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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2023**

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**THE KENYA CITIZENSHIP AND IMMIGRATION  
(AMENDMENT) BILL, 2023**

**A Bill for**

**AN ACT of Parliament to amend the Kenya Citizenship and Immigration Act to provide for the management of affairs of Kenyans living abroad; and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows —

**1.** This Act may be cited as the Kenya Citizenship and Immigration (Amendment) Act, 2023.

Short title.

**2.** Section 2 of the Kenya Citizenship and Immigration Act, in this Act referred to as the principal Act, is amended by deleting the definition of—

Amendment of section 2 of No. 12 of 2011.

(a) “director” appearing immediately after the definition of the word “deportation” and substituting therefor the following new definition—

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

(b) “foreign national” appearing immediately after the definition of the word “exit” and substituting therefor the following new definition—

“foreign national” includes a person who is not a citizen of Kenya and an alien;

(c) “foreign national registration certificate” appearing immediately after the definition of the words “foreign nationals order” and substituting therefor the following new definition—

“foreign national registration certificate” means a registration certificate issued under section 56;

(d) inserting the following new definitions in their proper alphabetical sequence—

“Kenyan living abroad” means a citizen of Kenya who for the time being is domiciled in a country outside Kenya; and

“returnee” means a Kenyan living abroad who is returning to reside permanently in Kenya.

**3.** Section 10 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (b)—

Amendment of section 10 of No. 12 of 2011.

(ba) statutory declaration affirming that the person—

- (i) has not taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years;
- (ii) has not entered or served in the armed forces of a foreign state if—
  - A. such armed forces are engaged in hostilities against the Republic of Kenya; or
  - B. such persons serve as a commissioned or noncommissioned officer;
- (iii) has not accepted, served in, or performed the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years or if he has or acquired the nationality of such foreign state;
- (iv) has not accepted, served in, or performed the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required;
- (v) has not committed any act of treason against, or attempting by force to overthrow, or bearing arms against the Republic of Kenya, violated or conspired to overthrow, put down,

or to destroy by force the Government of the Republic of Kenya, or to levy war against them; and

- (vi) has not committed, assisted in, or enticed into the commitment of a terrorist act, including taking an active role in the activities of a terrorist organisation, as defined by the prevention and financing of terrorism laws of Kenya.

**4.** Section 11 of the principal Act is amended by renumbering the current section as subsection (1) and inserting the following new subsection—

Amendment of section 11 of No. 12 of 2011.

(2) An application under this section shall be accompanied by a statutory declaration and marriage certificate to ascertain the marriage.

**5.** Section 12 of the principal Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 12 of No. 12 of 2011.

(3a) An application under this section shall be accompanied by a statutory declaration or a sworn affidavit by the applicant and or any other documents requested by the committee for purpose of ascertaining the validity of the marriage.

**6.** Section 13 of principal Act is amended in subsection (1) (b) by inserting the words “permanent resident” immediately after the words “valid permit”.

Amendment of section 13 of No. 12 of 2011.

**7.** Section 14 of the principal Act is amended by renumbering the current section as subsection (1) and inserting the following new subsection—

Amendment of section 14 of No. 12 of 2011.

(1a) A child may apply to be registered as a citizen in the prescribed manner, where their parents, legal guardians fail to register the child upon attaining the age of maturity.

**8.** Section 25 (1) of the principal Act is amended by inserting the following new paragraph immediately after paragraph (h)—

Amendment of section 25 of No. 12 of 2011.

(ha) Official passport, issued to government officials travelling on official government duties

outside Kenya and who do not qualify to be issued with diplomatic passports.

**9.** Section 31(1) (g) of the principal Act is amended by deleting the word “seven” appearing immediately after the words “not exceeding” and substituting therefor the word “thirty”.

Amendment of section 31 of No. 12 of 2011.

**10.** The principal Act is amended by inserting the following new Part immediately after section 32 —

Insertion of new Part VA in No. 12 of 2011.

**PART VA – MANAGEMENT OF THE  
AFFAIRS OF KENYANS LIVING  
ABROAD**

Duties of the Cabinet Secretary.

