

Kenya's National Integrated Identity Management System

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What is NIIMS?

The National Integrated Identity Management System (NIIMS) is a system intended to create and operate a national population register as a single source of information about Kenyan citizens and foreigners resident in the country.

What is the purpose of NIIMS?

NIIMS is not *only* a population register. Government agencies and private companies collect and store personal information for many different reasons, including improvement of service delivery, establishment of social networks, or as part of a business model (i.e. Facebook). Many countries are transitioning to *digital* registries that—just like their analog equivalents—serve a variety of different functions. Countries also administer civil registration (birth and death registration) and collect other vital statistics (e.g. marriage and divorce) on their populations throughout an individual life cycle. Whether or not they are digital, civil registries can be distinguished from population registries because they are *continuously updated and their purpose is to document a specific, limited set of life events*. NIIMS will collect a “snapshot” of the population, including biometrics, and **link that information with other functional databases**. Therefore, the Government of Kenya is proposing to collect *new* personal information on all citizens and resident foreigners, *and* to link those records with existing data held by separate government agencies for a particular purpose (e.g. land records, social welfare and school enrolment records).

The Kenyan public has no way to assess the quality or security of the information in the government registries that will be linked to NIIMS. The Government of Kenya has not made public any information concerning its own assessment of the accuracy of the information contained in databases/registries that will be linked to NIIMS, what will be done in the case of duplicate/conflicting records, or how to rectify incorrect information.

Moreover, the Government of Kenya has announced that registration in NIIMS will be required in order to access all public services, effectively leaving no option to opt out of the system.

Doesn't Kenya already have a national ID system?

Yes. Kenya has a national ID system, administered by the National Registration Bureau, a component of the Ministry of Interior and Coordination of National Government, State Department for Immigration, Border Patrol and Registration of Persons. Kenya has also experimented with the establishment of systems like NIIMS in the past: NDRS (National Digital Registry System), announced in 2014 and abandoned, and IPRS (Integrated Population Registry Service). The relationship between NIIMS and IPRS is unclear as they serve parallel purposes – both claiming, like the NDRS, to serve as the “single source of truth” on Kenya’s population. In order to enroll in NIIMS the Government of Kenya requires extensive information on registration in other government systems, including national ID card numbers of the enrollee and family members.



Kenya also has a civil registration system. But registration rates remain low. The World Bank's 2016 diagnostic assessment of Kenya's registration and identification systems found that "[b]irth and death registration rates are not high enough to provide a solid foundation for the national registration system." Birth registration is essential for ensuring that everyone is able to establish their legal identity from birth, including the provision of official evidence of nationality by birth. Registration in NIIMS under the Miscellaneous Amendments Bill is not intended to serve this purpose.

How was NIIMS created?

NIIMS was established through changes made to the Registration of Persons Act via a Miscellaneous Amendments Bill, which came into force on January 18, 2019 as Statute Law (Miscellaneous Amendments) Act No. 18 of 2018 after the President gave his assent on December 31, 2018. The Act is 86 pages long and contains provisions modifying more than fifty laws.

What data is being collected during registration for NIIMS/HudumaNamba?

The government collected information on each person's nationality, place of birth, parentage, marital status, education background, employment status, disability, agricultural activities, and biometrics – including fingerprints and a photograph. The register is meant to link with other existing government databases, such as NSSF, NHIF, NTSA, and others.

Crucially, the data capture form also required applicants to supply a range of existing identity numbers issued by various state agencies, including birth certificate numbers and national identity card numbers. Many residents and Kenyans were unable to provide this information because they do not hold secure documentation of their identity. Individuals facing this hurdle were not able to register for the program and are left in limbo as to their ability to access services and claim rights in the future.

How is litigation being used to respond to these developments?

In an attempt to protect the rights enshrined in the Constitution of Kenya, the Nubian Rights Forum (NRF) is the petitioner in a case filed with the High Court of Kenya, Constitutional and Human Rights Division on February 14, 2019. Kenya Human Rights Commission and Kenya National Commission on Human Rights each filed petitions on February 18, 2019. These petitions were consolidated and a number of interested parties and NGOs have joined the action. A judgment in the case was handed down on 30 January 2020 and is being appealed.

