



**MINISTRY OF INTERIOR AND NATIONAL  
ADMINISTRATION  
OFFICE OF THE CABINET SECRETARY**

**REGULATORY IMPACT STATEMENT**

**ON**

**THE REGISTRATION OF PERSONS (AMENDMENT)  
RULES, 2024**

**AND**

**THE BIRTHS AND DEATHS REGISTRATION  
(AMENDMENT) RULES, 2024**

**MAY, 2024**

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This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Interior and National Administration pursuant to sections 6 and 7 of the Statutory Instruments Act (No. 23 of 2013)

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## 1. BACKGROUND

- 1.1. Legal identity is recognized in a number of international and regional legal instruments. The Universal Declaration of Human Rights (1948) specifically recognizes right to recognition as a person under Article 6 as a fundamental human right for all citizens of the world. Under the Sustainable Development Goals (SDGs), particularly SDG 16.9, countries have targeted to provide legal identity for all by 2030. The East African Community Treaty and the attendant Common Market Protocol (2010) recognize the role of legal identity in promoting human dignity.
  - 1.2. Article 12 of the Constitution of Kenya guarantees every citizen a Kenyan passport and any document of registration or identification issued by the State to citizens.
  - 1.3. Parliament enacted the Registration of Persons Act, Cap 107 Laws of Kenya and the Births and Deaths Registration Act, Cap 149 Laws of Kenya as the primary registration laws in Kenya.
  - 1.4. The specific objectives of the aforesaid Acts of Parliament as provided for in the Act are *inter alia*; registration of children born in and out of (to Kenyan parents) Kenya, registration of deaths occurring in Kenya, registration of Kenyans turning 18, and registration of foreigners residing in Kenya and any other objective permitted by these Acts for purposes of effective enforcement and application of the Acts.
  - 1.5. Subsequently, respective Rules (hereinafter used interchangeably with 'Regulations') to these Acts of Parliament, to wit; the Registration of Persons Rules, 1948, and the Births and Deaths Registration Rules, 1969, were enacted to operationalize Cap 107 and 149 respectively.
  - 1.6. The implementation of the Acts vide the respective Rules has experienced a number of challenges partly due to emerging trends on legal identity. Further, some of the provisions in the Acts and the respective Rules are not aligned to the Constitution of Kenya, 2010, giving rise to the need to review and enact Rules/Regulations to facilitate better implementation of the Acts.
  - 1.7. Therefore, the Ministry of Interior and National Administration (hereinafter referred to as the "Ministry") developed the following amendment Rules to give effect to the provisions of the Acts and to anchor Unique Personal Identifier (UPI), Electronic Third Generation card and Digital Identity, to eliminate vetting for all persons. These Rules are: ***The Registration of Persons (Amendment) Rules, 2024***; and ***The Births and Deaths Registration (Amendment) Rules, 2024***.
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1.8. The Rules, being subsidiary legislations, fall in a category of statutory instruments which are regulated by the Statutory Instruments Act No. 23 of 2013 which provides for the making, scrutiny, publication and operation of statutory instruments.

1.9. In this regard, the Ministry of Interior and National Administration has embarked on a legislative review exercise of the existing Act, developing new rules to cater for emerging needs. Some of the new proposed rules include the development of rules for digital identity, third generation identity cards, UPI, elimination of vetting and prescription of new fees.

## **2. REQUIREMENT FOR REGULATORY IMPACT ASSESSMENT**

2.1 A Regulatory Impact Assessment (RIA) is an evaluation conducted before a new regulation is introduced. It provides a detailed and systematic appraisal of the potential impact of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. RIA promotes evidence-based policy-making as new regulations typically lead to numerous impacts that are often difficult to foresee.

2.2 The central purpose of RIA is to ensure that regulation is welfare-enhancing from the societal viewpoint, in that, the benefits will surpass costs. RIA therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing Governmental accountability. The conduct of RIA involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations.