**32A.** (1) In this Part, “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to foreign affairs.

(2) The Cabinet Secretary shall put in place mechanisms to safeguard the welfare of Kenyans living abroad including —

- (a) developing and implementing strategies for Kenyans living abroad to participate in the development process;
- (b) developing measures to enhance the safety and security of Kenyans living abroad;
- (c) developing and implementing mechanisms for engagement with Kenyans living abroad; and
- (d) establishing an administrative and institutional framework for the co-ordination of matters relating to Kenyans living abroad.

(3) The Cabinet Secretary shall, for the effective implementation of subsection (2)—

- (a) facilitate information sharing as a means of ensuring continuous engagement between the National

- and county governments and Kenyans living abroad;
- (b) develop policies to incentivize the participation of Kenyans living abroad in the economic development, governance and democratic processes in Kenya;
  - (c) establish a collaborative framework with Kenyans living abroad to promote Kenya as an investment destination;
  - (d) in consultation with other relevant state agencies, put in place fiscal and non-fiscal measures to promote investment in Kenya, by Kenyans living abroad;
  - (e) in consultation with the relevant State agencies, put in place measures for the protection of Kenyans living abroad including access to legal representation, adequate healthcare services and access to basic services during a pandemic or other emergency in the country of residence;
  - (f) develop and regularly update an integrated database on Kenyans living abroad and in particular document the expertise and skills of Kenyans living abroad;
  - (g) facilitate the timely issuance and renewal of passports and the processing of any documents required to be issued by the National Government to Kenyans living abroad;
  - (h) develop a framework for the reintegration of returnees upon arrival in Kenya; and

- (i) nominate recipients of the Presidential Distinguished Service Award for Kenyans living abroad.

Delegation.

**32B.** (1) The Cabinet Secretary may designate a department within the Ministry or delegate to such public officers as the Cabinet Secretary may consider necessary for the effective discharge of the functions specified under section 32A.

(2) The Cabinet Secretary shall, in ensuring that the services specified under section 32A are accessible to all Kenyans living abroad, liaise with public officers serving in Kenya missions for the welfare of Kenyans living abroad.

Returnees.

**32C.** (1) A Kenyan who, having lived abroad, intends to return permanently to Kenya shall have the right to access government services.

(2) For purposes of subsection (1), the Cabinet Secretary shall liaise with the relevant Kenya mission to ensure that a person who intends to permanently return to Kenya is adequately facilitated to access government services including —

- (a) updating any citizen information including voter registration, National Social Security Fund and the National Health Insurance Fund;
- (b) updating any documents relating to the education of that person; and
- (c) access to other social services.

Consular services

**32D.** (1) The Cabinet Secretary shall ensure that services provided at the Kenya mission shall be, as far as possible, made accessible to Kenyans living abroad taking into account the geographical size of the



country or territory in which the Kenya mission is located and the number of Kenyan citizens ordinarily resident in that country or territory.

(2) For purposes of subsection (1), the Cabinet Secretary shall ensure that —

- (a) services provided at Kenya missions are timely and appropriate to the circumstances; and
- (b) Kenya missions are progressively established in territories or countries in which Kenya does not have a representation.

Voluntary saving schemes services.

**32E.** (1) The Cabinet Secretary shall, in consultation with the relevant Kenya mission, promote the establishment of voluntary savings scheme for Kenyans living abroad.

(2) For purposes of subsection (1), the Cabinet Secretary may liaise with financial institutions in Kenya to negotiate favourable terms on the investments of any contributions that may be made.

(3) The Cabinet Secretary may, in consultation with the Cabinet Secretary for Treasury and the Governor of the Central Bank—

- (a) develop policies and programmes offering incentives to Kenyans living abroad to invest in Kenya;
- (b) establish a database setting out information on programmes and projects in Kenya for investment by Kenyans living abroad; and
- (c) put in place measures for the prevention of fraudulent practices that hinder investment in Kenya, by Kenyans living abroad.

Associations of  
Kenyans living  
abroad.

**32F.** (1) Kenyans living abroad may, pursuant to Article 36 of the Constitution and subject to the relevant laws of the country in which they reside, form an association.

(2) An association formed under subsection (1) may, subject to the laws of the respective country in which it is formed, be registered at the relevant Kenya mission.

(3) For purposes of subsection (2), the Kenya missions shall keep and maintain an up-to-date register of all associations of Kenyans living abroad.

