

May 23 , 2008
Contacts: Maureen Lynch
and Katherine Southwick

KENYA: NATIONAL REGISTRATION PROCESS LEAVES MINORITIES ON THE EDGE OF STATELESSNESS

The ethnic divides that Kenya's election crisis brought to light overshadow another longstanding form of marginalization: obstacles to citizenship faced by minority groups such as the Nubians, Kenyan Somalis, and coastal Arabs in the national identification (ID) card registration process. Security concerns and a view that some of these groups are not "indigenous" force individuals to endure arbitrary, even discriminatory scrutiny, and unnecessarily long delays.

In Kenya, a national ID is the hallmark of citizenship. Individuals denied national IDs are reduced to second class status or de facto statelessness. While Nubians have experienced some progress in their situation, more must be done for this group and others living on the edge of statelessness.

Domestic Legal Framework for Recognition of Citizenship

Under Kenya's Registration of Persons Act, citizens 18 or over must register with the National Registration Bureau and obtain a national ID. Failure to do so is a crime. The Kenyan National Human Rights Commission describes national identification as being "at the core in determining the extent to which an individual enjoys ... rights and freedoms." ID cards are required to register to vote, obtain a passport, purchase property, open a bank account, conduct business, seek employment, access higher education, enter government buildings, and get married. A Nubian elder explained, "National ID is a matter of survival. Without it, you are a non-entity. You don't exist."

The registration process relies on the Constitution of Kenya and the Kenya Citizenship Act, which provide that citizenship can be obtained through birth, descent, registration, or naturalization. The latter three methods generally apply to persons born outside Kenya. The registration process requires proof of age, usually shown by a birth certificate, and proof of citizenship. This second requirement creates the most obstacles for certain minorities. Typically, individuals obtaining citizenship by birth only need to demonstrate one parent is a Kenyan citizen, usually by presenting a parent's national ID. However, for Nubians, Kenyan Somalis, and coastal Arabs, the standard is higher and more arbitrary in practice. Registration

Policy Recommendations

1. Kenya's National Registration Bureau adopt a clear, uniformly applicable and appealable registration process, giving full consideration to the Kenyan National Human Rights Commission's recommendations to abolish vetting on the basis of ethnicity and eliminate corruption.
2. The government of Kenya modify the statutory framework governing citizenship to ensure women, children, and all minority groups have equal access to citizenship.
3. As part of constitutional reform and national reconciliation processes, Kenya shift from a paradigm of 42 "official" ethnic groups to a more fully inclusive approach to identity.
4. UNHCR act through monitoring and education to encourage Kenya's efforts to eliminate discriminatory practices, find durable solutions for refugees, and prevent statelessness.
5. Kenya become party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

officials have broad discretion under Section 8 of the Registration Act, which permits officers to require an applicant to produce additional evidence “as it is within the power of that person to furnish.” Under Section 5, the Principle Registrar may demand proof of “other particulars as may be prescribed.”

In addition, Kenyan citizenship law does not fully protect women, children, and refugees. Women cannot pass nationality to their children. Children of unknown origin or who might otherwise be stateless, including some orphans and street children, are not automatically granted Kenyan nationality. Refugees cannot naturalize, increasing the risk of statelessness over time.

Discrimination in Access to Proof of Citizenship

The registration process discriminates against groups with historical or ethnic ties to other countries. Security concerns have also created obstacles to citizenship.

Nubians. Originating in Sudan, Nubians came to Kenya in the 19th century as conscripts of the British colonial army and now number close to 100,000. Although Nubians have resided in Kenya for over a century, they are not one of 42 officially recognized ethnic groups. Applicants previously had to demonstrate that a grandparent was born in or had become a citizen of Kenya. Nubian applications are routinely subjected to scrutiny by a “vetting committee,” comprised of security and immigration officials, as well as community elders who can presumably vouch for an applicant’s identity. Use of vetting committees presumes applicants are non-citizens until proven otherwise.

Somalis. Traditionally, Somalis live in pastoralist communities throughout the region. Due to decades of waxing and waning Somali separatism, and the fact that Kenya hosts thousands of refugees from Somalia, the government imposes strict registration processes on Kenyan Somalis. The process is reportedly inconsistent and burdened with suspicion, harassment, and corruption. Applicants must appear before vetting committees, the outcome of which one person described as “random, pure luck.” Individuals are sometimes required to register in their “home” districts, places not easily accessible, with which a person may have no practical connection. They may be asked to show a pink card from a screening process that occurred in the late 1980s, but that did not cover all Kenyan Somalis. Individuals have obtained national ID through bribery. One person said, “As long as I have cash in my pocket, that’s my ID.” Appeals have been reportedly met with police harassment or threats of detention.

Members of the Galjeel community, a Somali sub-clan of about 3,000 in Tana River region, report being stripped of citizenship and forced to pay bribes as high as USD\$165 to obtain ID. Others have changed their identities to expedite registration, declaring they are from a different ethnic group or naming another individual as a parent. The registration office is three hours away by foot. One man commented,

“We are a forgotten people. The only way to exist is through other tribes.” The Galjeel now face forced eviction by multinational corporations with no plan for where the community can reside.

Coastal Arabs. Similar levels of scrutiny were reported among the coastal Arab community, which has long existed on the Kenyan coast and contributed to the development of Kiswahili language and culture. They are subject to vetting committees and report being arbitrarily denied ID cards. Officials have purportedly required title deeds and grandparents’ birth certificates, and a perception persists that registrants with Muslim names face longer delays than those without. Discrimination in the registration process is perceived to be part of a larger pattern of suspicion and marginalization following 9/11, prompting one man to observe “the majority of coastals do not feel that they are part of Kenya.”

Signs of Progress

There is evidence that discriminatory registration procedures are waning, at least with respect to Nubians. In 2003, the Nubian community filed a complaint in the Kenya High Court, seeking recognition as Kenyan citizens. When the Court failed to appoint a judicial panel, Nubians brought an action to the regional African Commission on Human and Peoples’ Rights in 2006. Neither case has reached resolution, but Nubian leaders attribute recent administrative changes to these efforts. Nubians must still submit to vetting committees, but report being able to obtain IDs with relative ease. These improvements are commendable, but only legal precedent in conjunction with statutory and administrative changes will provide permanent protection.

National institutions are taking steps to streamline the registration process, construing national identification as a right rather than a privilege. The National Registration Bureau issued a nationwide directive in 2006 to desist requests for grandparents’ documentation, though it is suggested that the directive has been implemented in an ad hoc manner. In 2007, the Kenya National Human Rights Commission published an in-depth report on national ID card issuance, with recommendations for legal and administrative change. Preliminary proposals have been circulating for the creation of a centralized database of birth registration information to help limit the practice of discriminatory identification procedures in adulthood.

Constitutional reform has become more salient in the wake of the 2007 election. Reassessing the relationship between central government and the provinces presents an opportunity to redefine identity and cultural belonging in Kenya. Officials must now consider new legislation to enhance citizenship rights of minority groups, women, children, and refugees.

Senior Advocate for Statelessness Maureen Lynch and Bernstein Fellow Katherine Southwick assessed access to citizenship issues in Kenya in April 2008.