Analysing the impact of Digital ID frameworks on Marginalised Groups in Sub-Saharan Africa
Analysing the impact of Digital ID frameworks on Marginalised Groups in Sub-Saharan Africa

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Cover: Indigenous forest people from Cameroon. Photo: News Watch Cameroon
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## List of Acronyms

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<tr>
<td>ABIS</td>
<td>Automated Biometric Identification System</td>
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<td>AFIS</td>
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<td>BUNEC</td>
<td>National Civil Status Bureau</td>
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<td>CNI</td>
<td>carde d’identité national</td>
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<td>Digital ID</td>
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<td>GPS</td>
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<td>IDPs</td>
<td>Internally Displaced Persons</td>
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<td>INEC</td>
<td>Independent National Electoral Commission</td>
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<td>IPRS</td>
<td>Integrated Population Registration System</td>
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<td>KNHRC</td>
<td>Kenya National Commission on Human Rights</td>
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<td>LMICs</td>
<td>Low- and Middle-Income Countries</td>
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<td>MINATD</td>
<td>Ministry of Territorial Administration and Decentralization</td>
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<td>MNOs</td>
<td>Mobile Network Operators</td>
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<td>National Integrated Identity Management System</td>
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<td>NIMC</td>
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Legal identity is a very basic and fundamental human right. The Asian Development Bank presents a broad definition of legal identity which provides an operational distinction between Legal Identity and proof of the same:

“Broadly speaking, “legal identity” refers to a human being’s legal (as opposed to physical) personality. Legal identity allows persons to enjoy the legal system’s protection and to enforce their rights or demand redress for violations by accessing state institutions such as courts and law enforcement agencies. Proof of legal identity consists of official, government-issued and recognized identity documents—documents that include basic information attesting to the holder’s identity and age, status, and/or legal relationships…”

Narrowly, legal identity is defined as “the recognition of a person’s existence before the law, facilitating the realization of specific rights and corresponding duties.” Accordingly, it follows that legal identity is fulfilled through issuance of legal documentation, referred to as “legal identification” which is necessary for the enjoyment and exercise of one’s rights. Theoretically, legal identity is automatically accorded to a possessor of rights and duties. In practice, legal identity often refers to benefits ascribed to an individual upon formal registration with, and official recognition, by the State in which the person continuously resides. In other words, the proof of a legal identity. There are various forms of legal identification including, but not limited to, passports, personal identification documents, birth certificates and marriage certificates.

Having a document that verifies one’s identity is fundamental for any person to be able to access rights, benefits, and services. Today, having legal identification is increasingly important for any person who interacts with the public sector, and society in general. Legal identification is understood to be the combination of factors; that is, the legal registration and documentation of name, personal data,
date of birth, and unique identification, whether in the form of biometric data or a unique identifying number. Therefore, to be undocumented means to be denied opportunities and possibilities to exercise civil and social rights. In practical terms, there is no distinction between an undocumented person whose birth was never registered and one whose birth was registered, but who never obtained his or her national identity document.\(^6\)

Despite the importance of legal identification, an estimated 1.1 Billion people\(^7\), around 15% of the world’s population, do not have any form of legal identification or proof of their legal identity. Currently, 81% of the “Invisible Billion” resides in Africa and Asia; with approximately half living in Sub-Saharan Africa. The lack of proof of, or official legal identification is a key deterrent to inclusivity; limiting access to basic rights; lowering safety, quality of life, increasing vulnerability, poverty and marginalisation; and proving detrimental to proper governance and planning, service delivery, public sector administration and emergency response.\(^8\)

The recent wave to digitise services by governments and the private sector has made the need for digital identity (“digital ID”) systems increasingly important. Digital ID is defined as “mechanisms that assert and verify personal data in the context of digital services and transactions, based on identification, authentication, and authorization processes”.\(^9\) Digital ID systems have been hailed as the transformative solution to the legal identification problems faced under the traditional legal identification systems in developing countries, including those in Sub-Saharan Africa. Reference is often made to the potential increase in public service delivery efficiency and to the broader significance of digital ID to the digital economy, which proponents claim has the capacity to leapfrog economies, and even go so far as to help countries achieve the Sustainable Development Goals.\(^10\)

Many of the traditional identity systems across Sub-Saharan Africa include multiple points of registration and segregated data that resides in silos within several institutions, with most formal identity documents provided upon attainment of the age of majority.\(^11\) Further, most of the systems tend to be paper based and manual, thereby making it increasingly difficult to track a person from birth to death.\(^12\) The consequences of inadequate and inefficient ID systems on human rights are potentially more dire, so to counter fragmented identity systems, many countries have adopted, or are adopting, digital ID systems with several common features.\(^13\) One such feature is a shift to a centralised register that amalgamates all records from birth and death registers, immigration, drivers licences among others, to establish what is commonly termed as a “single source of truth” (emphasis added) about every registered individual.\(^14\)

Proponents argue that the collation and centralisation of identity information would give governments greater visibility of their residents from birth to death, thereby being able to maintain a single relationship with each individual.

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12 Ibid.
13 Ibid.

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To ensure that these systems are beneficial to citizens, organisations such as Omidyar, a philanthropic investment firm, have released Good ID principles that call for openness and public participation in all aspects of digital ID.\textsuperscript{15} This includes providing access to, or information about, the technology used to implement the ID, as well as empowering users of the ID system — for example, by granting users access to their own information held in digital ID systems, and providing mechanisms for users to monitor the government and third-party use of their information. The #WhyID coalition further emphasises the conceptualisation, design, roll out and use of digital ID, should be for clear, specific purposes that benefit societies and avoid harm.\textsuperscript{16}

Digital ID initiatives have support from international institutions. For example, The World Bank, in consultation with stakeholders, has also released the \textit{Principles on Identification for Sustainable Development: Toward the Digital Age},\textsuperscript{17} which provides guidance on three broad areas when establishing digital ID programmes:

- inclusive coverage that avoids discrimination and removes barriers to access.
- robust, secure, responsive, and sustainable technology that is not only privacy enhancing but financially prudent; and
- a governance mechanism that protects and promotes user rights through comprehensive rights frameworks, institutions and independent oversight and grievance redress mechanisms.

Likewise, the United Nations Sustainable Development Goals (SDGs), which succeeded the Millennium Development Goals adopted in 2000, set a target (16.9) providing that all UN member states should “provide legal identity for all, including birth registration”, by 2030.\textsuperscript{18} The target falls under set Goal 16, which requires member states to: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, with a target (16.9) providing that all UN member states should “provide legal identity for all, including birth registration”, by 2030.\textsuperscript{19}

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\textsuperscript{19} ibid.
This paper aims to address the introduction and implementation of digital identity systems in four Sub-Saharan African Countries, namely: Cameroon, Kenya, Nigeria and South Africa, with a combined population of approximately 175 million unregistered persons, through regulatory instruments and the effects of adoption of the systems in remedying the lack of inclusion of marginalised communities and protecting their digital rights.

This mandates that member states must ensure that all persons consistently resident in their Nation must have an officially recognised identity, regardless of socio-economic standing/background, ethnicity, or geographical remoteness.

At a national level many Sub-Saharan Africa countries are adopting these digital ID Systems through legislation and, as they are currently designed, many do not offer adequate rights protections, nor do they meet the needs of the population. The premise of universality and completeness of records of an individual are commendable and often a key objective for many states adopting digital ID systems. However, it remains that the majority of the digital ID systems adopted by Sub-Saharan African countries require that people registering provide various, existing forms of formal identification. This enables collected data to be integrated with already existing identification repositories to then be held in a central repository/single source of truth register. Therefore, persons that have historically been unregistered would remain unregistered, and without legal identification.

The adoption of digital Identity Systems in Sub-Saharan African countries has also been marred with concerns particularly when it comes to the negative impact on the rights of marginalised communities. With the continued roll out and adoption of digital ID systems, marginalised communities run the risk of further being disadvantaged and discriminated against by either being locked out of the system or having their data exploited. In the adoption of digital IDs, a number of Sub-Saharan Countries have attempted to make them a requisite for accessing basic public services. Therefore, the adoption of digital ID raises questions regarding the ability of the system, and accompanying legislative and policy interventions to remedy traditional inefficiencies, to offer digital rights protections and ensure equality among citizens and residents.