(4) Kenya missions may collaborate with the relevant association for the holding of events to mark a national day in Kenya.

Reporting  
requirements

**32G.** The Cabinet Secretary shall submit an annual report to Parliament on the implementation of policies relating to the management of welfare of Kenyans living abroad.

**11.** Section 36 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of  
section 36 of No.  
12 of 2011.

(2a) Passes issued under subsection (1) shall not permit the holder to engage in employment except where expressly provided for.

**12.** Section 37 of the principal Act is amended—

Amendment of  
section 37 of No.  
12 of 2011.

(a) in paragraph (b) by inserting the words "or residence permit" immediately after the words "work permit"; and

(b) in paragraph (c) by inserting the word "country" after the word "domicile".

**13.** Section 42 of the principal Act is amended by deleting the word "service" appearing immediately after the words "surrendered to the" and substituting therefor the words "Director General".

Amendment of  
section 42 of No.  
12 of 2011.

**14.** Section 44 (1) of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 44 of No. 12 of 2011.

(1a) An immigration officer shall, by way of notice, require a person in charge of the carrier or its agent to furnish the immigration officer with an electronic advanced passenger information and passenger name record prior to disembarkation.

**15.** Section 46 of the principal Act is amended by inserting the following new subsection immediately after subsection (4)—

Amendment of section 46 of No. 12 of 2011.

(4a) A person in charge of a learning institution shall keep an updated record of all foreign students in their institution and submit the same annually to nearest immigration office.

**16.** Section 48 (1) of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (e)—

Amendment of section 48 of No. 12 of 2011.

- (ea) remove an undesirable alien from the country;
- (eb) access all borders including airports, sea ports and land borders in exercise of their duties; and
- (ec) conduct surveillance and information gathering in exercise of their mandate.

**17.** Section 53 (1) of the principal Act is amended by inserting the following new paragraph immediately after paragraph (r)—

Amendment of section 53 of No. 12 of 2011.

(ra) is engaged in trafficking or reasonably suspected to be engaged in trafficking in persons under counter trafficking of persons laws of Kenya,

**18.** Section 55 of the principal Act is amended—

Amendment of section 55 of No. 12 of 2011.

(a) by deleting the marginal note and substituting therefore the following new marginal note—

“Instant penalty”

(b) in subsection (1) by deleting the words “at any port of entry or exit a departing” appearing immediately after the word “where” and substituting therefor the word “a”;

(c) by deleting subsection (2) and substituting therefor the following new subsection—

(2) Upon receipt of the said written admission of contravention, an immigration officer shall impose a penalty depending on the duration of overstay as maybe *gazetted* by the Cabinet Secretary from time to time.; and

(d) by inserting the following new subsection immediately after subsection (3)—

(3a) The Chief Justice may designate special courts to handle immigration matters.

**19.** Section 56 of the principal Act is amended by inserting the following new subsection immediately after subsection (8)—

Amendment of section 56 of No. 12 of 2011.

(8a) A foreign national shall be issued with a foreign national registration certificate upon registration.

**20.** The principal Act is amended by inserting the following new section immediately after section 58—

Insertion of new section 58A in No. 12 of 2011.

Delegation of power.

**58A.** (1) The Cabinet Secretary may, where appropriate and in writing, delegate any power or assign any duty conferred on him or her under this Act to the Director-General.

(2) A delegation or assignment under subsection (1) shall not prevent the Cabinet Secretary from exercising the power in question in person.

(3) A delegation under this Act—

(a) shall be in writing;

(b) shall be subject to any conditions the Cabinet Secretary may impose;

(c) shall not divest the Cabinet Secretary of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and

(d) may be withdrawn, and any decision made by the person so delegated may be withdrawn or amended by the Cabinet Secretary.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principal purpose of the Bill is to put in place mechanisms for the protection of the interests of Kenyans living abroad and to ensure their active participation in the socio-economic development of the country.

The collective community of Kenyans living abroad play an important role in the development agenda of the country. For instance, foreign remittances account for a substantial percentage of the Gross Domestic Product. The Bill seeks to enhance these contributions while simultaneously tapping into the skills and expertise of Kenyans living abroad.

