

UNHCR and the Kenya Human Rights Commission Kenya Dialogue on Gender Equality, Nationality and Statelessness

Overview

Discrimination against women in nationality laws is a major cause of statelessness. Fortunately, it is also a problem that is in decline around the world. Kenya is one of 12 countries that have reformed their laws since 2003 to allow women to confer nationality to their children on the same basis as men.

On 2 December 2014, UNCHR and the Kenya Human Rights Commission held a dialogue with Kenyan women and their families. The purpose of this discussion was to understand how and to what extent Kenyan women are benefitting from provisions in the 2010 Kenyan Constitution and the 2011 Kenyan Citizenship and Immigration Act, which provide for gender equality in the ability of women and men to confer their nationality to their children and spouses.

The aim of the dialogue was to record the testimonies of participating women; identify any obstacles that stood in the way of the effective implementation of gender equal provisions in the 2010 Constitution and the 2011 Citizenship Act; translate the key challenges and viable solutions into recommendations for improving the effectiveness of nationality legislation; and to record and promote good practice examples.

Background: Gender equality, nationality and statelessness in Kenya

Under the 1969 Kenyan Constitution (amended in 1985), Kenyan women and men could confer Kenyan nationality to their children born in Kenya on an equal basis. However, only Kenyan fathers could confer nationality on children born abroad. This meant that Kenyan women who had children overseas with non-Kenyan men would not be able to pass on Kenyan nationality to their children. If these children were unable to acquire another nationality because their fathers were unable or unwilling to take steps necessary to confer their foreign nationality, or where their fathers were stateless or unknown, the children would be left stateless.

The new Kenyan Constitution which came into force in 2010 addressed this problem by replacing the previous provision which discriminated against women with the following:

“A person is a citizen by birth if on the day of the person’s birth, whether or not the person is born in Kenya, either the mother or the father of the person is a citizen.”

The 2010 Kenyan Constitution applies this provision with retroactive effect so that children born to Kenyan mothers abroad before the new Constitution came into force are also to be considered Kenyan nationals. However, the Kenya Citizenship and Immigration Act of 2011, places a limitation which only permits Kenyan mothers or fathers whose children are born abroad to confer their nationality to their children as long as they themselves are Kenyan citizens by birth.

Under the previous Constitution, only Kenyan men were permitted to pass on their nationality to their non-national spouses. Constitutional and legislative reforms in 2010 and 2011 addressed this discrimination by giving Kenyan women the right to confer their nationality to their Kenyan spouses.

Dialogue with Kenyan women and their families

During the dialogue, four Kenyan women spoke about their experiences of conferring or acquiring Kenyan nationality. Their testimonies are included in the Annex to this report. To protect their identities, the names of all the women have been changed.

Three of the women were married to stateless men from the Makonde community, which is mainly located on Kenya's southern coast. Originating in Northern Mozambique, the vast majority of the population living in Kenya arrived prior to Kenyan independence and several generations have since been born in the country. In order to acquire proof of Kenyan nationality, members of the Makonde community often have to undergo an identity verification process known as vetting, which requires an individual to prove her or his connection to Kenya upon reaching the age of 18.

The women participating in the dialogue explained the difficulties faced by their Makonde spouses in acquiring Kenyan national identity cards, which are the only valid proof of nationality for adult Kenyan citizens. While the inability of these men to acquire Kenyan nationality or proof of such nationality was clearly related to the discrimination they faced on account of their belonging to the Makonde community, it was also clear that the right of their wives to confer Kenyan nationality to them was not being recognised nor were resulting procedures for conferral of nationality being correctly followed.

The fourth woman recounted her experience of acquiring Kenyan nationality from her Kenyan mother, once the 2010 and 2011 legislative reforms had been passed. Her experience revealed that while the reforms have been a very positive development, problems with the effective implementation of the new laws persist.

The following common themes and findings emerged from the dialogue discussion:

- The negative impacts of women not being able to confer their nationality to their stateless husbands affected the entire family. The most commonly raised impacts included:
 - poverty, resulting from lost employment opportunities;
 - limited access to healthcare, education and legal redress;
 - risk-taking and illegal behaviour to acquire Kenyan national identity documents, which also implicated members of the wider family and community;
 - stress and tension in the family, sometimes resulting in emotional and physical violence;
 - ostracisation by Kenyan society more broadly; and
 - fear for the future, particularly whether children when they become adults will be able to acquire proof of, and benefit from, Kenyan nationality.
- All the women had taken significant steps to obtain proof of nationality, either for themselves, their children or their spouses, including by making repeated application attempts and travelling long distances to seek audiences with decision-makers. All went to great efforts to ameliorate the impacts of not being able to confer their nationality (e.g. by working voluntarily at their children's school to allow them to attend).

- Most of the women were not aware that under Kenyan law, women and men have equal rights to confer their nationality to their children and spouses. Upon being made aware of the law, most doubted that it would be correctly applied.
- Even though most of the women were not aware of their *legal* rights, they all had a sense that as Kenyan citizens, they ought to be entitled to pass their nationality to their children and husbands.
- From their experiences, most women also felt that decision-makers generally had a low level of knowledge about the fact that the nationality law was gender equal. They also noted that the prevailing view in their communities, and in society in general, was that Kenyan nationality could only be acquired through paternal descent.