It is becoming increasingly apparent that Sub-Saharan African countries face challenges that require a more nuanced and rights-based approach when introducing digital ID systems. The challenges fall broadly into the following categories: universality, governance, fit for purpose technology and legislative inefficiencies including lack of comprehensive protections of rights, including privacy. This paper aims to address the introduction and implementation of digital identity systems in four Sub-Saharan African Countries, namely: Cameroon, Kenya, Nigeria and South Africa, with a combined population of approximately 175 million unregistered persons, through regulatory instruments and the effects of adoption of the systems in remedying the lack of inclusion of marginalised communities and protecting their digital rights.

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Methodology

This paper undertakes qualitative descriptive research from primary and secondary sources to analyse the impact of Digital ID frameworks on marginalised groups in Sub-Saharan Africa. In order to illustrate these issues, this paper will focus on four Sub-Saharan African countries, namely Kenya, Nigeria, South Africa and Cameroon. Africa is not monolithic, and each country and region differ in language, population, geographical size, religion, political philosophies and challenges, technological implementation, and legal systems. As such, to provide (to the extent possible), an equitable qualitative account of the issues facing Sub-Saharan African countries relating to roll out of digital ID Systems, these countries were selected as:

- From a geographic perspective they are located in East (Kenya), West (Nigeria), South (South Africa) and Central (Cameroon) Africa. The ambit of this research paper was Sub-Saharan Africa and as such the author did not focus on North African countries.
- Broadly, they are the leading economies (bellwether countries) in their respective regions and, importantly, have implemented digital ID systems with corresponding regulatory and administrative regimes to implement the said systems.
- There have been publicized challenges, for example, from a legal perspective (e.g. litigation) in the space of marginalization and digital rights e.g. access and data privacy.

Fortunately, given the recency of the implementation of Digital ID regimes in these sample countries, many of the resources required to access and critically analyse these issues were available online. This is important as the publishing of digital rights related data in Sub-Saharan Africa is often found wanting (particularly re legislation and case law) across most jurisdictions. Primarily, the author undertook research from secondary resources (both online and offline) such as news sites, databases, books, journals, websites and other related resources. In addition, the author collated information from primary sources through verbal interviews with digital rights practitioners in some of the subject countries such as Kenya, Cameroon and South Africa to get first-hand accounts of current developments in this space.
Marginalised Communities

In elucidating the challenges presented by this paper, the author pays specific attention to the impact of implementation of digital identity systems on marginalised communities in the four identified Sub-Saharan African Countries. As aforementioned, these countries differ in many respects, including in the form and definition of those that are deemed to be “marginalised” due to lack of legal identification. The Elliott School of International Affairs & the World Fair Trade Organization-Asia developed a definition of marginalisation that states: “Marginalization is both a condition and a process that prevents individuals and groups from full participation in social, economic, and political life enjoyed by the wider society.” Taking from that definition, and for the purposes of this paper, the term marginalised persons or communities is broadly defined as:

“individuals and/or communities denied access to basic public services and involvement in economic, political, cultural and social activities due to their low socio-economic background, tribe, religious affiliation and geographical location”.

In the Sub-Saharan African Countries highlighted in this paper, marginalised communities have ranged from perpetually undocumented families (including children) in South Africa, Indigenous Communities in Cameroon, persons from lower socio-economic backgrounds in Nigeria and, in Kenya, persons from certain tribes and backgrounds, such as the Kenyan Somalis and Nubians.

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A digital ID system provides electronically captured and stored attributes and credentials that can uniquely identify a person. The rationale for use of digital identity systems has been explained through the various benefits that can be realised through their use. One rationale for implementing digital identity systems is for efficient delivery and distribution of public services. Other reasons for leveraging these systems include national security concerns and financial inclusion. More particularly, the importance of digital identity systems has been touted as the solution for those lacking any legal identification. Lack of legal identification prevents affected people from fully exercising their rights which could potentially exclude the affected people socially and economically.

Digital ID systems are not new in Sub-Saharan African countries with some having at least one digital ID scheme that is aligned to a certain function or to serve a certain subset of the population. Some examples of these are unique identification numbers offered by tax agencies, such as the Kenya Revenue Authority, which has a digital system that provides for a wholly digitised means of filing tax returns and claiming refunds. However, the concept of a multi-purpose, centralised digital ID system is one that has recently gained traction with the growing narrative around the potential for the economic gains these systems allegedly offer.

It is commonplace for reviews on digital ID systems to be accompanied by reviews of corresponding digital rights and, particularly, privacy and security of data collected and stored relating to any one individual. Sub-Saharan Countries face an additional, unique set of challenges to issues when viewed through the lens of inclusive economic and development national agendas, and the main SDG objective to leave no one behind. Privacy and data protection imperatives are potentially an ‘obstacle’ to the rapid rollout and implementation of digital ID systems, in addition to more persistent and institutional issues, such as: bureaucratic inadequacies, poor funding and corruption, legislative contradictions and flawed regulatory provisions to enable proper, inclusive implementation of foundational aspects of digital ID systems. Other structural challenges concern issues with birth registration, or recognition of citizens from certain cultural or ethnic groups. In Sub-Saharan African countries, these broadly fall into two categories, namely: regulatory and technical challenges.
Regulatory Challenges

1. The requirement of breeder documents needed to obtain Digital IDs

Breeder documents are used to access other forms of legitimate identification. For example, using a birth certificate to obtain a national identification card. In digital identity, breeder documents are used to ascertain that a person is who they claim to be. In many African countries such as Kenya and South Africa, the process of obtaining a digital ID requires submission of breeder documents such as a birth certificate. In the event a person does not submit it, they cannot be successfully registered. This poses the risk of exclusion.

The challenge of tying breeder documents such as birth certificates as prerequisites to obtaining digital identity in Kenya was well illustrated and documented during the Huduma Namba roll out. Communities such as the Kenyan Nubian and Kenyan Somali communities who have historically been discriminated against and denied citizenship have no key documents such as birth certificates to show their nationality, therefore were not eligible to be registered. The lack of eligibility would exclude them from key social services if the Huduma Namba is to be linked to access to services.

2. Lack of Information and Mistrust of Digital ID Systems

In some countries the process of digital identification has been shrouded with mystery that has led citizens to drop their support for the implementation. Poor public perception negatively impacts acceptance. This is true for countries such as Kenya. In Kenya, the Huduma Namba was introduced through a Miscellaneous amendment which critics viewed as unacceptable for such a significant change to a civil registration system. It was not clear to citizens why the country needed another identification system in addition to the Integrated Population Registration System (IPRS). This was made worse by contradictory information being given about the entire project and requirement to register or risk being unable to access public services, which many viewed to be coercion.

This led to many citizens to register out of fear more than understanding. For other countries, such as Nigeria, lack of citizen engagement has resulted in many failing to understand the relevance and importance of yet another identity document and are therefore, not interested or motivated to register.

3. The inadequacy of introduced legislative instruments and mechanisms used to protect citizen privacy.

The process of electronically capturing data to develop a digital ID system may involve collection of personal data. Where there are no mechanisms (legislative or otherwise) to protect the personal data collected, citizens whose data is collected risk having their right to privacy violated. Some countries that have already introduced digital ID systems began collecting personal data without legal privacy protections. In some of these countries, privacy concerns are only considered after-the-fact following a public outcry. In Kenya, for example, privacy laws and regulations focusing on the digital identity system were developed after the court mandated so.