The State is expected by the Constitution to safeguard the welfare of all Kenyan citizens be they home or away. It is on this premise that the Bill has also proposed enhanced Kenya mission services and provided a framework for the voluntary establishment of associations of Kenyans living abroad.

These two-prong approach will ensure that not only is the State aware of the challenges of its citizens abroad but also Kenyans living abroad can collectively advocate for their needs.

The Bill also make provision for—

- (a) immigration related offences;
- (b) enforcement of immigration laws;
- (c) delegation of powers and assignment of duties by Cabinet Secretary to the Director-General;
- (d) penalties and immigration offences of aiding, abetting or participating in document fraud or human trafficking;
- (e) empowerment of immigration officers to effectively enforce the Act; and
- (f) establishing of immigration courts in line with international best practices.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers, nor does it limit the fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill proposes to enhance the participation of Kenyans living abroad in the socio-economic development agenda as well as governance processes. Development and governance processes involve the delivery of services and discharge of functions by both the national and county governments.

The provisions of the Bill will have an impact on the discharge of devolved functions by county governments. The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th March, 2023.

SAMSON CHERARGEI,  
*Senator.*

*Section 2 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

## **2. Interpretation**

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

"application" means a request in a prescribed form made under this Act;

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

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

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

"carrier" includes any ship, boat, aircraft, wagon, truck, or any other vessel of conveyance;

"certificate of registration" means a certificate of registration issued under section 18;

"child" means any human being under the age of eighteen years;

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

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

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

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

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

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

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



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

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

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

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

"immigration officer" means the Director and any of the persons appointed as an immigration officer under section 16 of the Kenya Citizens and Foreign Nationals Management Service Act (No. 31 of 2011);

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

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

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

"pass" means a pass issued pursuant section 36;

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

"permit" means a permit issued under section 40;

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

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

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

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

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

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

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

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

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

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

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

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

*Section 10 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **10. Regaining citizenship**

(1) A person who was a citizen of Kenya by birth and who ceased to be a citizen of Kenya because he or she acquired the citizenship of another country may apply in the prescribed manner, to the Cabinet Secretary to regain Kenyan citizenship.

(2) The application under subsection (1) shall be accompanied by—

- (a) proof of applicant's previous Kenyan citizenship;
- (b) proof of citizenship of the other country.

(3) Upon receipt of an application made under subsection (1), the Cabinet Secretary shall cause the application to be registered and keep a record of such application.

(4) The Cabinet Secretary shall after registering an application, issue a certificate in a prescribed form to the applicant.

(5) The Cabinet Secretary may issue an extract of the register to the applicant and such further extracts to such third parties as shall be entitled upon application and payment of such fees as may be prescribed.

*Section 11 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **11. Citizenship by marriage**

A person who has been married to a citizen of Kenya for a period of at least seven years and has acquired residence status shall be entitled, on application, in the prescribed manner to be registered as a citizen of Kenya, if—

- (a) the marriage was solemnized under a system of law recognized in Kenya, whether solemnized in Kenya or outside Kenya;
- (b) the applicant has not been declared a prohibited immigrant under this Act or any other law;
- (c) the applicant has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (d) the marriage was not entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship; and
- (e) the marriage was subsisting at the time of the application.

*Section 12 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **12. Widows and widowers**

(1) A foreign national who has been married to a citizen who but for the death of the citizen would have been entitled, after a period of seven years, to be registered as a citizen of Kenya under section 11, shall be deemed to be lawfully present in Kenya for the unexpired portion of the seven years and shall be eligible for registration as a citizen on application in the prescribed manner upon expiry of the seven year period.

(2) The conditions for registration provided in section 11(a) to (d) shall apply to a widow or widower who has applied for registration under this section.

(3) A widow or widower who marries a non-citizen before the expiry of the period of seven years shall not be entitled to acquire citizenship by registration under this section.

