

## Nationality and discrimination: The case of Kenyan Nubians

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Relocated by force by the British Colonial Administration from the Nuba Mountains in Sudan, Nubians first arrived in Kenya in the late 19<sup>th</sup> Century. Today, despite having lived in Kenya for generations, they are still viewed as foreigners. At independence in 1963, few obtained Kenyan nationality and a struggle against statelessness and discrimination has continued ever since. In 2010, at least 13 percent of Nubian adults were still stateless, and most have at some point had their nationality questioned or been discriminated against in access to nationality. Decades of social and psychological marginalization have led to desperate poverty among Nubian communities across Kenya: the average household income is just USD 4 per day, and more than 70 percent are unemployed.

In 1904, the British Colonial Administration created a settlement in Kenya for discharged Nubian soldiers who had been drafted into the King's African Rifles from what is now Sudan. The settlement, located near Nairobi, became known as Kibera. Ironically, Kibera which comes from the word *kibra* in the Nubi language and means 'land of the forest' has now become one of Africa's largest urban slums. It is a place where poverty and disease, crime and social exclusion are overwhelmingly present. A majority of Nubians were initially settled in Kibera, but today only 50 per cent of the community live there. The rest mostly reside in so-called Nubian villages across Kenya.

Until independence in 1963, Nubians in Kenya were so-called British Protect Persons. In theory this gave them a right to Kenyan nationality when the new independent state was formed. But in practice that didn't happen. Instead, most Nubians in Kenya became stateless (some had previously asked to be repatriated to Sudan, but Sudan refused). Now, almost five decades later, many Nubians have retained this historical predicament

and remain stateless. Recent research by the Open Society Justice Initiative shows that at least 13 per cent of Nubian adults are stateless, but the actual numbers are thought to be higher.

Among those who are not stateless, many—if not most—still experience discrimination in access to nationality. The main problem is discrimination in the issuance of national ID cards, the main proof of nationality for Kenyans. Nubians and a number of other ethnic minorities are required to go through a discriminatory and burdensome vetting process to be confirmed as nationals.

The case of Abdulhaleem El-Busaidy illustrates the issue: El-Busaidy was refused an ID card in 2010 because he failed to produce his grandfather's birth certificate. He was told that because of his ethnic background, his nationality status had to be vetted, in accordance with a secret government circular that reads: "For Asians and Arabs—parents' and grandparents' birth certificates are required proof of citizenship." This vetting procedure, developed under Section 8 of the current Registration of Persons Act, applies to selected border populations

such as Kenyan Somalis, Booran, and Gabra, but also to non-border groups such as Nubians, Coastal Arabs, and South Asians, and a number of other specific ethnic groups. Like the Nubians, many of these groups are primarily of Muslim faith. Vetting committee officials have wide discretion to probe whether a Nubian is “really Kenyan,” including by asking for forms of documentation that have no bearing on citizenship under the law, such as grandparents’ birth certificates, title deeds and sworn affidavits. The implementation of vetting varies by province and locality and some ethnic groups are subject to vetting only in certain places. Nevertheless, it appears to always be on the basis of ethnicity rather than an objective, non-discriminatory criteria.

In interviews conducted by the Justice Initiative in October 2010, Kenyan government officials candidly disclosed the discriminatory animus behind the decision to vet certain individuals. For example, a registrar in Mombasa stated:

*You know, cases of indigenous Kenyans, like Mijikenda or Giriama, there is no way you will subject him or her to vetting...When you talk of Asians or Arabs, they are not indigenous Kenyans and that is why we ask them for extra birth certificates, like for their parents and grandparents.*

El-Busaidy, whose application for an ID card was rejected, challenged this form of discrimination in court. On February 18, 2011, Mombasa High Court Judge Ojwang confirmed conservatory orders suspending vetting for ID cards in Coast Province. In his preliminary ruling on conservatory orders, Judge Ojwang found the implementing government circular “plainly unconstitutional” and a “nullity” under the new 2010 Constitution.

The experience of Nubians in Kenya demonstrates the harsh, everyday realities associated with statelessness and the more general phenomenon of discrimination in access to nationality. Kenyan Nubians have long been victims of institutionalized discrimination in access to essential rights. Without

proof of identity, and more precisely without a Kenyan national ID card, access to employment in the formal sector is impossible. Without IDs, Nubians cannot vote or travel. Indeed, ID cards are required for nearly all official transactions, including opening a bank account or securing a government license or permit. Nubians without ID cards are also continuously vulnerable to police harassment, interrogation and arrest.

While many Nubians today have their ID cards, decades of social and psychological marginalization have had a long-lasting effect on the community in terms of poverty, education, employment and so on. Between 70 and 80 percent of Nubians are unemployed, depending on the region. While most children attend primary school, rates of transition to secondary education are poor, and only 2 percent enroll in tertiary education. Despite this, the great majority of Nubians identify strongly as Kenyans. In 2010, only 6 people in a sample of 18,862 said that they were foreigners, and 99 percent said that their parents were also Kenyans.

The Justice Initiative challenges discrimination against Nubians and violations of their right to nationality in Kenya. Some of our activities include:

- Litigation on behalf of the Nubian community at the regional level in Africa, including advocacy to enforce decisions.
- Documentation of statelessness and nationality discrimination in the Nubian community.
- Support, advice, and partnership with local organizations to address and challenge this form of discrimination.

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