What are the main constitutional issues raised in the petitions?

- The cases raise issues including the non-transparent and noncompetitive manner in which the NIIMS contract(s) were awarded, the use of a miscellaneous amendments bill to pass substantive amendments, the lack of consultation of the senate which is a body that represents a range of interests engaged at the county level under the 2010 Constitution, the lack of public participation in the process, concerns over data privacy and protection, the right to information, and the risk the system could further entrench discrimination of marginalized groups in Kenya.
- The case affects the rights of all people in Kenya, while also addressing how NIIMS will disproportionately affect marginalized communities.

How has the High Court responded to the litigation?

A three-judge bench in Kenya's Nairobi High Court issued interim orders in April 2019, ruling that the Government could proceed with a mass data collection initiative to collect data for the NIIMS system, including biometric data. However, it prevented the authorities from:

- making registration mandatory;
- tying access to services to enrolment;
- collecting DNA and GPS data;
- setting a deadline for enrolment; and
- sharing data between agencies or to third parties.

On 30 January 2020, the High Court issued a judgment in the case, finding that in their current form, the provisions governing NIIMS are not in line with the Constitution and a protective framework reducing risks to privacy and equality had to be put in place before the government is allowed to proceed with the Scheme. The Court also held that the Kenyan government cannot collect DNA or GPS information for the purposes of NIIMS.

Why is the judgment being appealed?

In February, NRF filed a notice of appeal and an urgent application to stay the judgment in response to the Government's attempts to push the roll-out of Huduma Nabma forward without addressing the flaws and dangers in system design or having established the necessary regulatory framework. Draft Regulations on Data Protection and NIIMS that the Government sought public consultation on in February did not adequately redress the concerns expressed by marginalized communities and those most vulnerable in the NIIMS system.

What were the alleged flaws in the process that established NIIMS?

- Substantive amendments in a miscellaneous amendments bill were introduced, which should only contain minor, non-controversial amendments. The substantive amendments include the creation of the NIIMS system, a new definition of biometrics (that includes DNA), the collection of GPS coordinates from each person during registration.
- There was a lack of adequate public participation as provided for under the Constitution.

Why is it a concern that meaningful data protection and privacy laws, regulations, and enforcement mechanisms are not in place?

- Article 31 of the Constitution protects the right to privacy, including the right of individuals not to have information relating to their family or private affairs unnecessarily required or revealed.
- Kenya adopted a Data Protection Act (DPA) in November 2019, months after the legal challenge commenced and following the two-week hearing on the merits of the case in September and October 2019. The Act, which is itself subject to a constitutional challenge, does not sufficiently regulate how data (in general and in an integrated population register) will be collected, secured, and stored – including who can access which information and for what purpose.
 - Any digital population register or new identity system must be carefully designed to comply with strict data protection requirements.
 - It was also argued by the petitioners' technical expert in the court case that “law cannot fix what technology has broken”—in other words, the adoption of a data protection law, however strong, after the design and introduction of a system such as NIIMS, will fail to reverse the damage already done and proceeds from the wrong values and on behalf of the wrong interests.
- The Kenyan Government is yet to establish – or even recruit for - the implementing officers enshrined in the Data Protection Act. This means that currently there is no individual responsible for carrying out and enforcing the regulations and remedies set out in the Act.
- Beyond the DPA, the amendments that created NIIMS themselves are also unclear on how the data will be secured and the privacy rights of the citizens protected. There is no opportunity for remedy if data is breached.
- Private companies that may operate or manage various aspects of the digital register must also be subject to strict and clear laws regarding access to personal data. Some of these companies are located abroad and it is not clear whether and how they are regulated within the Kenyan context.
- While the NIIMS system will compile sensitive personal data on all persons in Kenya, the country has a well-documented history of using these kinds of powers disproportionately against ethnic and religious minorities and other marginalized groups.

- In response to the Court's judgment, the Office of the President In Kenya has issued a press release that leaves little room to doubt that the system is intended to be a surveillance tool that is essentially above scrutiny.