*Section 13 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

**13. Lawful residence**

(1) A person who has attained the age of maturity and capacity who has been lawfully resident in Kenya for a continuous period of at least seven years may on application be registered as a citizen if that person—

- (a) has been ordinarily resident in Kenya for a period of seven years, immediately preceding the date of application;
- (b) has been a resident under the authority of a valid permit or has been exempted by the Cabinet Secretary, in accordance with section 34(3)(h) and who is not enjoying the privileges and immunities under the Privileges and Immunities Act (Cap. 179);
- (c) has resided in Kenya throughout the period of twelve months immediately preceding the date of the application;
- (d) has an adequate knowledge of Kenya and of the duties and rights of citizens as contained in this Act;
- (e) is able to understand and speak Kiswahili or a local dialect;
- (f) understands the nature of the application under subsection (1);
- (g) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (h) satisfies the Cabinet Secretary that he or she intends to reside in Kenya after registration;
- (i) has been determined, through an objective criteria, and the justification made, in writing, that he or she has made or is capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya; and
- (j) is not an adjudged bankrupt.

(2) The Cabinet Secretary shall not register an applicant as a citizen of Kenya under this section if at the date of making the application the applicant's country of citizenship is at war with Kenya.

(3) A child of a citizen by registration who was born before the parent acquired citizenship may on application by the parent or legal guardian be registered as a Kenya citizen upon—

- (a) production of documents conferring Kenyan citizenship to any of the parents;
- (b) production of the child's birth certificate; and
- (c) proof of lawful residence of the child in Kenya.

(4) A person who is a dependant of any biological parent or who is under the legal guardianship of a person who is a citizen of Kenya by registration shall, upon application made in the prescribed manner, be registered as a citizen upon—

- (a) production of documents conferring Kenyan citizenship to any of the parents or the legal guardian;
- (b) production of the child's or the person with disability's birth certificate; and
- (c) proof of lawful residence of the child or person with disability in Kenya.

*Section 14 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

#### **14. Adopted children**

A child who is not a citizen, but is adopted by a citizen, is entitled on application in the prescribed manner by the adopting parent or legal guardian to be registered as a citizen upon—

- (a) the production of proof of the Kenyan citizenship of the adopting parent;
- (b) the production of a valid adoption certificate issued in a reciprocating state or other jurisdiction whose orders, decrees are recognized in Kenya; and
- (c) proof of lawful residence of the child in Kenya.

*Section 25 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

#### **25. Types of passports and other travel documents**

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

- (a) Ordinary passport, issued on application to any citizen of Kenya;
- (b) Diplomatic passport, issued to such persons as may be prescribed in Regulations;
- (c) East African Passport, issued to a citizen of Kenya who intends to travel within the Partner States in East African Community;
- (d) Temporary passport, issued to any citizen of Kenya who for special circumstances cannot travel on an ordinary passport;

- (e) Emergency Travel Document, issued to a citizen of Kenya who is stranded outside Kenya or is being deported;
- (f) Certificate of Identity and Nationality, issued to a person other than a citizen of Kenya who cannot obtain a passport from the country of citizenship for the purpose of traveling outside Kenya;
- (g) Temporary Permit, issued to a citizen of Kenya who intends to travel within the East African Community Partner States or to such States as may be prescribed by the Cabinet Secretary; and
- (h) Travel Document issued subject to the provisions of the Refugee Act, 2006 (No. 13 of 2006), and any other Humanitarian Convention.

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

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

*Section 31 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **31. Confiscation or suspension of a passport or travel document**

- (1) An immigration officer or any other law enforcement officer may suspend or confiscate a passport or other travel document where—
- (a) the holder permits another person to use his passport or travel document;
  - (b) the holder has been deported or repatriated to Kenya at the expense of the Government;
  - (c) the holder is convicted for drug trafficking, money laundering, trafficking in persons and smuggling, acts of terrorism or any other international crime;
  - (d) a warrant of arrest has been issued against the holder and there is a risk of absconding;
  - (e) the holder is a person against whom there is a court order restricting movement or authorizing denial, confiscation, or suspension of the passport or travel document;
  - (f) the holder is involved in passport or document fraud, passport or document forgery or transnational crimes;

- (g) it is necessary to examine the passport or travel document for a period not exceeding seven days; and
- (h) subject to the Constitution, any other circumstances which in the opinion of the Director would be prejudicial to the interest of the State or holder of the passport.

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

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

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

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

*Section 32 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

**32. Passports and travel documents to be evidence of citizenship and domicile**

(1) A passport shall be prima-facie evidence of the citizenship or domicile of the holder, as the case may be, and of their entitlement to state protection.

