

SPECIAL ISSUE

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KERICHO COUNTY ACTS, 2021

NAIROBI, 29th September, 2021

CONTENT

Act—

PAGE

The Kericho County Regularization of Unauthorized Developments Act, 2021	1
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**THE KERICHO COUNTY REGULARIZATION OF
UNAUTHORIZED DEVELOPMENTS ACT, 2021**

No. 11 of 2021

Date of Assent: 30th June, 2021

Date of commencement: See Section 1

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title and Commencement.
- 2—Interpretation.
- 3—Objectives of the Act.

PART II—THE REGULARIZATION PROCESS

- 4—Regularization.
- 5—Regularization Period.
- 6—Regularization Notices.
- 7—Unauthorized developments which shall not be regularized.
- 8—Prior actions to be recognized under this Act.
- 9—Conditional Regularization.
- 10—Amnesty.
- 11—Payment of Regularization fees.
- 12—Unauthorized developments not regularized to be demolished or revoked.
- 13—Application of certain provisions of the National Physical Planning Act.
- 14—Liability.
- 15—Consequences of Regularization.
- 16—Regularization of Unauthorized Development Register.
- 17—Appeals.
- 18—Protection of action taken in good faith.
- 19—Removal of doubt.

PART III—THE REGULARIZATION ADVISORY COMMITTEE

- 20—Establishment of the Regularization Technical Committee.
- 21—Functions of the Regularization Technical Committee.
- 22—Establishment of the Regularization Advisory Committee.
- 23—Functions of the Regularization Advisory Committee.

PART IV—MISCELLANEOUS PROVISIONS

- 24—Regulations.
- 25—Administrative and other arrangements.

PART V—ENFORCEMENT PROVISIONS

- 26—Offences and penalties under this Act.

**THE KERICHO COUNTY REGULARIZATION OF
UNAUTHORIZED DEVELOPMENTS ACT, 2021**

**AN ACT of the County Assembly of Kericho to provide for the
regularization of unauthorized developments; and for connected
purposes**

ENACTED by the County Assembly of Kericho, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Kericho County Regularization of Unauthorized Developments Act, 2021 and shall come into operation on such on such date as the County Executive Committee Member responsible for Physical and Land Use Planning, may in consultation with the Governor, appoint.

Interpretation

Cap. 286

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

“committee” means the regularization advisory committee established under section 15;

“development” has the same meaning as ascribed thereto in the Physical and Land Use Planning Act (No. 13 of 2019) and includes transactions relating to public land;

“Executive Committee Member” means the Executive Committee Member responsible for physical and land use planning;

“Executive Committee Member” has the same meaning as Executive Committee Member or his/her agents;

“owner” means a person with proprietary interest in the development in question;

“provisional order of regularization” means an order issued by the Executive Committee Member pending the permanence of certain acts by the applicant or payment of fees by such applicant;

“regularization period” means the period referred to in section 5 as may be extended from time to time;

“land transaction” means allocation of land, confirmation of lease, extension of lease, renewal of lease, change of user, extension of user, subdivision of land, amalgamation of land, consent to charge, or consent to transfer land;

“relevant law” means a written national government or Kericho County law;

“family” in relation to a person means an individual, wife or husband, as the case may be, of such individual and their unmarried minor children;

“public” means residents of an area who are directly or indirectly affected by any unauthorized development;

“revenue site” means any commercial building, residential building, industrial building, or space, used for any trade or to generate revenue by any person or persons and that is or can be issued with a business license or permit by the county government;

“Appeals Committee” means County Land Use Liaison Committee as provide for in the Physical and Land Use Planning Act (No. 13 of 2019)

“prescribed” means prescribed by rules made under this Act;

“unauthorized construction” means any construction made without obtaining a building permit, or after obtaining a building permit which is issued in violation of any law relating to town and country planning or erection of building;

“permanent structure” means any building whether of masonry, bricks, wood, mud, metal or any other materials whatsoever;

“unauthorized development” means a development carried out, without obtaining the permission of the County Executive Committee Member competent to give such permission or in contravention of the permission; and a development that is inconsistent with existing approved physical development and land use plans, or has not received the necessary approvals under the relevant National Physical Planning Act, 1996 and other relevant County and National Legislation prior to the commencement of this Act;

“Approved Development Plans” means the initial approved physical development plans for both urban land uses and rural human settlement and land adjudication plans containing access road layouts and other demarcations for public purposes;

“declared urban Area” means a city, municipality, town or market declared in accordance with the provisions of Urban Areas and Cities (Amendment) Act, 2019.