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4. The Risk of Marginalisation for Communities

The digital ID programs often have support and technical input from development partners, governments, and global not-for-profits. But at a national level, the programs are imposed through legislation and, as will be demonstrated in further detail below, the legislative design does not respond to the real needs of the people. Instead, they risk bringing harm to already marginalized groups such as women, minorities and border communities. Not surprisingly, these projects have become the subject of litigation at various national courts. As mentioned earlier, laws on digital identity systems mainly focus on establishing the digital identity system. This single focus occurs at the expense of certain members of society such as marginalised communities. The impact on marginalised communities is greater where the digital identity system combines foundational ID (i.e., who a user is) with functional ID (i.e., what services a user can access).
Technical Challenges

1. Harmonization process where many functional databases exist

The existence of multiple and fragmented ID systems arises from an ease of developing sectoral policies and frameworks, relatively low costs to roll out, and faster adoption by the target population. 36 Many Sub-Saharan Countries have adopted such models, with some countries such as Nigeria having 13 agencies with identity systems and registers. 37 However, the adoption of centralised, “single source of truth” registers has uncovered the high cost of siloed identity systems.

One of the costs of fragmented sectoral digital ID schemes is the fiscal investment in the numerous and duplicated systems. However, the highest of the costs is the present need to develop and implement entirely new systems due to the high lack of interoperability, the low coverage of each of the systems due to their tendency to serve only certain groups of the population, and the lack of uniformity in the standards adopted for collection, storage and models adopted. 38 Therefore, there is insufficient quality in the data stored by sectoral systems to inform adaptation of systems that feed off existing digital identity systems.

In light of this, many Sub-Saharan African Countries have adopted a “fresh-start” model in which they have driven for registration of persons into the new system to be adopted. This model is then expected to guarantee the completeness of a registered individual’s records, be more secure, can be interoperable and align to international standards, but it also presents infrastructural and privacy concerns. 39

2. Inadequate connectivity and infrastructure especially in rural areas

The use of digital identity requires technological infrastructure for processes such as enrolment, operating the national identity registry, interoperability, identity verification and disaster recovery. 40 Particularly, where the system is operated online, high speed internet is required for a seamless process. 41 For many Sub-Saharan African countries, high speed internet is still a work in progress. 42 This challenge was particularly true in Nigeria where slow internet and power supply challenges slow down the process of enrolment for the National Identification Number. 43

3. Cybersecurity and Privacy Risks

In the spectrum of identity, having legal identity represents only one facet, having a safe identity is the other half. For a digital identity system to be effective, it must be secure. However, despite the importance of proper security systems, some countries, such as Kenya, still do not have robust security mechanisms for such centralised data, thus putting the personal data of enrolees at risk. Poor cybersecurity measures have the potential of compromising the digital identity infrastructure. This was a concern that was raised in the case against the launch of Kenya’s centralised identity database, the NIIMS project, where one of the expert witnesses for the petitioner posited that the system was prone to hacking. NIIMS will be explored in detail later on.

Although these challenges are interrelated, this project considers them through the risks posed to marginalized communities specifically.

36 World Bank Group, op. cit., 27.
42 ibid.
Countries
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South Africa
1. History of Legal Identity

Historically, in South Africa, legal identity was closely linked to the different races present in the racially segregated country under the apartheid regime. Under this regime laws and policies on identification were created in what was known as "pass laws." The pass laws saw to it that blacks carried identity documents with them as they moved around, particularly in the white urban areas. These government-imposed pass laws were a form of "internal passport control designed to segregate the population, severely limit the movements of the black African populace, manage urbanisation, and allocate migrant labour". However, the pass laws and their resulting identity documents were not without resistance. There were marches protesting this manner of identification as well as the fact that having this form of identification meant that one was not considered a citizen. The protests led to the repealing of the pass laws in 1986. The abolition of the laws in 1986 saw the enactment of The Restoration of South African Citizenship Act No. 73 of 1986 promised to return citizenship rights to its Black population.

The 2017 the World Bank ID4D-Findex Survey indicates that South Africa has registered over 92% of persons over the age of 15 residing in South Africa. More recently, the Department of Home Affairs, that is charged with the mandate to capture identification data and issue IDs, has their number of registration at approximately 40 million, which would suggest that there is almost 100% registration of persons over the age of 16 years, being the minimum age for obtaining an ID. However, the 2018 ID4D-Findex Survey reports that 27% of the South African population (being, approximately 15,341,719) remains unregistered and lacking proof of identity includes those under 15.

South Africa’s identity system is integrated with civil registration systems and is pivotal and instrumental in effective public service delivery, with the system being linked to electoral social security, social security grants, amongst others. Biometric Identification Systems are not new to South Africa with the current systems responding to the discriminatory identification system that existed during the apartheid period, which saw the country operating two different population registers, with the green identity book. The green identity book, which contained a 13-digit identity number that was issued to non-black people, was then adopted as the National Identity Book doing away with the dompas (“dump pass”) that was historically issued to black people during the apartheid.

2. Current Digital ID landscape

South Africa is hailed as a success when it comes to the adoption and registration of its citizens and legal residents, having successfully transformed its identification system from an exclusionary tool during the apartheid to one of inclusion post-apartheid. South Africa is viewed as a continental leader and prime example of the successful implementation of a digital ID program, an initiative that has been ongoing for a number of years, with the current system said to be well on the way to ensuring universal civil registration and identification.

45 Ibid.
46 Ibid.
51 Ibid.
53 Ibid.
The system run by the Department of Home Affairs referred to as HANIS (Home Affairs National Identification System). HANIS is a national biometric identification population register. At the time of implementation HANIS was one of the world’s largest civilian fingerprint databases, and was an Automated Fingerprint Identification System (AFIS). However, HANIS, a manually operated system is set to be phased out and replaced by a new digital system the “Automated Biometric Identification System” (ABIS) that was launched in 2018, and is expected to be a fully integrated and automated system by 2021.

On 18 July 2013, the Government of South Africa, following the issuance of the Notice regarding the replacement of green, bar-coded identity documents with identity documents (Notice), launched the smart ID card, to replace the 13 digit green identity book, accompanied by a drive to ensure any duplication of identity was resolved. The Notice highlighted that roll out and implementation was set to take eight years, commencing with a pilot targeting an identified group of the population. Although not mentioned in the Notice, one of the pilot groups was the “Nelson Mandela population” a term that referred to persons in their 80s and 90s, with the late Nelson Mandela being the first to be registered and receive a Smart ID.

The procedure for replacing or obtaining a smart ID as detailed in the Notice was as follows: an applicant would need to present themselves to the nearest Home Affairs local office, service point or mission (if an applicant is abroad), upon application, the Department records the information and the details verified against the population register. An applicant who appears before the DHA was required to submit their green identity document for cancellation, and first time applicants were also required to submit their birth certificate. The DHA collects photographs and fingerprints, in addition to other personal information, from all applicants. To effect the roll out of the new identity card and ensure mass reach, the Department of Home Affairs made a deliberate effort to set up numerous registration points throughout the country, the application continues to be free of charge for first time applicants, while an application for replacement ID comes with a cost.

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64 Section 7.2, Notice regarding the replacement of green, bar-coded identity documents with identity documents.
65 Section 7.5, Notice regarding the replacement of green, bar-coded identity documents with identity documents.
66 Section 7.5, Notice regarding the replacement of green, bar-coded identity documents with identity documents.
67
Section 14 of the Constitution of South Africa, 1996 gives explicit recognition to the right to privacy.69 This right is given legislative backing by the Protection of Personal Information Act (POPI), No. 4 of 2013 which governs data protection in South Africa.70 POPI outlines a number of matters including the conditions for lawful processing of personal information and regulates both public and private sectors.71 In this regard, the processing and storage of information collected for the purposes of smart ID is governed by the provisions of POPI.72

4. Deficiencies of the regulatory framework

Despite the huge strides made in national identification, the Identification System in South Africa has excluded citizens and residents,73 especially those who lack legal documentation such as a birth certificate, or are born to parents without legal documentation.74 The problem of under documentation or inability to access registration documents that impedes the ability to access a national identification document continues to be prevalent in South Africa despite regulatory safeguards — although South Africa has the highest birth registration rate on the continent, an estimated 5% of the population are unregistered.75

