<p>Add whether there are any thresholds or requirements for private entities to gain access to foundational data of an individual, and for what purposes.</p> <p>Overall, the bill needs to be clear about who has authority to access the NIIMS Database and NIIMS data.</p> <p>48(2) is inconsistent with provisions above on the Huduma Card and birth certificate, both of which would have the Huduma Namba displayed on the document itself</p>	<p>Can any private entity access the data or are there any requirements on who can access? This is essential to ensure privacy and data protection.</p> <p>49(2) states the Huduma Namba will never be published, displayed, or publicly posted – but the Huduma Namba is on the face of the Huduma Card and on the birth certificate and presumably will be regularly shared with public and private</p>

		entities for access to services and transactions, and may be recorded by those entities.
49. Technical security measures	Add a clause 49(c) that provides for the conduct of regular operational and institutional risk assessments.	If designed and implemented properly, operational and institutional risk assessments (including periodic Data Protection Impact Assessments) can reduce the risk of data breaches and intrusion of privacy both prior to establishing a system such as NIIMS as well as on an ongoing basis while the system is operational.
Add new section 54 in Part VI	Add an explicit cause on the protection of persons and/or organizations that expose instances of data misuse.	The law will be ineffective if it cannot protect the people supporting and holding to account the Office of the Data Commissioner, NIIMS Officers, and others with access to NIIMS data.
Part VII – Offences and Penalties	<p>The bill should clearly state what offences may be committed by NIIMS Officers and what the consequences or penalties are.</p> <p>Include corruption and failure to/delay in issuing a Huduma Namba as potential offences of NIIMS Officers.</p>	There is too much emphasis on offences of individuals rather than the NIIMS Officers who have more power and more access to sensitive data in their roles.
58. Interference with the NIIMS database	Consider increasing the penalty listed for someone who without authorization accesses or secures access to the NIIMS database, damages data in the NIIMS database, disrupts access to the NIIMS database, or another offence under section 58.	<p>Given the sensitive and personal nature of the data to be stored in the NIIMS database, unauthorized access or damage to the data should carry a heavier penalty than only 100,000 Shillings or one year imprisonment.</p> <p>The potential negative impact of such actions are much more severe than some of the individual offenses contained in the bill at much higher penalty levels, such as altering information on a Huduma Namba card carrying a penalty of up to three million Shillings in section 56.</p>

59. Penalties for failure to give information, etc.	Remove Section 59	Offences should be focused on actions that are fraudulent or done in bad faith – but not for actions such as failing to register, not updating details, or not providing information.
61. Measures to Ensure Inclusion	Section 63 should specifically reference Kenyans who lack proof of identification, people with poor biometrics, and stateless persons.	<p>This section is not sufficient to promote inclusion in practice, especially given lack of universal coverage of Kenya’s current birth registration and national ID systems as well as a history of deeply embedded discrimination in the identification system.</p> <p>The <u>High Court of Kenya in its judgement re: consolidated petitions 56, 57, and 59 of 2019</u> required the Government of Kenya to enact a regulatory framework to address a number of issues related to risks of exclusion in NIIMS, including how Kenyans “without access to identity documents or with poor biometrics will be enrolled in NIIMS” (para 1045) yet nothing in the draft bill attempts to address these issues.</p>
65. The NIIMS Coordination Committee	<p>Change committee to a commission or agency with more administrative power. Transfer all the powers bestowed on the Principal Secretary to the commission or agency</p> <p>We propose the establishment of an independent institution as a body corporate of similar status as a Commission, named and styled as the National Identification Authority or Huduma Namba Authority, complete with a Board and Secretariat to implement the Act.</p> <p>The proposed NIIMS Committee in the Bill can be the Board of the Proposed National Identification Authority</p>	<p>The committee currently has a large mandate and needs to be established with the proper administrative power, potentially also reporting directly to Parliament.</p> <p>The draft bill bestows sweeping powers with regard to the administration of NIIMS on a single individual, the Principal Secretary, which should instead be held by a commission or agency.</p> <p>The current governance structure for the implementation of the Act, is weak. Civil registration and identification are vitally important processes for the country and cannot be overseen by a single individual. It requires an entire</p>

	<p>The Board should include representation of other relevant agencies, entities, and stakeholders:</p> <ul style="list-style-type: none"> ● Data Protection Commissioner ● Ministry of Social Welfare ● Ministry of Health ● Department of Refugee Affairs ● Civil Society Organizations ● Kenyans affected by challenges accessing proof of identity ● Office of the Attorney General ● Kenya National Commission on Human Rights ● Representative of private sector organizations ● National Gender and Equality Commission <p>Exclude the Chief Executive Officer of the Independent Electoral and Boundaries Commission from the list of Committee and/or Board Members.</p> <p>Provide for the Secretariat of the Commission or Agency for the Authority, including among others:</p> <ol style="list-style-type: none"> a) Appointment of the Director-general b) Qualifications of the Director-general c) Functions of the Authority d) Powers of the Authority e) Vacancy and removal of the Director-general f) Staff 	<p>organizational structure which must be established within the law, and not left to the discretion of the Permanent Secretary.⁴</p> <p>See comments above on Part II about the need to establish a true governing body for NIIMS, rather than only an oversight committee.</p> <p>The law may also need to create separate departments for civil registration, Huduma Card issuance, and passports for efficiency, even if all departments are operating under the Huduma Act.</p>
--	---	---

⁴ As comparative examples: RENIEC (Registro Nacional de Identificación y Estado Civil) was created in Peru in 1995 to roll out the identification of Peruvians, provide documents and register vital events. The organization has an autonomous constitutional status which makes it independent from any Ministry. The country has a classic ID architecture, with a civil registry as the basic platform to transmit information to the population register. The National Database and Registration Authority (NADRA) in Pakistan has the responsibility to produce cards and the Multi-Biometric National Identity Card. NADRA has gained international recognition for its success in providing solutions for identification, e-governance and secure documents that deliver multi-pronged goals of mitigating identity theft, safe-guarding the interests of its clients and facilitating the public. NADRA developed Kenya's passport issuance system.

	<ul style="list-style-type: none"> g) Remuneration h) Oath of office i) Confidentiality j) Funding k) Audit 	
66. Functions of the Committee	Add establishment and oversight over appeals and grievance redress mechanisms for all NIIMS-related processes (enrollment, updating of particulars, issuance of birth certificate, issuance of Huduma Cards, issuance of passports, issuance of death certificates, etc.)	Given the implications of not being enrolled in NIIMS, such as denial of public services or inability to complete private transactions, there must be an internal review mechanism or other grievance redress mechanism set up in order to deal with appeals on enrollment and cancellation decisions as well as issuance of various related documents.
74. Repeals	The bill should include provisions for a transition period, rather than repealing these other identification and registration laws without providing for a smooth transition.	See comments above on Part III and the need to add a new section on initial enrollment and a transition period, as NIIMS is a new system.
Second Schedule: Consequential Amendments	<p>The Elections Act (No. 24 of 2011)</p> <p>Remove proposed amendments to sections 4, 8, and 8A(2) of The Elections Act</p>	<p>IEBC is an independent commission that has a mandate to register, verify and store the voters register and therefore providing the option for the voters register to be generated from NIIMS is usurpation of IEBC's constitutional mandate.</p> <p>Additionally, the draft bill in section (3) does not indicate that one of the Objects of the Act is to provide a database for the generation of a voters register by IEBC.</p>