(2) Words and expressions used but not defined herein shall have the respective meanings assigned to them in the Physical Planning Act (1996), the Physical and Land Use Planning Act (No. 3 of 2019), the Urban Areas

2021 *Kericho County Regularization of Unauthorized Developments* No. 11
and Cities Act (No. 6 of 2011) or any other law relevant to Physical and
land Use Planning, unless the context requires otherwise.

Objectives of the Act

3. The objectives of this Act are to—

- (a) bring unauthorized developments under the umbrella of planning framework and to provide basic facilities and infrastructure to the residents of the concerned areas in the County;
- (b) provide for regularization of unauthorized developments commenced or completed before the date of commencement of this Act;
- (c) exclude unauthorized development made on any public land, or lands reserved for public purposes from the benefit of regularization;
- (d) provide for regularization of unauthorized developments made in conservation area declared as such under the relevant law;
- (e) provide for regularization of unauthorized developments which fall within the required setoff specified in any law governing buildings;
- (f) provide for appointment of an advisory committee for the purpose of this Act.

PART II—THE REGULARIZATION PROCESS

Regularization

4. Notwithstanding anything contained in any law, but subject to such rules as may be prescribed, any unauthorized development made in the County, except those specified in section 7, made prior to the commencement of this Act by any person on—

- (a) allotted land belonging to the National or County Government, or their ministries, departments and agencies; or
- (b) private land,

may, on the application of such person made before such date as prescribed, be regularized in accordance with the provisions of this Act.

Regularization period and reports to the County Assembly

5. (1) Developments shall be eligible for regularization under this Act from the date of commencement of this Act and shall lapse at the expiry of twelve months from such date.

(2) The County Executive Committee Member may, with the approval of the Governor, extend the regularization period.

(3) The power to extend the regularization period shall not be extended for an aggregate period of more than six months but may be exercised more than once.

(4) The County Executive Member shall within sixty days from the commencement of this Act submit the first report to the county assembly detailing the status of unauthorized developments in the County.

(5) The county executive members shall submit reports to the county assembly on a quarterly basis detailing the status of unauthorized developments in the County.

(6) The County assembly shall consider the reports submitted by the county executive member within 30 days.

(7) The county assembly, while considering the executive committee member's report in (6) above, shall conduct public participation in the relevant areas affected by such unauthorized developments being considered.

Regularization Notices

6. (1) The Executive Committee Member may serve a notice to the owner of an unauthorized development, within a period of six months from the commencement of the Act, or within such period as may be extended, requiring him or her to furnish such particulars and documents within a period of one month from the date of notice.

(2) On receiving the notice served under subsection (1), the owner shall comply and furnish the relevant particulars and documents as specified in the notice.

(3) Any owner may, on his or her own motion, within a period of six months from the commencement of this Act or within such period as may be extended, make an application to the County Executive Committee Member for regularization of an unauthorized development.

(4) Any member of the public may petition the executive committee member to serve a notice of regularization for any unauthorized development.

(5) On receipt of the reply under subsection (2) or an application under subsection (3), or a petition under subsection (4), the Executive Committee Member shall, after making an inquiry in the manner as he or she considers necessary, and is of the opinion that the development can be regularized,

issue an order requiring the owner to pay the fees for the regularization of the unauthorized development within 30 days.

(6) Where a petitioner under sub-section (4) is not satisfied with the executive committee member's response, the petitioner may submit an appeal to the liaisons committee in a prescribed format.

(7) Petitions under sub-section (4) relating to unauthorized developments under Section 7 of this Act shall not be regularized.

(8) The executive committee member shall, while considering matters under sub-section (2) and sub-section (4), invite for public comments through a publication in at least two newspapers of widest circulation.