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

*Section 36 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

**36. Types of permits and passes**

(1) There shall be such classes of permits and passes as shall be prescribed under the regulations.

(2) Permits shall be issued in the manner provided in section 40 of this Act.

(3) Passes shall be issued by immigration officers in such manner as shall be prescribed in Regulations.

*Section 37 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **37. Permanent residence**

The following persons, their spouses, children and dependants shall be eligible upon application in the prescribed manner for grant of permanent residence status in Kenya —

- (a) persons who were citizens by birth but have since renounced or otherwise lost their citizenship status and are precluded by the laws of the countries of their acquired domicile from holding dual citizenship;
- (b) persons who have held work permits for at least seven years and have been continuously resident in Kenya for the three years immediately preceding the making of the application;
- (c) children or dependants under any law of citizens who are born outside Kenya and have acquired citizenship of the domicile;
- (d) children of registered citizens who are born before their parents acquire citizenship;
- (e) the spouses of Kenyan citizen married for at least three years; and
- (f) widows or widowers of Kenyan citizens.

*Section 42 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **42. Permits, etc., void for fraud etc.**

Any entry permit, pass, certificate or other authority, whether issued under this Act or under the repealed Acts, which has been obtained by or was issued in consequence of fraud or misrepresentation, or the concealment or nondisclosure, whether intentional or inadvertent, of any material fact or circumstance, shall be and be deemed always to have been void and of no effect and shall be surrendered to the service for cancellation.

*Section 44 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **44. Duties and Liabilities of carriers**

(1) A person in charge of a carrier arriving from or leaving for any place outside Kenya, or the owner of or agent of the carrier, shall, furnish



to an immigration officer at the first port of entry or departure a list in duplicate, signed by himself or by some person authorized to sign it on his behalf, the names of all persons in the carrier including—

- (a) details of identity of all passengers on board the carrier classified according to their respective destinations;
- (b) a list of crew; and
- (c) such other information as the cabinet secretary may prescribe.

(2) A person in charge of a carrier about to call at any port or place outside Kenya, shall, if so required by an immigration officer, take into his custody any person in respect of which subsection (3) applies, and, on due payment, afford that person a passage to that port or place, and proper accommodation and maintenance during that passage.

(3) Where any person who is conveyed to Kenya in a carrier, is refused permission to enter Kenya on the ground that he is a prohibited immigrant or inadmissible person—

- (a) the owner of the carrier and the person in charge of the carrier which brings in a prohibited immigrant or inadmissible person shall be liable to a surcharge in the sum not exceeding Kenya shillings two hundred thousand for every such person brought into Kenya and in default of payment of the sum surcharged the carrier shall be liable to detention at the cost jointly and severally of the owner and the person in charge;
- (b) the person in charge of the carrier shall, if so required by an immigration officer, take that person into his custody and ensure that he is removed from Kenya;
- (c) the owner of the carrier and the person in charge of the carrier shall jointly and severally be liable to pay to the Government all expenses incurred by the Government in respect of the transportation, maintenance and upkeep of that person and his removal from Kenya, and the amount of such expenses shall be a civil debt recoverable summarily;
- (d) notwithstanding paragraphs (a), (b) and (c) above, any carrier knowingly bringing in passengers with forged documents, passengers without travel documents, passengers with documents issued to other people, passengers without return or onward ticket or passengers without visa shall be liable to a surcharge of Kenya shillings One Million for every passenger and in default of payment of the surcharge the carrier shall be liable to detention at own cost; or

(e) notwithstanding paragraphs (a), (b) and (c) above, any carrier bringing in passengers in transit who are improperly documented shall be surcharged Kenya Shillings one Million per passenger failure to which the carrier may be detained at their own cost.

(4) Any person who is taken into the custody of the person in charge of a carrier pursuant to this section is deemed to be in lawful custody while he is in Kenya.

(5) An immigration officer may examine the passports or travel documents of transit passengers at any entry or exit point and take action where necessary.

(6) Where in the opinion of an immigration officer it becomes necessary to examine the travel and other documents of a passenger onboard a carrier, the person in charge of the carrier shall present upon demand by a immigration officer the passenger's travel documents or details of identity presented at the last point of departure to Kenya.