There are numerous laws in South Africa that should guarantee against discrimination, ensure inclusion, and confer certain rights relating to legal identity. The most important being the Constitution of the Republic of South Africa, particularly, the Bill of Rights contained in Chapter 2, which establishes the rights and privileges to be afforded to citizens and non-citizens of South Africa. The most relevant to this paper are: Section 9 which states “everyone is equal before the land and has the right to equal protection…. the state may not unfairly discriminate directly or indirectly against anyone”76 However, pursuant to regulation 3 of the Regulations on the Registration of the Births and Death Act, 2014, a legally valid documentation of a parent or guardian is required to register the birth of a child.77 Therefore, undocumented parents or guardians cannot register the birth of their child. In the case of the birth of a child out of wedlock, the regulations only make provision for a mother of the child to register the child’s birth. Lawyers for Human Rights, a human rights organisation based in South Africa, have documented cases where they have acted for children whose mothers have been undocumented and father was a South African with valid identity documents.78 However, due to the current legislative framework, the father was unable to register the birth of his child without the mother’s consent. This is the case even when the mother of the child to be registered is unreachable.79

The provisions in the aforementioned Regulations are not only contrary to the protections offered under the Constitution of South Africa, but they create what would appear to be a perpetual cycle of undocumented cases and therefore, increasing the generations of persons who lack identity.80 The existence of such contradictory legislation creates

71 Ibid.
72 Ibid.
73 Ibid, 69.
74 Section 7.5, Notice regarding the replacement of green, bar-coded identity documents with identity documents
75 The South African Human Rights Commission (3 February 2019) “Thousands of ‘undocumented’ children are being deprived of the basic right to education, write André Gaum and Eden Esterhuizen”
76 Ibid.
77 Ibid.
79 Ibid.
marginalised groups of people that lack a legal identity of any kind and therefore are perpetually at a disadvantage that cannot be cured by the implementation of any Digital Identity Systems. Additionally, whilst there is an existing legislative framework on data protection, the substantive provisions of POPI did not come into effect until 1 July 2020.
Nigeria
1. History of Legal Identity

Nigeria, like many other countries in Sub-Saharan Africa, is ethnically diverse and boasts 250 ethnolinguistic groups, various religions, and a range of traditions and customs within its borders.\textsuperscript{81} It is, therefore, unsurprising that national identity frameworks and systems have for many decades been recognised as crucial to the management of Nigeria’s citizens and its legal residents. The first step to actualising the vision for an identity management system was the enactment of Decree 51 of 1979 Act, which gave mandate to the Department of National and Civil Registration.\textsuperscript{82} However, whilst the enactment of the Act was a move in the right direction, the Department of National and Civil Registration programme was not realised or even activated for another 22 years.\textsuperscript{83}

In 2001, the Department of National and Civil Registration contracted a private sector entity to issue national cards. The program ran for a period of five years at a cost of $236.8 million, registering 37.3 million people, prior to being declared defunct in 2006.\textsuperscript{84} During that time, presumably for lack of a structured identity ecosystem and in furtherance of their respective sectors, 13 agencies and at least 3 state Departments were granted sectoral mandates to collect personal identification information and issue IDs for purposes of provision of various services such as the Central Bank of Nigeria, the Independent National Electoral Commission, the National Communications Commission, the Nigerian Immigration Service and the Federal Road Safety Corps, to name a few.\textsuperscript{85}

2. Current Digital ID landscape

The number of persons registered on the National Identity Database is 41.5 million, as of May 2020, representing approximately 21% of Nigeria’s population, leaving 158 million Nigerians (based on a 2020 population estimate of 200 million) unregistered and without a National Identification Number.\textsuperscript{86} In a speech delivered by the Chairman of the Committee on Citizen Data Management and Harmonisation in August 2020, he said there are currently 14 different agencies that hold substantial and duplicated citizen data in segregated repositories that are currently not linked, and that the funding allocation to NIMC is not adequate for it to effectively carry out its mandate.\textsuperscript{87} He also claimed there are many Ministries, Department and Agencies that have not complied with the standards of data collection prescribed by the NIMC; therefore, the process of standardisation for the purposes of integration and harmonisation would require an investment in equipment.\textsuperscript{88} In light of the foregoing issues enumerated by the Chairman in his speech, the committee made the following recommendations, \textit{inter alia}:\textsuperscript{89}

a) That the Commission should focus on its core mandate of issuing unique identifying numbers;

b) The NIMC Act should be amended so as to allow for specific licences for the collection of biometric data on behalf of the Commission;

c) All existing data held by Agencies with National Identification Numbers should be harmonised to completion by 20 June 2021, with the exception of the Independent National Electoral Commission (INEC), whose deadline for harmonisation is to be 31 December 2021.

d) A directive should be issues requiring all agencies currently capturing identity data to commence full enforcement of NIN as a requirement for accessing their services;

e) Issuance of an Executive order providing for the “exclusive collection of biometric data by the Commission and its licensees; exclusive storage of Biometric data in the National Identity Database and the discontinuance of biometric data storage of new registrations by all agencies and institutions; the mandatory use of the NIN for identification in all government services; subject to the issuance of a National Identification Number by the Commission to at least 80 percent of the population, mandatory


\textsuperscript{83} Ibid.


\textsuperscript{88} Ibid.

\textsuperscript{89} Ibid.
use of the National Identification Number by all Mobile Network Operators (MNOs) for issuance of Subscriber Identification Module (SIM) with effect from 30 June 2021.

f) the commencement of digital registrations of birth, death, marriages, divorces, adoption and other vital registrations by the National Population Commission at all hospitals and designated NPC offices; and integrate with the National Identity Database.

These recommendations were made in response to concerns which led to a travel ban by the United States. Some recommendations align with previous recommendations made in the Strategic Roadmap Digital ID published in 2018 in response to The Economic Recovery and Growth Plan, which noted that in order to enable public service deliver and to address issues of economic downturn, the Government must be able to have visibility into the persons requiring services and the residents of its country. The fragmented data collection ecosystem in Nigeria has, many times over, received criticism for wasting taxpayer funds. In recognition of a need to have a harmonised National Identity Database, numerous directives, including by two sitting Presidents, have been issued requesting that all government agencies align their data capturing, identity verification and authentication services and practices with those of the National Identity Management Commission and its infrastructure and calling for a centralised identity database managed by the Commission.

There have been renewed efforts to have a centralised system and universal registration, with the Nigerian Government recently announcing its Nigeria Digital Identification for Development Project supported by the World Bank which aims to support the National Identity Management Commission to increase the number of persons who have a national identification number to 150 million in the next three years. Accomplishment of this goal would see that Nigerians, particularly those from low-socioeconomic and marginalised backgrounds, would be able to access services, such as social safety nets, basic healthcare, access to financial service thereby ensuring financial inclusion and, consequently, enhance welfare services. In a recent webinar held on 23 September 2020, conducted by ID4Africa the Director General, Aliyu Aziz noted that the estimated cost to roll out this initiative would be $433 million. The Director General noted that this would see that most vulnerable persons, such as IDPs, are captured in the system and issued with National Identity Numbers (not cards). Further, the Director General noted that the service would continue to be offered for free for first time applicants with a revenue model being founded on the verification and authentication services to be offered to the public and private sector. The current enrolment process undertaken by the National Identity Management Commission is governed by the Registration of Persons and Contents of the National Identity Database Regulations. According to the Regulations, registration is to be done at enrolment centres spread across the country. To be eligible for enrolment into NIMC a person has to be 16 years and older, a citizen of Nigeria, a person lawfully and permanently residing in Nigeria, or any non-citizen of Nigeria lawfully residing in Nigeria for a period of two years or more. This is followed by the collection of biometric data. An applicant is required to appear at the registration centre with the required identification documents. The permitted identification documents include: old national ID card, valid driver’s license, valid international passport, voter’s ID card, government staff ID card, state of origin certificate, or birth certificate/declaration of age.

