

## 6 | The importance of paperwork

In 2007, the BBC website ran a discussion forum asking African readers ‘Is a passport your right?’ Respondents from across the continent and in the diaspora responded, detailing the trials that they undergone to obtain this most critical of citizenship documents. Repeatedly, they described the bribes they had to pay, the discrimination they faced, and the difficulties of producing documentation that proved their right to nationality and to travel documentation.

In practice, individual Africans far more often face the practical impossibility of obtaining official documentation than an explicit legal denial of nationality. Yet something as simple as a failure to register a birth or an indefinite delay in obtaining a national identification card upon reaching adulthood – processes regarded as purely administrative – can have consequences just as damaging and permanent as if denationalization had been enacted in the law.

In principle, recognition of citizenship should start at the time of birth. Birth registration is usually fundamental to the realization of all other citizenship rights: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing healthcare, or obtaining identity cards, passports or other important documents. Yet, according to UNICEF, the UN Children’s Fund, 55 per cent of African children under five have not been registered, with the situation much worse in rural areas; in some countries more than 90 per cent of children are not registered.<sup>1</sup>

Access to documentation that can prove place of birth and parentage (critical steps in proving a right to citizenship) is thus already difficult in many countries, without the additional complications of ethnic and political discrimination. Nevertheless,

*Citizens report the challenges of getting a passport*

*Kenya:* I am a Kenyan Somali. Getting my passport was not easy at all, I now treasure it because of the process. I can't say am proud of it. It is our right to get passports, but in Kenya the process is a nightmare, it has now been politicized because of the upcoming election. Muslims in Kenya have been allocated a separate desk at the Migration. They don't need to be treated special ... but equal, like any other Kenyan.

*Sierra Leone:* I have a passport and very proud of it. Holding a Sierra Leonean passport is not easy, more so if you are poor or your surname belongs to the Fullah tribe, like me! It cost a lot of money (for the average Sierra Leonean), it sometimes cost up to 300,000 Leones [US\$100] which include 'see to see' for the fast tracking of the process. I believe a better option to get is to decentralize the process as people are better known in their communities. Everybody should be treated equally always.

*Liberia:* Getting passport in your country of birth should be

people born of parents who are commonly acknowledged as being 'from' a place will ultimately be able to show their membership of the citizen group, should they need to obtain the documentation to do so. Those who are not in this position may face extreme difficulties in showing simply that they exist and have a claim to nationality in their state of residence, though it may be the only country they have ever known. Refusal to register births or accept applications for documentation is often perpetrated by low-level local officials or bureaucrats, who have little knowledge of the law, receive next to no supervision from the central government and whose actions are completely non-transparent and very difficult to appeal.

In Swaziland, for example, non-ethnic Swazis experience

a right not privilege, but in Liberia here, getting passport is being tribalized when it comes to certain ethnic groups like the Mandingo – which is unconstitutional, unjustifiable and unacceptable.

*Sudan:* I have my Sudanese passport though getting it wasn't easy, one has to first acquire a nationality card and then apply for it, and by the way, my fellow poor countrymen and those who have no relatives and no access to the Southern Capital, Juba (in terms of transport fee and poor roads to make it to the capital) are unable to get as it is only here in Juba in the whole South where they are issued.

*Eritrea:* In Eritrea getting a passport is a roller coaster. There are times when they issue passports to everyone, that is apparently when the issuing authority needs money, then they screen people when they issue exit visas. Children above ten years of age and young men and women till the age of forty-five are not allowed to travel outside the country, but family members and associates of the ruling system have it easy. And yet, they travel abroad and claim asylum.<sup>2</sup>

lengthy processing delays when seeking passports and citizenship documents, owing in part to the prejudice that mixed-race and white persons are not considered legitimate citizens. At the same time, the government has since independence treated the thousands of ethnic Swazis living across the border in South Africa as indistinguishable from citizens and routinely grants them Swazi documentation.<sup>3</sup> In Madagascar, members of the 2-million-strong Muslim community find that a Muslim-sounding name alone can delay a citizenship application indefinitely.<sup>4</sup>

Among the groups particularly affected by difficulties in documentation and registration are those who have been displaced by conflict, whether or not they have crossed an international border. Following the end of the long-running civil war in Angola, both

those who became refugees in neighbouring countries and those who were internally displaced returned home in large numbers. While those who became refugees in most cases received assistance and documentation from UNHCR that enabled them to prove Angolan citizenship, the internally displaced who had never left the country were often in a worse situation.<sup>5</sup> The children of those displaced across borders who marry in the country of refuge face similar problems. In 2005, UNHCR was engaged in finding legal solutions for children born in the Democratic Republic of Congo of mixed Angolan and Congolese parentage and denied registration as citizens, despite nationality legislation granting citizenship of the DRC to a child with only one Congolese parent.<sup>6</sup>

When it comes to travel documentation, the law often favours arbitrary action. The Commonwealth African countries often follow the historical British law position that regarded the grant of passports and other travel documentation as being within the 'crown prerogative', a privilege and not a right.