The dialogue participants made the following conclusions and identified the following areas for further work to improve the effectiveness of the nationality law:

- It is very positive that Kenya has achieved full gender equality in its nationality law, however gaps remain in the effective implementation of the law.
- Women, and the general public, need to be made aware that men and women have an equal right under the law to confer their nationality to their children and spouses. Civil society organisations, and women's rights groups and community leaders should play an active role in explaining this important aspect of the law to Kenyan women and other members of the public.
- Decision-makers, especially at the local level and members of nationality vetting committees, also need to be made aware that Kenyan nationality legislation is gender equal, and need to be trained so that they can correctly implement the law.

Annex Testimonies

Akeyo

Akeyo was born in Kenya to the Kamba tribe. When she was 26 years old she was able to acquire a Kenyan National Identity Card by submitting a copy of her grandfather's national identity card as proof of her entitlement to Kenyan nationality.

In 1990, Akeyo married Hélder, a member of the Makonde community. Together they have five children, aged 29, 28, 19, 14 and 13 years. Although Akeyo remembers that citizenship-related documents were not of great importance when she was growing up, they are of great value in the present day.

Akeyo has tried to help her two oldest children acquire a Kenyan national identity card, which is the only valid proof of Kenyan citizenship for adults and necessary to enjoy rights and benefits related to citizenship. However, when she applied, the Registrar refused to issue them with IDs, telling her: "their father is a Makonde man so he cannot have Kenyan nationality. The children therefore cannot have Kenyan nationality either." At this time, Akeyo did not know that as a Kenyan national, she was permitted to pass on her nationality to her children, irrespective of the nationality status of her husband.

Out of desperation, Akeyo again decided to reapply for Kenyan national identity cards for her children without including her husband's name on the application form. When she went to submit the form, she was asked for her husband's name and the name of his tribe. On this occasion, even though she gave her husband's real name and noted that he was from the Makonde community, she was nevertheless issued with national identity cards for her two oldest children without any further questions being asked.

Recently, Akeyo has also been successful in acquiring birth certificates for her three youngest children, after the district area commissioner announced an initiative for the issuance of such certificates in the community. Even Hélder has recently been able to acquire a birth certificate.

However, Akeyo is saddened by the fact that she is still unable to confer her Kenyan nationality to her husband of over 20 years. She says: "Because my husband cannot get a Kenyan national ID he can only take the worst, most lowly paid jobs. He is hardworking and intelligent, but all of this goes down the drain because he doesn't have the papers he needs to get a good job. It is left to me to find work to feed all the mouths in my family."

Akeyo remembers how Hélder lost land when his first wife died and her relatives took over their property, knowing that he lacked the nationality status to be a property owner. She recalls "the hardship we have faced and continue to face. We cannot succeed in life because my husband cannot get my nationality." Crying, she confesses that "all of this puts a huge pressure on our marriage - sometimes there is a lot of anger and my husband even acts violently towards us because he is just so frustrated."

Akeyo firmly believes that many of their problems would be solved if Hélder was able to acquire Kenyan citizenship. It would help them live on more equal terms and benefit from physical, social and economic security.

Makena

Makena is from the Mijikenda community. She is a Kenyan citizen by birth and received her national identity card when she was 21 years old without any problems.

Makena got married to Dinis, a man from the Makonde community, in 1995 in a church ceremony and was issued with a marriage certificate. They have since had 5 children together. It was only after they married that Makena realised the full extent of the disadvantage that her husband faced as a result of being stateless and lacking citizenship documents. She says: “After I talked to my relatives and they told me how difficult it would be for me to pass on Kenyan nationality to Dinis, we decided to submit an application for a Kenyan national identity card for him by falsely saying that Dinis was my younger brother. We went as far as submitting the application with a photograph and having Dinis’ fingerprints recorded. But when he faced the vetting committee, someone there recognised him as being a Makonde and his application was thrown out on the spot.”

Makena feels very bitter about the way in which her husband has been treated. As she explains: “My husband was lucky to have been allocated a stall to sell his handicrafts at one of the big hotels on the coast, but he was later evicted for not having proof of any nationality. I tried to register the stall in my name but they told me that I couldn’t because I was a woman.” Dinis also entered into a partnership to sell plastic containers, but after the goods were sent to him he was unable to access the shipping documents because he did not have the identity documents to prove that he was a national. This resulted in him being dropped from the partnership. Dinis has even been imprisoned for two months for not holding any proof of nationality.

Makena was not aware of the fact that in Kenya, women and men have equal rights to pass their nationality to their children and spouses. Upon being informed of this fact, Makena said that “these laws are like the aroma of good food to a starving person – completely out of reach”. She feels that the denial of her right to pass her nationality to Dinis has resulted in them living in poverty when they could be living a decent life. For example, Makena says that “when Government officials give out food relief, they demand to see proof of nationality from the head of the household. As Dinis is considered to be the head of the family we are often left hungry.”