90 Ibid.
93 Ibid.
96 Ibid.
98 Ibid.
99 Ibid, 72.
104 Ibid, 72.
105 Ibid.
Where a person does not submit any primary source documents to validate the information given on the form, the registration officers are still required to register them but they will not be entitled to a General Multi-Purpose Card.\textsuperscript{106} The applicant is issued with a slip with a reference number where the National Identity Number is not generated on the spot, confirming that an applicant’s information has been collected.\textsuperscript{207} However, where a National Identity Number is generated in real time, an applicant is issued a NIN slip and comes for the General Multi-Purpose Card at a later date.\textsuperscript{108} The first National Identity Number was issued in 2012 while the first identity card was issued in 2014.\textsuperscript{109} This is a free exercise and; therefore, there are no charges for first issuance.\textsuperscript{110} However, in the event of a subsequent issuance, re-issuance, replacement of a lost or damaged card a fee of USD$13 (5000 Nigerian Naira) shall be charged.\textsuperscript{111}

3. Regulatory framework governing digital ID

The National Policy & Institutional Framework for an Identity Management System for Nigeria, in 2007 expressed the need for a digital identity management system.\textsuperscript{112} The envisioned system would have broad usage, security and uniquely identify registrants; simply, a system that would establish, communicate and assure an identity.\textsuperscript{113} In an effort to cure the issues of National Identity Structures and attempt to consolidate and harmonise public and private sector identification systems and registries, Nigeria enacted the National Identity Management Commission Act, No 23 of 2007 (NIMC Act), repealing the National Civic Registration Act of 1990.\textsuperscript{114} This gave rise to the NIMC whose mandate is to reform the identity sector, and in particular and pursuant to section 5 of the NIMC Act, to, inter alia, “create, manage, maintain and operate the National Identity Database… including the harmonisation and integration of existing identification databases in government agencies and integrating them into the National Identity Database,” carry out registration of citizens and lawfully resident non-citizens; issue multi-purpose identity cards, issue unique National Identification Numbers to persons registered; and ensure the security and integrity of data collected and stored in the database.\textsuperscript{115} The aim of the Nigerian Government in enacting the NIMC Act was to ensure a system was put in place to enable universal registration for authentication and verification of civil documents and counter issues of illegal immigration.\textsuperscript{116}

The Constitution of the Federal Republic of Nigeria guarantees and protects the privacy of citizens.\textsuperscript{117} Currently, there are a number of legislative instruments that touch on data protection in Nigeria.\textsuperscript{118} The most wide reaching of these instruments is the National Data Protection Regulations 2019 that flow from the National Information Technology Development Agency Act 2007.\textsuperscript{119} These regulations give a blanket obligation to all organisations processing data to

\textsuperscript{106} Section 2(4), Registration of Persons and Contents of the National Identity Database Regulations, 2017 <<https://www.nimc.gov.ng/docs/NIMCregistration_person_contents.pdf>>
\textsuperscript{107} Section 2(4), Registration of Persons and Contents of the National Identity Database Regulations, 2017 <<https://www.nimc.gov.ng/docs/NIMCregistration_person_contents.pdf>>
\textsuperscript{108} Section 2(15), Registration of Persons and Contents of the National Identity Database Regulations, 2017 <<https://www.nimc.gov.ng/docs/NIMCregistration_person_contents.pdf>>
\textsuperscript{109} World Bank, ‘ID4D Country Diagnostic: Nigeria’, op. cit.,
\textsuperscript{110} Section 11(a), Registration of Persons and Contents of the National Identity Database Regulations, 2017 <<https://www.nimc.gov.ng/docs/NIMCregistration_person_contents.pdf>>
\textsuperscript{111} Section 11(b), Registration of Persons and Contents of the National Identity Database Regulations, 2017 <<https://www.nimc.gov.ng/docs/NIMCregistration_person_contents.pdf>>
\textsuperscript{112} World Bank, ‘ID4D Country Diagnostic: Nigeria’, op. cit., 39.
\textsuperscript{113} Ibid.
safeguard personal data collected. However, given that the National Data Protection Regulations 2019 is a subsidiary instrument, it is limited in its scope and only applies powers and mandates created under the National Information Technology Development Agency Act 2007.

The lack of a primary and comprehensive data protection legislation in Nigeria led to a challenge to the mandatory use of the National Identity Number, in the absence of adequate data protection laws in the case of Incorporated Trustees of Paradigm Initiative for Information Technology (PIIT) & Sarah Solomon-Eseh (Applicants) v National Identity Management Commission (NIMC) & Anor. In this matter, the Federal High Court affirmed the importance of data privacy rights of Nigerian citizens and directed that NIMC develop and improve its data privacy and security systems in order to avoid a breach of citizens’ rights to privacy. This matter was heard prior to the issuance of the National Data Protection Regulations. In acknowledgement of the limitations of the National Data Protection Regulations and the inherent gaps in the data protection frameworks presently existing in Nigeria, the Nigerian Federal Government has published a Data Protection Bill 2020 which if enacted would act as overarching legislative framework for the protection of personal data and privacy.

4. Deficiencies of the regulatory framework

Whilst the registration process seems relatively straightforward, and the regulations provide for registration of all persons, be they citizens or not, the number of people registered, relative to the population of Nigeria, is quite low. Despite attempts by the Government of Nigeria to make the possession of National Identity Number mandatory for access to government services, with the NIMC Act imposing penalties for not using National Identity Number, this is not currently enforced. However, there are a number of services, such as the application for a passport, that require a National Identity Number. Many have criticised the system, claiming that only those that are rich are capable of obtaining the National Identity Number, citing the prevalence of corruption and bribes to cut the long lines to register for a National Identity Number. Critics have noted that poorer members of society are not able to do so partially because the lack of supporting documentation has acted as a barrier to accessing the national ID to some. The number of barriers to registration in Nigeria are mostly related to the lack of proper implementation structures and capacity to carry out legal and policy mandated activities. There are currently only a thousand stations in Nigeria in which persons can register for a National Identification Number. For a population of close to 200 million, spread out across 923,768 km2, this number of stations is negligible. Therefore, it is not a surprise that the barriers to registration mostly affect persons with low income, people with disabilities, and those who live in rural communities. In interviews carried out by the Engine Room, many people stated that the registration process was long and one could stand in line for hours and sometimes even days waiting to be registered, which is a deterrent to many including those who have to travel long distances to a registration centre. Further, it was stated that little to no accommodation was made for persons with disabilities, with these groups of persons being most affected.

Even when persons with disabilities have gone through the arduous task of being registered, in which they are asked to fill in a form which does not make accommodation for blind persons, and provision is made to state if they have a disability (although the type of disability is not requested) it is not stated on the ID, and it unclear if this is noted on
Therefore, in the event of requiring special assistance, the National Identity Document would offer no help as it lacks critical information.\(^{135}\)

Additionally, the infrastructure challenges and clear lack of capacity faced by the Commission, sees that National Identification Documents can take several months if not years to be processed once registration has occurred. In the High Court of Anambra State of Nigeria Isabella Ijeoma Okeke v. The Emerging Matters Telecommunication Services (SUIT NO: 0/103/2018)\(^ {136}\) the plaintiff, a mobile telephone subscriber, had provided her NIN slip as a means of identification to the defendant, a mobile telecom operator in Nigeria, for the purposes of SIM-Swap/SIM replacement.\(^ {137}\) However, the slip was rejected by the defendant on the ground that it was not a valid means of identification. In deciding the matter, the court held that the NIN number is sufficient identification of an individual for the purposes of any transaction with any authority or organization. This is because the NIN slip is issued in place of the National identity card.\(^ {138}\) The aforementioned decision theoretically cures the issues of whether one can use a National Identity Number as valid identification whilst waiting on a Nation Identity. The decision of the High Court also noted that the NIMC Act is superior to other legislation when it comes to matters of identity.\(^ {139}\) However, the biggest issue in Nigeria is lack of access to information; it, therefore, goes to follow that persons who are unaware of the decision of the High Court may be disadvantaged unnecessarily as a result of “ignorance of the law” by both the persons accessing a service and those providing the service.