How could NIIMS and the Huduma Namba exacerbate existing marginalization and discrimination?

- Millions of Kenyans currently face discriminatory practices in acquiring identity cards as they are subjected to a different process for acquiring an identity card based only on their ethnicity or religion. The process causes administrative burdens, undue delays and even denials of documents to Kenyan citizens.
- Other Kenyans struggle to access registration and identification facilities due to distance and cost—particularly communities living in rural, remote, or pastoralist areas.
- Moving forward with a new population register and “smart” ID card without explicitly addressing these problems could further marginalize these communities.
 - In Court, the Government of Kenya has made contradicting statements on what documents must be provided to obtain a Huduma Number and requirements to obtain other identity documents may shift, leaving out those who have not been able to acquire documentation under the current system.
 - Under the NIIMS system, all government documents will be centrally printed and distributed, which may create additional difficulties in following up on applications.
 - The stakes of not being able to acquire a Huduma Number or ID card will increase, as the government has stated the number is a requirement to access government services.

A new registration system must include reforms to address existing challenges before it is rolled out.

What potential solutions are there? How do we move forward?

- **An integrated, digital population register is an enormous undertaking that would be best served by a new comprehensive piece of legislation** drafted in consultation with relevant experts.
 - Enact a new Registration of Persons Act that will (1) reform the current system of access to documentation to ensure equal, non-discriminatory treatment of all Kenyans, (2) ensure meaningful data privacy protections, and (3) be intentional about how any new integrated register is created, managed, and secured.

- Constitute a task force made up of experts, including representatives of the petitioners in the litigation, to consult on the implementing legislative framework.
- **Kenya's law on data protection must be strengthened in line with international standards and be fully enacted and implemented prior to any new digital identity system.**
- **Substantial public participation and debate must be a central part of the process of enacting the legal framework.**
 - More public participation in the legislative process can ensure the system will balance national interests, counter bias and discrimination, and promote individuals' right to privacy and other rights under the Constitution.

What risks of exclusion, data security and privacy can we expect based on the experience of other countries?

- **India's Aadhaar system is consistently cited as a model for centralized identification systems that provide a "unique number from cradle to grave"—Kenyans must become educated about Aadhaar.** Aadhaar was also passed through a "Money Bill" without consultation or popular education. Recently the Supreme Court of India heard dozens of legal actions challenging the process by which it was adopted, privacy concerns, and the onus it creates to surrender private information for access to public services, among others.
- **The main cause of leaks is not external hackers, but intentional or accidental release of information by those with authorization to process personal data.** In India, as of June 2019, an estimated 210 government websites with legitimate access to the data have leaked individuals' personal data, including one leak of an estimated 135 million beneficiaries. In its arguments to the Supreme Court, the Indian Attorney General included a statement that system was secure because it was behind walls 13 feet long and 5 feet high (reminiscent of PS Kibicho's claim that it would take 10 geniuses to hack NIIMS – this is beside the point when the leak comes from inside). Just days ago a researcher found 5.8 million records leaked by a legitimate entity—Indane, a state-owned gas company—when Google indexed the company's website thus exposing personal data.
- **We know there is a high risk of error and exclusion.** In India, the error rate in the basic demographic details is as high as 8.8%. Biometrics, particularly fingerprints, are notoriously biased against the poor, women, and manual laborers, who may have no readable fingerprints. In India's Andhra Pradesh and Telangana regions, 14% of the poor eligible for food rations could not authenticate their identity, because of unreadable fingerprints, electricity or connectivity issues.

What should I know about OT Morpho/Idemia?

OT Morpho, now known as Idemia Identity and Security, has been operating in Kenya for years, and its involvement in NIIMS raises legitimate concerns. Idemia, a French company, won the contract to build NIIMS in a “top secret” non-public limited tender in 2019. Idemia was the company behind biometric voter registration in the last two presidential elections. Idemia has also faced lawsuits in connection with its operations. In the United States, whistleblowers claim that Idemia technology provided “back door” access to US voter data to Russia and a Paris court fined the company (then Safran Morpho) in 2012 for bribing local officials to win a massive ID card production contract in Nigeria.