Exploiting these legal loopholes, one of the most common actions of repressive governments seeking to silence their critics is to stop them travelling abroad: either by denying them a passport to start off with, or by confiscating existing passports when they try to leave the country. During 2007, for example, governments in Chad, Djibouti, Eritrea, Sudan and Zimbabwe – and no doubt other countries – denied or confiscated passports from individual trade unionists, human rights activists, opposition politicians or minority religious groups.<sup>7</sup> But litigation in some countries and new laws in others have begun to push back the tide of absolute administrative discretion: recent court cases in Zambia, Nigeria and Kenya have all ruled that a citizen is entitled to a passport, even though this is not provided for in legislation.<sup>8</sup> And in Uganda, the 1999 citizenship law explicitly provides for a right to a passport.<sup>9</sup>

The situation in Kenya provides a one-country illustration of problems faced across the continent. The basic administrative processes for birth registration and the issuing of national

identity cards are extremely slow and inefficient to start off with; and then different groups of Kenyans from pastoralist, historical migrant or border populations face exclusions that compound the problems faced by all those who cannot buy their way out of the tangle of required paperwork. In some cases, they are left effectively stateless.

*Kenya: no identity card, no rights*

In law and practice, a large percentage of Kenya's population is deprived of the rights that are core to the ability to participate fully in the economic, social and political life of the country. While their right to citizenship may be acknowledged in theory, they have immense difficulties in obtaining the passports, identity cards and other paperwork that would prove this citizenship.

The law in Kenya provides for compulsory registration of births and deaths, and a new Children's Act brought wide-ranging reforms in 2001, including providing for every child to have the right to a name and nationality. Nevertheless, in practice, only 40 per cent of Kenya's infants are registered; in 2007, the UN Committee on the Rights of the Child noted its concern at 'the restrictive measures around birth registration, the discrimination with regard to the registration of children born out of wedlock and of non-Kenyan fathers, as well as the lack of mechanisms and infrastructure to facilitate birth registrations'.<sup>10</sup> The Citizenship Act, the most critical law to ensure that a right to nationality is respected in practice, remains unreformed and discriminatory.

The Registration of Persons Act, in effect since 1947, also provides for a compulsory system of national identity cards for all adults. Even those Kenyans who have birth certificates face problems in gaining their national identity cards once they reach adulthood. Birth certificates contain a note explicitly stating that they do not have any effect in determining the individual's right to nationality. Members of some ethnic groups find that once they turn eighteen they face an onerous vetting process before they can obtain the identity document that is an essential passport to so many national goods.

Investigations and hearings held by the Kenya National Human Rights Commission and by a 2002 Constitutional Review Commission brought repeated complaints from marginalized ethnic groups of burdensome screening processes before they could get identity cards or passports, or exercise the right to vote.<sup>11</sup> Kenyan Somalis, Nubians and others faced demands for bribes or complete refusal to grant documentation; though some managed to obtain registration by paying for the privilege. Kenyan women who had married non-Kenyans found that their children could not obtain identity documents, even though children born in Kenya with one Kenyan parent should have an automatic right to citizenship.<sup>12</sup>

Those who do not have a national identity card are unable to vote or contest any political office, and often cannot register their children in school, gain access to university, or obtain healthcare or other supposedly public services. The laws regulating marriage require presentation of an identity card for registration of the union. The non-registered may even be unable to enter government buildings to make a complaint about their situation, if they cannot produce alternative proof of identity. In the private sector, they may not be able to open a bank account or obtain employment in the formal economy.