\(^{134}\) Ibid.
\(^{135}\) Ibid.
\(^{137}\) Ibid.
\(^{138}\) Ibid.
\(^{139}\) Ibid.
The decision of the Court in *Incorporated Trustees of Paradigm Initiative for Information Technology (PIIT) & Sarah Solomon-Eseh (Applicants) v National Identity Management Commission (NIMC) & Anor* there was an acknowledgement by the Federal High Court on the lack of adequate data protection and security safeguards for data collected and relating the National Identity Number.\(^{140}\) Whilst this inadequacy was theoretically cured by the issuance of the National Data Protection Regulations, it is clear from the recent publication of a Data Protection Bill, and that the National Data Protection Regulation is limited in scope.\(^ {141}\) This inadequacy is further amplified by the fact that the National Data Protection Regulations is inherently a subsidiary legislation which is limited to its primary legislation.\(^ {142}\) Therefore, the regulations cannot establish an independent regulator or extend its scope to apply to collection or processing of data in a non-automated manner.\(^ {143}\) It is presently unclear if or when the Data Protection Bill will be enacted into law; this continues to present issues with respect to the potential misuse of personal data collected by non-automated means.\(^ {144}\)


\(^{142}\) Ibid.

\(^{143}\) Ibid.

\(^{144}\) Ibid.
Kenya
1. History of Legal Identity

The history of legal identity in Kenya can be traced back to the colonial era with the issuance of an identity card known as “kipande.” The kipande came about with the enactment of the Native Registration Ordinance as a means of supervising and controlling the recruitment of male Africans into colonial labour.\(^{145}\) In 1947, the Registration of Persons Ordinance required all male persons of all races of 16 years and above to be registered. After registration, distinguishable identity cards were issued (for protectorate and non-protectorate persons).\(^{146}\) In 1978, an amendment was made to the Registration of Persons Act to include the registration of women who had attained the age of 16 years and above.\(^{147}\) A further amendment to the Act was made in 1980 that raised the age of registration from 16 to 18 years. The 1980 amendment marked the end of the use of the identification booklet and introduced the paper based identification documents.\(^{148}\) In 1995, the paper based identification document was replaced by a smaller sized card that was laminated paper.\(^{149}\) The same identification document was used up until 2011 when the plastic, “second generation” cards were introduced.\(^{150}\)

2. Current Digital ID landscape

The digital ID landscape in Kenya is an evolving one built off a national identification system known as Integrated Population Registry Service (IPRS).\(^{151}\) The IPRS is administered by the National Registration Bureau.

Kenya has introduced the National Integrated Identity Management System (NIIMS), administered by the Ministry of Interior and Coordination to also serve as a “single source of truth.”\(^{152}\) NIIMS has is also referred to as “Huduma Namba”. Most of the activity concerning NIIMS has been around registration of persons. However, like Nigeria, Kenya still lags behind with issuing the physical card which was set to replace the currently used identity cards. In November, the government announced plans to stop the usage of the current identity cards by December 12, 2021.\(^{153}\) According to the government, the process of issuing the cards will begin with a SMS notification for persons already registered, after which, they will have one month to collect their cards. Unlike the current national identity card, Huduma cards will contain more personal data, including a person’s registration to the national health fund.\(^{154}\)

The initial registration into NIIMS was marred with resistance and ultimately a legal suit, which made it more difficult for the Kenyan government to register people.\(^{155}\) Consequently, the government recently announced that a second mass registration will begin in April 2021.\(^{156}\) Like all other governments, the Kenyan government aims to use NIIMS to facilitate national planning and efficient provision of services.

3. Regulatory framework governing digital ID

In 2018, the Statute (Miscellaneous Amendment) Act No.19 amended the Registration of Persons Act (RPA).\(^{157}\) RPA is the law that governs issuance of identity cards in Kenya. The amendment introduced Section 9A in the RPA which established the NIIMS that would build on the Integrated Population Registration System (IPRS).\(^{158}\) Section 9A (2) provided the functions of NIIMS.\(^{159}\) Section 5 of the RPA defined some of the information to be collected

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146 Ibid.
147 Ibid.
for purposes of entry into the NIIMS database. It includes: name of enrolled, date of birth, sex, county of birth/residence, occupation, profession/trade/employment, place of residence and postal address, Global Positioning Systems (GPS) coordinates, Land Reference Number, Plot Number/ house number, finger and thumb impressions, biometric data, date of registration.\(^\text{160}\)

However, in 2019, there was a constitutional challenge\(^\text{161}\) to NIIMS before the High Court of Kenya that rendered the miscellaneous amendment null and void.\(^\text{162}\) The court found that establishment of the system was not backed by valid law and called for a standalone law to be enacted to govern NIIMS. In line with the court ruling, the “Huduma Bill” was introduced in 2019, as a second legislative attempt. The Bill is still at the public participation level and is yet to be enacted.\(^\text{163}\) If enacted it will repeal various laws dealing with registration of persons namely: the Birth and Deaths Registration Act (CAP 149), the Registration of persons Act (CAP 107) and the Kenya Citizens and Foreign Nationals Management Service Act (No 31 of 2011).\(^\text{164}\) The First Schedule of the Huduma Bill highlights the information to be held in the NIIMS database. The information is divided into five categories: foundational data, contact details, personal reference numbers, record history, registration history and validation information.\(^\text{165}\) Pursuant to the court ruling on Huduma Namba, collection of DNA and GPS data was prohibited.\(^\text{166}\)

The roll out of the NIIMS project in Kenya began after the amendment of the RPA, its annulment occurred after the first phase had been rolled out. The registration process targeted adults and minors. The registration began with a mass registration exercise at designated registration centres staffed with registration officers. Registration centres were located at every sub-location under the supervision of an assistant chief. Registration required an enrollee to fill in a “data capture form”.\(^\text{167}\) Initially, enrollees had to download the form, however, this slowed down the process and the government resorted to printing and distributing. After filling in the form, an enrollee has to present themselves physically before a registration officer to collect the biometric data.\(^\text{168}\)

After successful registration, an enrollee was issued with an acknowledgement slip indicating that their personal data has been captured.\(^\text{169}\) The card was not issued immediately since the data had to be verified after which a unique number (huduma namba) and a card would be issued.\(^\text{170}\) However, there is neither a number or card that has been issued up to date. The yet to be enacted Huduma Bill states that upon being issued with a unique number, an applicant would receive the card within sixty days of being assigned a number.\(^\text{171}\)

Data protection in Kenya is governed by the Data Protection Act, 2019. It is worth noting that it was after the completion of the hearing of the Constitutional Challenge to the Huduma Namba, and before delivery of judgment that the Data Protection Act of 2019 was enacted by the National Assembly. Therefore, the roll out was done in the absence of a data protection law. In the Huduma Namba case, data protection concerns were raised as the process began without appropriate data protection laws. In resolving the data protection concerns, the court in its judgement permitted the roll out of the NIIMS system with the appropriate safeguards.\(^\text{172}\) The judgement was followed by release of Data Protection (Civil Registration) Regulations 2020,\(^\text{173}\) which regulates the collection of data for the purpose of Huduma Namba registration and implementation.

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\(^\text{161}\) Nubian Rights Forum & 2 others v Attorney- General & 6 others; Child Welfare Society & 8 others (Interested Parties); Centre for Intellectual Property & Information Technology (Proposed Amicus Curiae) [2019] eKLR; Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR.


\(^\text{168}\) ibid.

\(^\text{169}\) ibid.

\(^\text{170}\) ibid.


\(^\text{172}\) Privacy International, loc. cit.

4. Deficiencies of the regulatory framework

Prior to the Huduma Namba issues of discrimination were already present and recorded in Kenya. A Kenya National Commission on Human Rights (KNHRC) report revealed gross discrimination in the issuance of national ID cards for Kenyan-Somalis, Nubians and Kenyan-Arabs.\textsuperscript{174} As an example, the following infographic outlines some of the challenges faced by Kenyan Somalis (a border community) in obtaining their 2nd generation ID cards\textsuperscript{175}:

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175 Ibid.
As noted previously, low- and middle-income countries (LMICs) are rolling out sophisticated digital ID programs that at a national level, seem imposed and as they are currently designed, do not respond to the real needs of the people in these LMICs. They risk bringing harm to especially marginalised people such as women, minorities and border communities. Not surprisingly, these projects have become subject of litigation at national courts and Kenya is no exception.