Makena feels that she cannot enjoy the benefits of the law until officials at the local level and members of the vetting committee are trained on how to implement it. She says: “We live the life of the blind, because without a national identity document for my husband, we can have no vision for the future.”

Aisha

Aisha is a Kenyan citizen from Mombasa. She has six children aged between 4 and 26 years of age. Her first three children are from her first marriage with a Kenyan man and the second three from her current marriage to Thomas, a man from the Makonde community. They have been married for 16 years.

Aisha's first husband was a Kenyan citizen and her eldest three children, all adults, have proof that they are Kenyan citizens. Her second husband was born in Kenya but his parents came to the country from Tanzania more than 60 years ago, before independence. According to Aisha, "my husband should also be considered a Kenyan citizen because he was born in Kenya, his whole family lives in Kenya and he is married to a Kenyan woman."

In 2010, Aisha delivered her youngest child in hospital and was issued with a hospital birth notification, as had been the case for her fourth and fifth children. However, in order to get birth certificates for them, she was required to present the Kenyan national identity cards of both parents. Because Thomas is from the Makonde community and unable to get a Kenyan national identity card, they could not meet this requirement and their children remained uncertified. After that, Aisha posed as a single mother in order to get birth certificates for her three youngest children.

In 2012, Aisha tried to get a Kenyan ID for Thomas. Knowing the difficulties they would face because he was a Makonde, they agreed that Aisha's mother, who holds a Kenyan identity card, would pose as Thomas' mother so that the officials would believe that he was entitled to Kenyan citizenship. Even though they paid a bribe, Thomas only received a waiting slip. When Aisha went to collect the ID, the registrars shouted abuse and said that they would never issue a Kenyan national ID to a Makonde man.

Aisha says: "Without a Kenyan national ID, Thomas is exploited. He is a wood sculptor, but he cannot set up a good business without proof of his nationality. When customers place large orders for sculptures and then don't pay, the law is never there to help because he is seen as an outsider." Without a reliable income from her husband, the family suffers. They do not have enough money to go to the doctor and rely on traditional remedies, which only work some of the time. Aisha volunteers as a cleaner at her children's school so that they can have an education.

Aisha says "even if officials do not agree that my husband is Kenyan because he was born in the country, as his wife of more than 15 years I should have the right to pass my nationality to him." But Aisha says that they are poor and uneducated and don't know where they can turn for help. She says: "At least my children are still young – they do not yet have to face the real consequences of life without Kenyan nationality."

Penelope

Penelope is a middle-class Kenyan woman living in Nairobi where she works as a free-lance filmmaker. Her mother is Kenyan and her father is German. She was born in Germany in 1985 and became a German citizen because at the time, the Kenyan Constitution did not permit a Kenyan woman who gave birth overseas to confer nationality to that child.

In 1988, Penelope's family moved back to live in Kenya. She completed her early schooling years in the country and then went on to study in France, Holland and South Africa for her high school and tertiary education. While living in Capetown in 2005, Penelope felt the importance of her Kenyan and African identities and in 2010 made the decision to move back to live in Kenya.

Although Penelope identified with being Kenyan, at the time she did not hold Kenyan nationality, nor did she have any way to acquire it. Because she was a 'foreigner' working as an independent filmmaker in the country, she struggled to obtain and renew her work permits, which were the only way that she could stay and work.

In 2009, Penelope became aware that forthcoming Constitutional change in Kenya would finally mean that she would be able to acquire Kenyan nationality through her mother. She says: "I and many of my friends who were also born overseas with Kenyan mothers were very excited about this development and we wanted to take advantage of it. I wanted more freedom, more independence. Given that I had made a decision to live in Kenya, getting Kenyan citizenship would put an end to dealing with bureaucracies to get my work permit renewed. It would make it easier to buy property, to be seen as part of the community."

In 2010, when Kenya passed its new Constitution, by law Penelope became a Kenyan citizen. This is because the Constitution now permitted Kenyan mothers who had given birth to children overseas to pass on their nationality to these children. This provision was also passed with retroactive effect. Penelope also needed to get a Kenyan national identity card to prove her new citizenship.

However, the process of obtaining a Kenyan ID proved to be extremely difficult for Penelope. This is despite the fact that she was from a wealthy and well-connected family. Penelope says that the entire process of acquiring the Kenyan national identity card took 7 months and she had to "buy a lot of sodas" (pay bribes) along the way. She remembers that "the thing that shocked me the most was that only three out of ten officials whom I met during the process were even aware that this law reform had taken place and that I was permitted to get Kenyan nationality from my mother. In fact the most commonly held view was that Kenyan nationality could only be acquired if your father was a Kenyan."

Penelope said that the process of obtaining proof of Kenyan nationality was also quite intimidating and she and her mother faced a lot of discrimination along the way. She says that if she and her mother had not been well-educated and aware of their rights, they might easily have given up. Penelope has now held a Kenyan national identity card for 4 years and says that it has been very important for her professionally and personally. However, she still feels very emotional when she thinks about the stress and struggle she went through to realize her right to Kenyan citizenship.