(9) The executive committee member's determine the matters under sub-section (2) and sub-section (4) within 60 days and the decision shall be published in the *Gazette*, and in at least two newspapers of widest circulation.

(10) Any person not satisfied with the Executive Committee Member's decision in (9) above may appeal against the decision to the appeals committee.

Environmental Management and Coordination Act, 2015

7.(1) The following unauthorized developments shall not be regularized under this Act—

- (a) unauthorized developments on existing or proposed roads, including those proposed for widening, railway lines, communications and other civic facilities or public utilities;
- (b) unauthorized developments on forest land or river banks and riparian areas as defined by the Environmental Management and Coordination Act;
- (c) unauthorized developments done by any person on land belonging to another person over which the former has no title or where the title is disputed as evidenced by court proceedings;
- (d) unauthorized developments done in violation of any law other than planning law;
- (e) unauthorized development on public land or land otherwise reserved for public utility or a government body and where express permission from the authorities was not obtained;
- (f) unauthorized development on land appurtenant to any building owned by the Government or by a company owned or controlled by the Government;

- (g) unauthorized development done on land belonging to the County Government and not allotted;
 - (h) unauthorized development on any land reserved for parks, access roads, play grounds, open places or for providing any public amenities;
 - (i) unauthorized development on land under alignment of existing public roads or an internal road, of approved layout;
 - (j) unauthorized development on water courses and water bodies like tank beds, river beds, natural drainage and such other places;
 - (k) areas earmarked for the purpose of obnoxious and hazardous industrial development
 - (l) unauthorized constructions made in violation of zoning regulations existing for the time being before commencement;
 - (m) unauthorized development which is otherwise structurally unsound or which poses danger to the occupants or to the occupants of neighboring premises or members of the public generally;
 - (n) developments which despite of any approvals granted before their commencement remain inconsistent with the existing approved physical development and land use plans at the time of their commencement;
 - (o) unauthorized development relating to extension and/ or renewal of leases not in accordance with relevant laws for the time being during commencement;
 - (p) unauthorized developments relating to subdivisions of land from interests that were acquired in violation of survey and planning physical and land use planning regulations;
 - (q) unauthorized developments resulting in the amendments of initially approved layouts for access roads and where the public were not involved in the decision;
 - (r) such other unauthorized development as the Executive Committee Member may determine.
- (2) Unauthorized development may not be regularized if it is inconsistent with—
- (a) fire safety measures under the relevant law; and

- (b) building and structural integrity requirements as per the relevant regulations, building code and standard specifications for the time being in force during commencement:

Provided that, if the applicant furnishes to the Executive Committee Member, a certificate from the relevant registered fire practitioners or the registered structural engineer authorized by it certifying compliance of provisions of clause (a) or (b), as the case may be, unauthorized development may be regularized.

- (3) (a) The Executive Committee Member may regularize any authorized development in respect of the following matters, namely—
 - (i) Margins and setbacks;
 - (ii) Floor Space Index (F.S.I.);
 - (iii) Covered projection;
 - (iv) Change of use excluding for areas designated for public utilities;
 - (v) A common plot and a consolidated open plot;
 - (vi) Height of a building;
 - (vii) Parking deficiency:

Provided that, the Executive Committee Member shall not regularize unauthorized developments having Floor Space Index (F.S.I.) exceeding those provided by regulations, building code and standard specifications for the time being in force before commencement; and projections beyond plot boundary and the change of use which in the opinion of the Executive Committee Member is generally with the surrounding land uses, or may cause danger to health or lead to hazard.

- (b) The Executive Committee Member may regularize any unauthorized Development, in so far as sanitary facilities are concerned, on providing necessary sanitary facilities by the applicant, as may be directed by the Executive Committee Member.