In 2019, Kenya civil society organisations filed a petition against the national digital ID program, Huduma Namba. In the first petition, Kenyan Nubians, a community whose ancestral home is South Sudan protested that if digital ID was made a precondition to access government services, they would be legally excluded from accessing many services. This is because they have been historically discriminated against in acquisition of primary identity documents such as birth certificates and ID cards. The other petitions in the case were on the grounds that Kenya did not have adequate data protection, the project had been opaque and that the legal basis for the digital ID law was unprocedural.

The NIIMS project was accused of disenfranchising the Nubian minority which is not new to issues of identity registration. Nubians in Kenya have historically experienced discrimination during registration for identity purposes. The exploitation of this vulnerability has been recognized at the national level. In the African Commission on Human and People’s Rights matter of “Nubian Community in Kenya vs Republic of Kenya (Decision of February, 2015)” and the African Committee of Experts on the Rights and Welfare of the Child “Children of Nubian Descent in Kenya v Kenya (March, 2011)” it was found that Kenya had discriminatory registration and identity documentation practices against Nubians despite them being citizens of Kenya hence eligible for identity cards.

To obtain a national identity card, Nubians must undergo a vetting process. The vetting involves obtaining the identification card of their parents and grandparents, appearing before a committee of elders, swearing an oath, and paying a fee before a magistrate. Some of these requirements are difficult to attain given the history of how the Nubians landed in Kenya. Nubians came to Kenya as a result of being recruited by the British to fight in the army and were settled in Kibera which is a large slum located in the capital city Nairobi.

Discrimination emerges since, to successfully be registered into the NIIMS database one requires state issued identification documents- a national identity card for adults and an original birth certificate for minors, which most Nubians lack. Therefore, they risk being excluded from registration which would mean they will not have access to essential services tied to the Huduma Namba.

Groups advocating for reform to the registration of persons process in Kenya have identified the exclusion of marginalised groups as a major problem in the registration of persons. The Huduma Bill recognises this fact in Section 60 and mandates the Cabinet Secretary to develop measures to mitigate any legal, procedural, and social barriers that may limit enrolment, with special attention being paid to any group or persons at risk of exclusion. However, despite the provisions in section 60, the NIIMS Bill does not sufficiently address the challenges faced by marginalised communities during registration of persons. Their exclusion and those of other marginalised groups such as the Nubians and border communities is therefore likely to continue until this is done.

178 ibid.
179 ibid.
180 ibid.
185 Section 60, Huduma Bill, 2019.
Cameroon
1. History of Legal Identity

Since 1964, Cameroon has been issuing a paper ID card, the carte d’identité national (CNI), as mandated by Decree No.64/DF/394 of 29 September. The responsibility for the issuance of the ID was given to the national police force, the Direction Générale de la Sûreté Nationale. The card is for adults 18 years and older. In 1995 the national IDs began to be computerized, although they were still paper cards. The CNI was replaced by new cards in the early 2000s but the old cards remained valid until 30 June 2004. Cameroon has had several identity programs, but it appears that none have been successful, sustainable, or robust.

2. Current Digital ID landscape

In Cameroon, the Ministry of National Security and Defense is responsible for issuing the national ID card. To obtain the CNI, the government through the ministry set up identification posts/stations in police stations. In other areas, the government set up mobile enrolment posts. To apply, a registrant had to submit: a certificate of nationality, a certified copy of a birth certificate, and proof of employment. Married women must submit an original copy and an uncertified photocopy of a marriage licence. Unlike other countries implementing a digital identity system with no first-time registration costs to the applicants, the Cameroonian one requires payment. At the identification post, one is required to pay for a digital photograph.

Once an applicant has been successfully registered, a provisional identity document containing a photograph, filiation, size, digital signature and date of registration would be issued as a proof of identity. The provisional document is valid for three months and renewable once. The card contains user data in English and French. The card would be valid for a period of 10 years. For the new identity card, no duplicate could be obtained.

The importance of having the digital ID, first rolled out in 2016, in Cameroon cannot be overstated; it is likened to the password of an email address. However, obtaining a digital ID in Cameroon is not straightforward. The process is encumbered by bottlenecks such as corruption and delays in issuance of the ID. Ideally, once a person has been successfully registered for the ID they are supposed to be issued with the ID in three months’ time, complaints of waiting for years are not uncommon. At an administration level, there have been problems with procurement and vendor lock-in that have contributed to poorly functioning technology, stalled projects, and difficulties bringing identification systems to scale. Cameroon has invested in proprietary technology that limits future expansion.

3. Regulatory framework governing digital ID

In 2016, a new decree relating to a new national identity card was introduced. The President of Cameroon, through Decree No. 2016/375 of 4 August 2016 set out the characteristics and conditions of establishing and issuing the national identity card. The decree described the card as “computerized, biometric, personal and containing an electronic chip.” The CNI was made compulsory for citizens aged 18 or over. As with many other countries, a key challenge of this change of identification cards was the collection and processing of personal data which was further compounded by the lack of comprehensive data protection legislation in Cameroon.
4. Deficiencies of the regulatory framework

The roll out, it appears, is particularly slow and inefficient as there are 2,700 stations that serve 22.7 Million Cameroonians.208 This is further compounded by insufficient administrative capacity which causes a slow rate of registration which stands at one registration per day. This allows little opportunity for registration staff to gain experience and specialization.209 This low administrative capacity may also be due to complex identity verification processes that rely on manual transportation and verification of documents, adding significant burdens for both staff and civilians.210

In most communities, minority communities tend to be affected by exclusion among other ills.211 This is true among the indigenous communities of Cameroon. These indigenous communities make up 1% of the population of Cameroon.212 An example of these is the Ba’Aka forest people whose population is estimated at between 8,000 and 20,000.213 Ba’Aka people live largely nomadic lives in the forested areas, sustaining their livelihood through hunting and gathering.214 Historically, the Ba’Aka have suffered discrimination, and have been regarded as inferior by other ethnic groups.215 They are currently threatened by the expansion of logging, agro-industry, mining, and natural protected areas into their customary lands where they have been denied ownership216 as the government does not recognise communal land ownership. This has led them to face continued difficulties, over issues around rights to land and resources. This aforementioned treatment has led to the Ba’aka people to suffer from poverty and lack of access to basic services.217

As mentioned earlier, to successfully register for a national identity card, one must produce, among other documents, a birth certificate. According to a report by Gbabandi Platform on the right to citizenship, birth registration in Cameroon is dismal, much more among indigenous and nomadic forest communities.218 The report indicates that 69% of indigenous children under five were not registered at birth, despite the national average of birth registration standing at 31%.219 Due to the difficulty of obtaining a birth certificate, for a long time now, these indigenous communities lack citizenship documents such as the CNI which is necessary to enjoy other rights (civil, political, economic, social and cultural).220

Since the decree declares that a birth certificate or supplementary judgment (where a birth is being registered out of the stipulated period) is necessary to obtain a national identity card, the absence of a birth certificate among the indigenous forest communities can become a major obstacle and even prevent obtaining a CNI for a child when he/she reaches the required age.

In order to acquire a birth certificate out of time, Cameroonians have to pay a fee.221 The same applies when you want to apply for a CNI, once they reach

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208 World Bank Group, op. cit. 7.
209 World Bank Group, op. cit. 7.
214 ibid.
215 ibid.
216 ibid.
217 ibid.
219 ibid.
220 ibid.
This also applies when renewing expired CNI. For many of Cameroon’s poor, the costs attached to securing legal identification is high and often unaffordable, hence the proliferation of counterfeit CNI and identity theft. The high costs are often cited as the reasons for late registration. The decrease in birth registration has disproportionately affected the poorest regions, including the provinces of Adamaoua, Nord, and Extrême Nord.

Therefore, people of low socioeconomic background face a number of challenges in Cameroon. In addition to the aforementioned lack of capacity and inadequate infrastructure, other persistent barriers to universal coverage of identification systems in Cameroon include: high costs associated with registration and obtaining supporting documents, the destruction of paper-based records due to violence or disaster, complex legal and administrative requirements to obtain identification, geographic conditions, and a lack of demand from citizens.