2.3 The Statutory Instruments Act, No. 23 of 2013 is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

2.4 The Act further sets out certain key elements that must be contained in the RIA, namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
  - (b) a statement explaining the effect of the proposed legislation;
  - (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
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- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

2.5 This Statement is therefore made to fulfil the requirement of section 6 of the Statutory Instruments Act, 2013.

### **3. RULES/REGULATIONS UNDER THE ACT**

3.1 The Act delegates Regulation/Rule making powers to the Cabinet Secretary to make the Registration of Persons (Amendment) Rules, 2024, and the Births and Deaths Registration (Amendment) Rules, 2024 which Rules are likely to result in the imposition of a significant cost to the community.

3.2 Therefore, an impact assessment of the proposed rules has been made in addition to carrying out extensive consultations with stakeholders.

### **4. PURPOSE, OBJECTS AND OVERVIEW OF PROPOSED RULES**

4.1 The purpose of the proposed Regulations is to provide a framework for the production of electronic third generation identity cards, digital identity, Unique Personal Identifiers, UPI, to new-borns and persons turning 18, the elimination of vetting especially in border counties and prescription of applicable fees.

4.2 The primary objective of the new Rules is to leverage on technology and ensure provision of legal identity to all by the State, as well as eliminating discrimination on any ground.

### **5. PUBLIC CONSULTATIONS**

5.1 Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from relevant key stakeholders and the general public. An evaluation of the public consultation process will be necessary to ascertain whether all stakeholders are given an opportunity to present their views which will ameliorate the proposed Rules.

5.2 With regard to the subsidiary legislation making process, the Statutory Instruments Act requires that the Regulatory Making Authority shall undertake consultations before making statutory instruments (Regulations), and in particular, where the proposed regulations are likely to have a direct or a substantial indirect effect on the community.

5.3 The Statutory Instruments Act, 2013 provides that in determining whether any consultation that was undertaken is appropriate, the Regulation Making Authority shall have regard to all relevant matters, including the extent to which the

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consultation: drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

5.4 The Statutory Instruments Act, 2013 further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be lesser than 14 days or be invited to participate in public hearings concerning the proposed instrument.

5.5 Pursuant to section 5 of the Statutory Instruments Act, the Ministry of Interior and National Administration identified the key stakeholders whom it intends to engage for consultations. These include the, relevant MDAs, Social Partners, Development Partners, Private Sector Players, Civil Society Organizations, Mainstream Media and General Public. They include:

- (a) Implementers of the proposed Rules such as the National Registration Bureau, NRB, the Civil Registration Services, CRS, Integrated Population Registration Systems, IPRS, Ministry of Education, Ministry of Health, Directorate of Children Services, and National Government Administrative Officers
- (b) Subject Matter Expert such as ID4Africa, European Union, Estonian Government.
- (c) Civil Society Organizations, CSO.
- (d) Religious organizations.
- (e) The Private Sector.
- (f) The Media.
- (g) Professional bodies and Academia.

5.6 The Ministry of Interior and National Administration also identified the following nine regions that were earmarked for public participation being geographically representative of the territory of Kenya:

- a) Nairobi
  - b) North Rift
  - c) South Rift
  - d) Coast
  - e) Central
  - f) Eastern
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- g) Western
- h) Nyanza
- i) North Eastern

## **6. APPROACH AND METHODOLOGIES**

6.1 The Ministry of Interior and National Administration intends to undertake stakeholder calendar of events, the stakeholder consultations engagements in the month of May 2024. The engagement will adopt the following methodology:

- (a) Publication of the notice calling for public comments on the draft Rules and Regulatory Impact Assessment
- (b) Publication of the draft Rules together with the draft Regulatory Impact Assessment RIA on the Ministry's website and their social media platforms, in newspapers of nation-wide circulation;
- (c) Publication of the RIA in the Kenya Gazette;
- (d) Write letters and emails to the stakeholders calling for comments on the draft Regulations and RIA within a specified time;
- (e) Hold physical meetings with select stakeholders; and
- (f) Validation of the draft Rules incorporating comments received during stakeholder engagement.

6.2 In this regard, it is expected that the proposed Regulations and RIA shall have undergone an extensive and thorough public participation exercise as provided in the annexed public participation report.