(4) The Executive Committee Member may regularize any unauthorized development relating to public land undertaken before the commencement of this Act if such developments are consistent with the relevant laws for the time in force before their commencement, if—

- (a) the land allocation was in accordance with the provisions of the relevant existing laws, regulations and procedures before their commencement;
 - (b) the land was available for allocation in accordance with the approved physical and land use plans;
 - (c) if the registered owner's details and land particulars are consistent with the official records of the relevant defunct local authority.
- (5) Notwithstanding anything contained in clause (b) of sub-section (3), the Executive Committee Member may, for the purpose of regularization, direct making of provisions in the unauthorized development as follows, namely—

- (a) in the case of building with 100 per cent built-up area with no space for water storage tank and installation of fire pumps and no provision of alternate means of escape or no provision for fixed fire fighting installations, the Executive Committee Member may, in consultation with the relevant government fire officer, direct the person to provide such fire safety measures as may be specified in the direction within a period of three months from the date of such direction;
 - (b) in the case of building where no space is available within the complex in which they are situated for the construction of underground water storage tank and installation of fire pumps but adequate means of escapes are available, the Executive Committee Member may direct the person to provide common water storage tank and fire pumps in such complex at suitable location within a period of three months from the date of direction;
 - (c) in the case of high rise building having height of fifteen meters or exceeding fifteen meters, the Executive Committee Member may permit a person to install diesel generating set instead of electric supply to the main fire pump within a period of three months.
- (6) No person shall be eligible to seek regularization of more than one unauthorized construction either in his name or in the name of any member of his family.

Prior actions to be recognized under this Act

8. All things done, or omitted to be done, and all actions taken, or not taken, with respect to obtaining approval for development during the period before the commencement of this Act shall, in so far as they are in conformity with, and regularized in accordance with the provisions of this Act be deemed to have been done, or omitted to be done, or taken, or not

taken, under the provisions of this Act as if such provisions were in force at the time such things were done or omitted to be done and action taken, or not taken, during that period.

Conditional regularization

9. The Executive Committee Member may regularize a development subject to such conditions as he or she may impose, and a certificate of regularization shall not issue unless such conditions are met by the owner and within such timelines as the Executive Committee Member may determine.

Amnesty

10. (1) All notices issued by the County Government for initiating action against unauthorized development in respect of such development shall be deemed to have been suspended and no punitive action shall be taken till the expiry of the regularization period, if the development in question—

- (a) commenced prior to the commencement of this Act;
- (b) conforms to the safety standards as in force under any written law or such other safety requirements as may be notified by the County Government; and
- (c) complies with the directions with respect to safety, if any, issued by the County Government.

(2) This section shall not apply to developments mentioned in section 7.

Payment of regularization fees

11. Within two months from the date of receipt of a provisional order of regularization, the person in whose favor such order is made shall pay such amount, being regularization fees, as may be prescribed.

Unauthorized developments not regularized to be demolished or revoked

12. (1) Every unauthorized development which is not regularized under this Act after the expiry of the regularization period shall be liable for demolition, and the supply of water or electricity shall be liable to be disconnected without notice and the occupants therein shall be liable to be evicted summarily.

(2) Every unauthorized developments relating to extensions and renewal of leases, changes and extensions of user, subdivision of land where the initial registered interest were obtained in violation of any law shall be cancelled or revoked as the case may be.

(3) At the expiry of twelve months from the effective date, unauthorized developments not regularized in accordance with this Act shall not be licensed as revenue sites by the County Government.

Application of certain provisions of the national Physical Planning Act

13. The provisions of the National Physical Planning Act, 1996 relating to a matter of procedure or the manner of objections shall with the necessary modifications apply to the regularization process under this Act.

Liability

14. (1) An owner undertaking any alteration, modification or addition in an unauthorized development so as to get the unauthorized development regularized shall continue to be wholly and solely liable for any injury or damage or loss whatsoever that may be caused to any one in or around the area during the carrying out of such work, and no liability whatsoever in this regard shall lie on the County Government.

(2) Regularization of unauthorized development shall not in any way mean the acceptance of any statement, documents, structural report, design or drawings and shall not discharge the owner, engineer, architect or the structural designer from the responsibilities imposed upon such owner engineer, architect or the structural designer under the relevant law.

Consequences of Regularization

15. (1) Notwithstanding anything contained in any other law for the time being in force, the unauthorized development on being regularized, shall be deemed to have been exempted from all other physical development and land use planning regulations relating to unauthorized developments; and the government land under encroachment shall be deemed to have been transferred in favor of encroachers, subject to the payment of price of land, as may be determined by valuation, and stand converted to non-agricultural use, and the provisions of relevant Physical and Land Use Plan, shall so far such development is concerned, stand modified or relaxed to the extent of regularization.