(7) An immigration officer shall have powers to detain a carrier, compel a carrier to pay such surcharge or penalties for bringing inadmissible persons into Kenya and compel the carrier to remove such persons.

*Section 46 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

#### **46. Learning institutions**

(1) A learning institution and a person in charge of a learning institution providing training or instruction shall before admitting a person for purposes of training or instruction ensure that a person is not—

- (a) a foreign national who is in the country illegally;
- (b) a foreign national whose status does not authorize him or her to receive such training or instruction by such person; or
- (c) a foreign national on terms or conditions in a capacity different from those authorized in such foreign national status.

(2) Any person, being in charge of learning institution, who allows a student who is required under this Act to obtain a student's pass to attend such institution before such student is in possession of a student's pass, commits an offence.

(3) If any person referred to in subsection (1) is found undertaking or receiving training or instruction on any premises where instruction or training is provided, it shall be presumed that such person was allowed to

receive instruction or training by, the person who has control over such premises, unless contrary is proved.

(4) The provisions of this section shall not apply to persons holding refugee status residing in designate refugee camps.

*Section 48 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

#### **48. Powers of immigration Officer**

(1) Subject to and for the purposes of this Act an immigration officer shall have the power to—

- (a) board, or enter, and search any carrier or premises in Kenya;
- (b) require any person seeking to enter Kenya to answer any question or to produce any document in his possession for the purpose of ascertaining whether that person is or is not a citizen of Kenya and, in the case of any person who is not a citizen of Kenya, for the purpose of determining whether that person should be permitted to enter Kenya under this Act;
- (c) require any person seeking to enter or leave Kenya other than a refugee or any asylum seeker, to produce to him a valid passport or a valid travel document and any form of declaration that may be prescribed;
- (d) require any person seeking to enter Kenya to submit to examination by a medical practitioner; or
- (e) arrest, restrain, stop or deny departure to any person against whom a warrant of arrest has been issued by a competent Kenyan court and hand over the person for custody to the nearest police officer.

(2) An immigration officer may investigate any offence or suspected offence under this Act and shall have all the powers and immunities conferred by law on a police officer for the purpose of the investigation.

(3) An immigration or other authorized officer of the Service shall capture biometrics in the course of the discharge of the mandate of the Service.

*Section 53 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

#### **53. General offences**

(1) A person who—

- (a) knowingly misleads an immigration officer seeking information material to the exercise of any of his or her powers under this Act;
- (b) having left or been removed from Kenya in consequence of an order made or deemed to have been made under section 43, if found in Kenya while that order is still in force;
- (c) being a prohibited immigrant or inadmissible person fails to comply with an order of a immigration officer to leave Kenya;
- (d) harbors any person whom he knows or has reasonable cause to believe to be a person who has committed an offence under paragraph (g) or paragraph (h);
- (e) being an agent or a carrier facilitates or assists or enables entry or exit of improperly documented person;
- (f) not being a immigration officer or other member of staff of the Service, by words, conduct or demeanor falsely represents himself to be an immigration officer or member of staff of the Service;
- (g) exercises or attempts to exercise undue influence over an immigration officer or other member of staff of the Service which is calculated to prevent the delegated officer or other officer or member of staff from carrying out his duties or encouraging him or her to perform any act which is in conflict with his duties;
- (h) willfully obstructs or impedes a immigration officer or a police officer in the exercise of any of his powers under this Act;
- (i) refuses or neglects to answer any question, to furnish any information, to produce any document, to attend at any place or to submit to medical examination, when required to do so under this Act;
- (j) unlawfully enters or is unlawfully present in Kenya in contravention of this Act;
- (k) harbors any person whom he knows or has reasonable cause to believe to be a person who has committed an offence under this Act;
- (l) fails to comply with any term or condition imposed by a work permit, residence permit or pass, being a term or condition which he is required to comply with;
- (m) not being a citizen of Kenya, engages in any employment, occupation, trade, business or profession, whether or not for profit

or reward, without being authorized to do so by a work permit, or exempted from this provision by regulations made under this Act;

- (n) employs any person, whether or not for reward, whom he knows or has reasonable cause to believe is committing an offence under paragraph (m) by engaging in that employment;
- (o) any person who, for the purpose of procuring anything to be done or not to be done under this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular commits an offence;
- (p) smuggles or is reasonably suspected to be engaged in smuggling of human beings;
- (q) employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed;
- (r) offers accommodation without maintaining a record of all its customers who are foreign nationals in the prescribed manner, commits an offence.