## **7. IMPACT STATEMENT**

7.1 The assessment considered the likely impact of the Rules on general positive externalities, impact on the fundamental rights of the people, the impact on the economy and the public and private sector, economic impact on individuals and environmental considerations. The summary of the key findings is as follows:

### **7.1.1 Impact on Fundamental Rights and Freedoms**

- a) The Rules are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to it. The Rules address matters that relate to the Bill of Rights, particularly on the Citizenship (registration and identification documents) under Article 12 of the Constitution. The Rules do not have a negative impact on the environment or environmental rights of the people.
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- b) The Rules do not impair the right to any fair administrative action.
- c) The Rules promote the Right to privacy by transposing the provisions of the Data Protection Act. The Ministry of Interior and National Administration has done extensive Data Protection Impact Assessment on the project intended to be anchored by the Rules.

### **7.1.2 Economic Impact on the Private Sector**

- (a) The Rules will motivate the legal compliance of all entities who are covered under the Acts and the Rules.
- (b) In relation to registration of citizens and provision of identity documents, the draft Rules shall enhance compliance by the State.
- (c) The draft Regulations will promote effectiveness in issuance of registration and identification documents.

### **7.1.3 Impact on the Public Sector**

- (a) The Government of Kenya is already issuing registration and identity documents. The digital/virtual versions will only supplement the already existing processes and therefore save on cost.
- (b) To the extent that there is no additional budgetary allocation for the project, additional cost occasioned to the Government.
- (c) The draft Rules will enhance efficiency and effectiveness in issuance of registration and identification documents.

### **7.1.4 Impact on the Constitution and existing legal framework**

The draft Rules are in conformity with the Constitution and in harmony with the Registration of Persons Act, Cap 107 and the Births and Deaths Registration Act, Cap 149, legislation in *pari materia* and other existing legislation.

## **8. OPTIONS TO REGULATIONS**

8.1 This Part considers the question whether the proposed regulation is the best form of Government action. The Statutory Instruments Act requires a regulator to carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulation should be the last resort in realizing policy objectives. There are alternatives, which could come in handy

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in dealing with certain aspects of social security. The options considered under this part are as follows:

(a) Policy guidelines: The Ministry ensures that policy decisions issued by the Government are communicated to the relevant stakeholders, including implementers, prior to translating the policy decisions into legislation. The Ministry has considered that it is necessary to develop the proposed Rules.

(b) Standard Operating Procedures, SOPs: these are meant to guide persons in responsibility in the implementation of the Regulations including the public servants in undertaking their respective obligations as set out in the Regulations.

8.2 The impact assessment involved evaluating the costs and benefits of implementing the regulations based on the policy options outlined above.

8.3 A policy change is considered desirable if it will result in real or potential improvement. This is determined by accumulating its direct and indirect benefits and costs. Based on this philosophy, policy guideline option presents strengths and weaknesses and therefore may result to ineffective implementation of the Act. For instance, issuing policy guidelines without regulations would certainly occasion a suboptimal result because of limited options for enforcement.

8.4 Providing procedural rules option is more practical and sounds effective. However, it is worth to note that all the options were considered and it was found necessary that the regulations for guiding the digital identity be formulated in order to effectively implement the Acts.

## **9. COST-BENEFIT ANALYSIS.**

9.1 The Rules is expected to create a positive impact in effective service delivery and uptake of government services resulting in increased revenue to the Government of Kenya while on the other hand there are no additional costs to the government.

9.2 Overall, it is expected that leveraging on technology and digital platform will create more jobs and improving the growth of Kenyan economy.

9.3 Finally, the Rules are expected to boost the international recognition of Kenya in matters legal identity.

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## **10.CONCLUSION**

10.1. The proposed Rules are necessary in the operationalization of the Registration of Persons Act, Cap 107, and the Births and Deaths Registration Act, Cap 149. Although they prescribe nominal fees and charges on the essential documents, it is clear that the benefits and impact of developing these Rules by far outweigh any estimated cost of its implementation.

## **11.RECOMMENDATION**

Given that the proposed Registration of Persons (Amendment) Rules, 2024 and the Births and Deaths Registration (Amendment) Rules, 2024 will facilitate effective implementation of the Registration of Persons Act, Cap 107, and the Births and Deaths Registration Act, Cap 149 respectively, it is recommended that the Rules be approved for public participation.

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