(2) On such regularization of unauthorized development under section 3, all court cases or other proceedings, filed by the County Government of Kericho and pending in any court in so far as they relate to such unauthorized development, shall abate.

Regularization of Unauthorized Development Register

16. (1) The County Executive Committee Member shall maintain a register of documents submitted by applicants for regularization and shall issue a submission certificate to every applicant who submits such documents.

(2) The County Executive Committee Member shall maintain a register of applications for regularization and shall enter the details of each petition or application for regularization, whether or not permission was granted to that applicant or petitioner and the details of the unauthorized development for which application or petition has been submitted for.

(3) A register maintained by the county executive committee member under this Act shall be open to the public for scrutiny.

(4) The County executive member shall, within 90 days of the enactment of this Act, publish guidelines for public access to that register.

Appeals

17. (1) Any person aggrieved by the order or decision of the Executive Committee Member under clause of sub-section (4) of section 3 may, within thirty days from the date of the receipt of the order, prefer an appeal to the Appeals Committee:

Provided that, the Appeals Committee may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appeals Committee may, after giving the appellant an opportunity of being heard, pass an order confirming, modifying or cancelling the order appealed against.

(3) The decision of the Appeals Committee shall be final.

(4) No appeal under this section shall be entertained by the Appeals Committee unless it is accompanied by proof of payments for appeal fees as provide for in the relevant Finance Act.

(5) The Appellate Committee members shall receive from the County Government such allowances as may be determined by the County Executive with the approval of the County assembly, and with the advice of Salaries and Remuneration Commission.

Protection of action taken in good faith

18. (1) No suit, prosecution or other legal proceedings shall lie against any officer or county executive committee member for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceedings shall lie against the County Government or any officer or county executive committee member for any damage caused or likely to be caused by anything which is in good faith

done or intended to be done in pursuance of this Act or any rules made thereunder.

Removal of Doubt

19. For the removal of doubt, it is hereby declared that regularization of unauthorized development under this Act shall be without prejudice to any civil or the criminal liability to which a person may be subject to under any other law for the time being in force.

PART III—REGULARIZATION COMMITTEES

Establishment of the Regularization Technical Committee

20. (1) There is established the Regularization Technical Committee.

(2) The committee shall have to be in existence for two years.

(3) The committee shall consist of the following members appointed by the County Executive Member from amongst the county government public officers—

- (a) a registered physical Planner (*Chairperson*);
- (b) a surveyor;
- (c) a Geographical Information Systems expert;
- (d) Sub- County Administrator;
- (e) Municipal Manager;
- (f) a member from the department responsible for roads;
- (g) a member from the department responsible for environment;
- (h) a member representing the governor's office;
- (i) Officer in charge of enforcement in the county;
- (j) Officer-in-charge of administration in the department of lands, housing and physical planning who will provide secretariat services.

(4) Members appointed into this committee shall serve for a one year renewable term.

Functions of the Regularization Technical Committee

21. (1) The Regularization Technical Committee shall be responsible for—

- (a) reviewing of the existing developments against approved physical and land use plans to identify unauthorized developments;

- (b) preparing and submitting reports for (a) above to the county executive member for consideration;
- (c) preparing and submitting reports to the county executive member on a quarterly basis detailing the status of unauthorized developments in the county;
- (d) receiving information or complaints from the county residents and other persons relating to unauthorized developments in the county;
- (e) conducting hearings for complaints or disputes relating to unauthorized developments and recommending solutions to the county executive member from time to time.

(2) The Chief Officer responsible for Physical and land-use planning shall provide such information, to the advisory committee as the committee may require on all aspects of the regularization process under this Act including information on the pending applications for regularization.

Establishment of the Regularization Advisory Committee

22. (1) There is established the Regularization Advisory Committee.