Additionally, whilst the right to privacy is enshrined in the Constitution of the Republic of Cameroon, Cameroon has no singular data protection Act, nor does it appear to have any consolidated legislative framework that governs the collection and processing of personal data outside the health, financial and telecommunications sectors.

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222 ibid.
223 ibid.
225 ibid.
The above discussion illustrates how marginalised groups can be excluded from digital identity systems for a variety of reasons. The World Bank Principles on Identification for Sustainable Development: Toward the Digital Age provides 10 principles for establishing digital ID systems are inclusive, trusted and useful for governments and the private sector. The principles are outlined in Box 3 below and were a product of collaborative discussions with stakeholders. The principles most relevant to this discussion and to inclusion, universal coverage and accessibility are:

- Ensuring universal coverage for individuals from birth to death, free from discrimination which requires that all persons permanently or continuously relevant in a Country, whether citizens or not, should be provided with legal identification from birth to death, in accordance with international norms, laws and national legislative frameworks:

- Removing barriers to access and usage and disparities in the availability of information and technology.

To have inclusive and universal digital identity systems, governments have to go beyond the technological considerations and specifications of the systems and look at the legal, administrative, and physical barriers to access of digital ID. It is clear from the above discussion that existing structures have led all residents of the four countries to experience different barriers to universal registration, which has resulted in locking out persons from various backgrounds and amplifying marginalized communities.

There is an obvious need for Sub-Saharan African Countries to build a culture of rule of law that is non-discriminatory and that aligns with International Laws and adheres to human right norms. The lack of existence of such a culture in the “brick and mortar” world, see a replication of such discrimination and inadequacies when digital ID systems are rolled out. It stands to reason that the lack of transparency, communication and public engagement by Sub-Saharan African governments rolling and implementing digital identity are contributors to the existing mistrust of digital ID systems.

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227 Ibid.
229 Ibid.
230 Bomu G, loc. cit.
Box 3: The 10 principles on identification for sustainable development published by the World Bank^231
In light of the above discussion, the following recommendations are put forward for Sub-Saharan African Countries implementing Digital ID systems, to ensure universality and inclusivity.232

(i) There is a clear need for legislative reviews and reform legal ID frameworks, including birth registrations, citizenship, and death registration. Even with a robust digital ID legislative framework (from establishment to privacy protections), without the deliberate reviews and reforms of existing legislation, digital identity systems would continue to carry the failures of the traditional systems, and remain exclusionary.

(ii) Fragmentation, caused by numerous sectoral institutions registering specific persons, has resulted in fiscal wastage and, in some cases, lack of buy-in and cooperation with agencies mandated to provide national identification. Cases, such as that of Nigeria, where one agency undertakes a mammoth task of registering close to 200 million people, have proven to be difficult and slow; primarily due to the lack of capacity (human resources) and funding. However, a collaborative inter-sectoral approach, headed by one agency, to effect mass registration, may be the cure to fragmentation and would leverage existing structures (including physical locations for registration), expertise and resources. However, this approach would require effective privacy protection measures, political buy-in, and strong leadership to cut through politics and government bureaucracies to ensure efficiency.233

(iii) There is a move by a number of Sub-Saharan Countries to make access to public services conditional on having digital IDs. The lack of universality of digital IDs in many Sub-Saharan African Countries will see that many are excluded from basic services due to inability to register for an ID, for reasons such as their geographical location, the lack of information on the importance of registration, amongst other legitimate factors. Therefore, all social services should be accessible without a digital ID.

(iv) Countries like South Africa present a lack of harmonisation of legislation and implementation of laws that would otherwise protect from both perpetual lack of documentation of persons entitled to legal documentation. For this reason, it is seen that for many, the only source of redress has been to make a petition to the Courts. However, this is usually done through Human Rights Organisations, such as the Lawyers for Human Right in South Africa, which rely on funding and cannot cater to the needs of all marginalised persons and communities. There is a need to harmonise legislation so as to avoid contradiction which could be interpreted in a manner contrary to the intention of the State, as embodied by the Constitution and other legislative documents.

(v) It is clear that there is a need for an administrative avenue for appeal that considers the applications of persons who lack breeder documentation, or whose parents lack breeder documentation, and are likely to be denied access to basic services such as education due to lack of identification. This could be done by creating an independent entity for registration of persons with a mandate to resolve non-registration for marginalized groups, protect and promote the privacy of individuals in the database, address grievances and resolve complaints from individuals and the public.

(vi) To enable completeness and universality of digital identity systems, Sub-Saharan African Countries need to prioritize the registration and issuance of digital IDs to those without primary identification documents. Many Sub-Saharan African Countries, in their constitutions, afford rights to persons within their borders regardless of nationality. Therefore, in light with the acknowledged rights, priority registration and issuance of a digital ID should not be dependent on the legal status of a person. Sub-Saharan African Countries must be cognizant to existing barriers and offer other alternatives to persons wishing to access public services, or offer registration at points of interaction with persons who have yet to register. Such services could be provided to mothers and children in hospitals; children and parents at schools; at police offices; government services “one-stop-shop” centres, such as the Huduma Centres in Kenya. This has the added advantage of increasing contact points for registration, thereby increasing reach and coverage to allow for more registrations, even in remote areas.

(vii) Due regard must be given to the possibility of heightened discrimination towards marginalised and vulnerable groups, such as being subjected

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232 Centre for Intellectual Property and Information Technology Law, ‘Huduma Namba Bill Analysis’, op.cit.,
to more scrutiny than other members of public, once registered onto digital identity systems. Therefore, governments must establish stringent and enforceable policies and practices within Departments and Agencies mandated to register persons, so as to ensure marginalized and vulnerable populations are recognized and that appropriate safeguards are established to protect data from abuse.

(viii) As identified above, one of the challenges to digital identity systems is the lack of trust in the registration for “new” IDs due to propaganda, lack of information, or simply because people think that the ID is not necessary for their day-to-day lives. Therefore, fostering trust, ensuring public participation through the process of enacting legislation, identifying systems and implementation; and running communication and awareness campaigns is key to ensuring transparency and designing systems that meet the needs of the population. Communications campaigns reduce information asymmetries and increase the ensure that persons, irrespective of background, are aware of their rights and the benefit to them if they register.
Conclusion

It is necessary for Sub-Saharan African countries to consider and implement the principles espoused in this paper when rolling out sophisticated centralized digital ID programs. Many of these programs are rolled out at a national level and implemented through poorly drafted and considered legislation. By thoroughly considering the ramifications of digital ID, through adequate public and other stakeholder participation, governments will be able to identify and resolve systemic issues attaching to the acquisition of identity cards and other primary documents in their jurisdictions, prior to the implementation of these systems.

Africa is not monolithic, and a one-size-fits-all approach to digital ID, both in terms of technology adoption and regulatory implementation, has led to the many issues espoused in this paper including the discrimination and exclusion of marginalized groups. Further, centralized digital ID poses serious cybersecurity and data privacy risks. In many instances, the only documentation available on these centralized digital ID systems is the law establishing the system. The public do not have access to information on the system design, architecture or other relevant information on how their rights are safeguarded. Without the above consideration, many of these Digital ID programs seem imposed and, as they are currently designed, do not respond to the real needs of the people resulting in poor implementation and, in many cases, litigation to address these deficiencies.

Inclusion and equality form the foundation for effective participation in the social, political, and economic life of a country. This inclusion cannot be said to exist if members of a nation are excluded from obtaining legal identities due to gaps in the law or in regulatory frameworks governing identification. It is the position of this paper that the changes being made to shift identities onto digital platforms can only be effective at meeting the Sustainable Development Goals if they are cognizant of the different ways that minority and marginalized groups struggle with being legally recognized and rightfully registered. The advancement in technology cannot contribute to the existing inequalities or else it cannot be said to be an advancement at all. For progress to be made, there must be adherence to human rights, principles of identification and the values that underlie them in order to have a just and equitable society in which the full participation of all, is guaranteed.
Inclusion and equality form the foundation for effective participation in the social, political, and economic life of a country.
Analysing the impact of Digital ID frameworks on Marginalised Groups in Sub-Saharan Africa