(2) Any person convicted of an offence under this section shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both;

(3) Any person convicted under subsection (1)(q) is, in addition to the prescribed fine and or term of imprisonment as the case may be, liable to pay for the cost of maintenance and removal of the person he employed.

(4) For purposes of paragraph (1)(p), a person who is a victim of the offence of human smuggling may not be held liable so long as he identifies and is willing to act as a witness in the prosecution of the smuggler.

*Section 55 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

**55. Instant fine**

(1) Where at any port of entry or exit a departing foreign national is found to have overstayed in the country in contravention of this Act, the immigration officer shall have the power to bring it to the notice of that person the option to enter a written admission of contravention in the prescribed manner in relation to the offence.

(2) Upon receipt of the said written admission of contravention the immigration officer may impose a fine not exceeding fifty thousand shillings:

Provided that the provisions of this section shall not be invoked if it is proved that the foreign national has overstayed beyond the period of ten days.

(3) An immigration officer may prosecute any person who fails to immediately pay the penalty imposed in subsection (1) above for the offence of unlawful presence.

*Section 56 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

### **56. Foreign Nationals Management**

(1) The Cabinet Secretary may on advice of the Cabinet and National Security Council, at any time when a state of war exists between Kenya and any foreign power or when it appears that an occasion of imminent danger or great emergency has arisen, by order impose from time to time restrictions on foreign nationals and provision may be made by the order—

- (a) for prohibiting foreign nationals from landing in or otherwise entering Kenya either generally or at certain places and for imposing restrictions or conditions on foreign nationals landing or arriving at any port in Kenya;
- (b) for prohibiting foreign nationals from embarking in or otherwise leaving Kenya either generally or at certain places, and for imposing restrictions and conditions on foreign nationals embarking or about to embark in Kenya;
- (c) for requiring foreign nationals to reside and remain within certain places within Kenya;
- (d) for prohibiting foreign nationals from residing or remaining in any areas specified in the order;
- (e) for imposing penalties on persons who aid or abet any contravention of the order, and for imposing such obligations and restrictions on masters of ships or any other persons specified in the order as appear necessary or expedient for giving full effect to the order;
- (f) for any other matters which appear necessary or expedient with relating to the security of the country.

(2) A foreign national residing in Kenya for a continuous period exceeding three months shall be required to register with an immigration officer and notify change of address, travelling or otherwise in such manner as may be prescribed.

(3) A person who contravenes any provision or requirement of an order issued to a foreign nationals commits an offence and liable upon conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(4) The court before which a person is convicted under this section may, in addition to or in lieu of any such punishment, require that person enter into recognizance with or without sureties to comply with the provision of the order or such provision thereof as the court may direct, and if the person fails to comply with the order of the court requiring him to enter into recognizance, the court may commit that person to imprisonment for a term not exceeding three years.

(5) Any provision contained in this Act in respect of a Foreign National Order may relate to foreign nationals in general or to any class or description of foreign nationals.

(6) If any question arises in any proceedings under a foreign national order, or with reference to anything done or proposed to be done under any such order, as to whether any person is a foreign nationals or not, or is a foreign nationals of a particular class or not, the onus of proving that that person is not a foreign national, or, as the case may be, is not a foreign national of that class, shall lie upon the person contending so.

(7) The Cabinet Secretary may at any time revoke, alter, or add to any foreign nationals' order.

(8) Any powers given under this section, or in any foreign nationals' order, shall be in addition to, and not in derogation of, any powers with respect to the expulsion of foreign nationals or the prohibition of foreign nationals from entering Kenya or any other powers conferred on the Cabinet Secretary or any other service by any other written law.

*Section 58 of the Kenya Citizenship and Immigration Act that the Bill proposes to amend—*

**58. Electronic communication**

(1) Any application, enquiry or other action undertaken under this Act may, subject to the Constitution and conditions prescribed by the Cabinet Secretary be carried out by use of electronic information technology.

(2) The Cabinet Secretary may bring the provisions of this section into operation by notice in the Gazette.