(2) The committee shall consist of the following members appointed by the Governor—

- (a) an advocate of the High Court of Kenya (*Chairperson*);
- (b) a registered Physical Planner nominated by Kenya Institute of Planners
- (c) an Urban Planning Expert nominated by the Kenya Institute of Planners;
- (d) a surveyor nominated by the Institution of Surveying of Kenya;
- (e) an Environmental Expert;
- (f) an Engineer nominated by the Institute of Engineers of Kenya;
- (g) an Architect nominated by the Architectural Association of Kenya;
- (h) the County Secretary, or his/her representative;
- (i) the County Attorney of the County Government;
- (j) the Chief Officer of the County Government responsible for Economic Planning;
- (k) the Chief Officer of the County Government responsible for Land Use Planning;

- (l) the County Commissioner or his/her representative;
- (m) a representative of the National Construction Authority;
- (n) a representative of the National Lands commission;
- (o) a representative of the business community in the county.

Functions of the Regularization Advisory Committee

23. (1) The committee shall be responsible for—

- (a) advising the County Government generally on the regularization exercise, providing and facilitating the necessary stakeholder involvement in the regularization exercise;
- (b) advising the County Government on the human and other resource requirements for the regularization program;
- (c) undertaking stakeholder mobilization for the regularization exercise;
- (d) overseeing the regularization exercise and recommending such measures as may be necessary to ensure its fair, equitable and efficient implementation.

(2) The County Executive Member and any officer deputed in that behalf shall provide such information, to the advisory committee as the committee may require on all aspects of the regularization process under this Act including information on the pending applications for regularization.

PART IV—MISCELLANEOUS PROVISIONS

Regulations

24. (1) The Executive Committee Member shall make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) the procedure of applications for regularization and the processing of such applications;
- (b) the requirements with respect to documentation that may be required with the applications and other processes in the regularization process;
- (c) the forms to be used and the manner of communication in the regularization exercise;

- (d) action to be undertaken to make provision for expansion of access roads, disposal of solid and other waste, creation of space for amenities;
- (e) the manner of public participation in the regularization exercise;
- (f) the receipt and dealing with objections by interested parties taking into account the relevant provisions of the national Physical Planning Act and any other relevant written law.

Administrative and other arrangements

25. The Executive Committee Member shall put in place the measures necessary to effect this Act including the establishment of the necessary administrative arrangements for that purpose.

PART V—ENFORCEMENT PROVISIONS

Offences and penalties

26. A person commits an offence if that person —

- (a) after the expiry of regularization period, continues to use or causes to be used any authorized development either as revenue site or for private purposes;
- (b) being a public officer, issues a trading license or causes to be issued with a trading license to any business operating in an unauthorized development;
- (c) being a public officer, grants regularization permission or comments on an application for regularization contrary to this Act or any other law;
- (d) being a public or government officer, fails to publish the regularization of unauthorized developments register or knowingly and willfully omits from the register petitions or applications submitted in relation to unauthorized developments;
- (e) provides falsified information relating to any unauthorized development for the purposes of regularization under this Act;
- (f) obstructs the undertaking of any process relating to the regularization of unauthorized developments under this Act.

(2) A person who commits an offence under this section is liable, on conviction to a fine of not less than one million shillings or to imprisonment for a term of not less than five years or to both.

SCHEDULE

(s.6)

**FORM OF PETITION FOR REGULARIZATION OF
UNAUTHORIZED DEVELOPMENT**

Petition to the County Executive Committee Member responsible for Land Use Planning

I/We, the undersigned

(Here identify in general terms, who the petitioner or petitioners are, for example, residents of Kericho County orWard/Town/Estate/Village, workers of.....)

DRAW attention of the County Executive Committee Member to the following—

(Here, briefly state reasons underlying the request for the intervention of the County Executive Committee Member by outlining the grievances or problems and by summarizing facts including land registration details, map sheet numbers and references to approved physical development and land use plans which the petitioner or petitioners wish the County Executive Committee Member to consider).

THAT

(Here confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body).

WHEREFORE your humble petitioner(s) pray that the County Executive Committee Member—

(Here set out the prayer by stating in summary what action the petitioner(s) wish the County Executive Committee member to take or refrain from).

And your PETITIONER(S) will ever pray.

Name of Petitioner(s)

.....

P. O. Box..... Town..... Postal Code.....

National Identification Number Phone No.....

Signature/ Thumb Impression.....

****This form may contain such variations as the circumstances of each case may require.**