Most of those affected by this discrimination are ethnic groups with origins in border areas, or with pastoralist lifestyles, including the Masai, Teso, Borana and especially the Somalis. These groups are also subject to harsh security procedures. Special regulations are set out for the North-Eastern Province and contiguous districts, allowing for the control of movement of specified ethnic nationalities or into 'prohibited zones'.<sup>13</sup> In these areas, the security forces have power to enter, search and arrest on suspicion and without warrant.<sup>14</sup> Constitutional protections for freedom of movement do not apply to restrictions imposed for 'the protection or control of nomadic peoples', among other circumstances.<sup>15</sup> Although two of the most draconian laws passed using these constitutional exceptions were repealed in 1997, the 1966 Preservation of Public Security Act is still in force and allows

for special public security measures to restrict free movement (into, out of or within Kenya).<sup>16</sup>

Kenya hosts tens of thousands of refugees from Somalia, as well as a large Kenyan Somali population. The security forces have a long history of harassment of Somalis, whether refugees or Kenyans, who are consistently suspected of support for pan-Somali unity and universal engagement in banditry. In the aftermath of independence a secessionist movement was suppressed with great brutality, and episodes of military abuses have recurred since then.<sup>17</sup>

In November 1989, a newly introduced 'screening' procedure compelled all Kenyans of Somali origin to report with identity documents to the Kenyan authorities, for the purpose of 'registration of all Kenyan Somali and to expel those found sympathetic with Somalia'.<sup>18</sup> Vetting committees handed out identity cards to those that satisfied them; and confiscated existing cards from those that did not. Kenyan Somalis living in other provinces were told to go back to their 'home' district to register, a requirement not imposed on members of other ethnic groups.

Most Kenyan Somalis live in North-Eastern Province, but among the subgroups suddenly denationalized in this way were the roughly 3,500 Galje'el Somalis living in Tana River District, Coast Province. The Galje'el Somalis claim that their ancestors came from Wajir in North-Eastern Province in the mid-1930s and settled along the Tana river, where they had until the 1980s been regarded as Kenyan citizens, though they still faced exclusion from public services, lacking government-provided schools, clinics or drinking-water points. During the 1989 screening process, they were branded non-Kenyans, their identity cards were confiscated, they were told to leave for Somalia and many of them were displaced from their land. Their national identity cards have never been returned to those from whom they were confiscated, though their entitlement to citizenship was officially confirmed.<sup>19</sup> In 1999, the Galje'el were evicted from their main settlement and forcibly relocated some distance away with access to few if any services.<sup>20</sup>

In April 2005, the minister for immigration, registration of persons and refugees stated that those non-citizens (not only Somalis) who did not possess the necessary registration documents would be considered as staying illegally in Kenya and would therefore be deported to their countries of origin. The original deadline for the registration of non-citizens in Kenya was fixed for the end of June, later extended to 15 August 2005. Using this law, security forces once again raided the Galje'el communities. The Galje'el have obtained interim orders in court against the provincial administration and the attorney-general to stop any attempts to evict, harass, displace or render the community homeless or stateless.<sup>21</sup> But this has not changed the position on the ground. A 2008 letter addressed to a member of the Galje'el community stated that an application for an identity card could not be processed 'because the holder was declared to be non-Kenyan by the ... Task Force of 1989'.<sup>22</sup> Hundreds of people remain non-citizens in the country of their birth and sole residence.

More recently, the global politics of the 'war on terror' have impacted on the Kenyan Arab minority living in the coastal areas, who, unlike the Somalis, have not historically faced discrimination or challenge to their right to citizenship. In early 2005, the minister for immigration announced on the radio that any late (i.e. longer than six months after birth) registration of births in the coastal areas would have to be vetted by the central government. The justification given was that many terrorists come to the coastal regions and acquire Kenyan birth certificates illegally, and then easily get other relevant national documents and pass themselves off as Kenyans. In practice, the policy has made it harder for coastal Muslims to obtain identity documents, and embitters a population already resenting a general atmosphere of suspicion against them.<sup>23</sup>

Perhaps least well known, yet one of the worst affected groups, are the Kenyan Nubians, who came to Kenya with the British empire and who are still not accepted as 'native' by the state authorities.<sup>24</sup> The Nubians were conscripted into the British army



from what is now Sudan, at the time administered jointly by Britain and Egypt. They became known as the King's African Rifles, or as askaris (the Arabic/Swahili word for soldier or guard), during the British expeditions of colonization in East Africa and in both world wars. When they were demobilized in Kenya they were not given any meaningful compensation or benefits, although many were allocated small plots of land for farming. In 1933, an official report had already criticized the British government's treatment of its former soldiers:

We consider that the government had a clear duty to these ex-Askaris either to repatriate them or to find accommodation for them. They were told they might make their homes in Kibera and in our judgment they ought not to be moved without receiving a suitable land elsewhere and compensation for disturbances, and we believe that similar obligations exist in respect of their widows or sons who are already householders at Kibera.<sup>25</sup>

Yet neither citizenship nor repatriation to Sudan was offered by the British authorities, and at Kenya's independence in 1963 the askaris remained in Kibera, where they had been settled. Kibera is now an enormous slum in Nairobi, which the Kenyan government has insisted is government land; local politicians have arranged for numerous parts of it to be given to groups of their supporters while the police and courts have refused to entertain Nubian protests.<sup>26</sup> The Nubian community faces suspicion from other communities around them. Many are unemployed, poor and essentially landless, now that the plots they once farmed have been appropriated for housing by other groups.

The Nubians today number more than 100,000, and their members are now the third or fourth generation of their family born in Kenya, yet they face enormous difficulties in obtaining recognition of their status as Kenyans in the form of national identification cards or passports. The Kenyan census, which until 1989 collected information on ethnic identity, did not list 'Nubian' among the forty-odd different indigenous ethnic groups. Nubians found themselves classified as 'other Kenyan',

'other African' or 'other Arab'. Even today, Nubians are routinely subjected to security vetting when they apply for identification documents on reaching adulthood, a process that can take years or may only be completed on payment of a bribe. Individuals can be called upon to produce their parents' or grandparents' identification documents to verify their origin, or asked irrelevant questions about acquaintances and family. Lack of documentation exposes Nubians to frequent arrest by police and ensures that the community is one of the poorest in Kenya.

In 2003, representatives of the Nubian community brought a case to the Kenyan courts seeking confirmation of their citizenship and the right to be issued with relevant official documents.<sup>27</sup> The Kenyan government argued that the case should be struck out on the grounds that it should have been brought against the British, that in any case it has been brought too late, and that the Nubians were not citizens. After more than three years of blocked progress at national level on procedural grounds, the Nubians took their case to the African Commission on Human and Peoples' Rights, requesting the premier continental human rights body to find in their favour in relation to numerous violations of the African Charter on Human and Peoples' Rights.<sup>28</sup> Since submission in 2005, this case has also been bogged down in procedural issues at the Commission.

*The daily struggles of Nubians in Nairobi*

*Jaffar Hassan* was born in 1979 in Kibera. She and her husband have four children and share a small home together with her brother. Jaffar's life story echoes the stories of thousands of other Nubians deprived of basic necessities. Whereas she says without hesitation that she is a citizen of Kenya, she has no means of proving that. 'My father, who died when I was very young, told me that I am,' she says. 'Nubians have a real problem getting any kind of identification documents.'

If you have a Muslim name it is very difficult to do anything.’ Jaffar explains that few Nubians can afford to pay the bribes that officials demand for birth certificates, and without connections in the government it is very difficult for Nubians to get identity cards and essentially impossible to get passports. ‘Unlike other people here, Nubians have to go through a vetting process to get identity documents. If I wanted a passport for myself, they will ask for my parents’ and grandparents’ – sometimes even my great-grandfather’s – birth certificates. My friend who is Kikuyu got a passport simply by showing her ID,’ she says. ‘I consider myself a Kenyan. I was born here and I don’t have anywhere else to go even though people tell us “go home where you came from” all the time.’

*Abdalla Ali Ramadhan* was born in Mlimani in Eldama Ravine in 1955. He tried to get an ID card for many years, and finally succeeded in 1992. In 2004, he lost his ID card and tried to get a replacement. He was told, however, that he had to produce his deceased parents’ and grandparents’ birth certificates to get a new one – a requirement he was unable to meet. As a result, Abdalla has virtually no access to official transactions such as opening a bank account or voting. He also cannot be formally employed without an ID card, something which significantly contributes to unemployment and poverty among Nubians. Moreover, the risk of becoming a victim of police violence is significantly larger for people without identity documents as the police frequently demand to be shown national IDs to forestall arrest – something which Abdalla has experienced on several occasions.

*Azizi Juma* has a daughter who is three years old. Since autumn 2005 he has tried to get her a birth certificate and explains the bureaucratic process: ‘I went to Sheria House where I was given a form to fill. I filled out the form and took it back. I was told to go to City Hall. At City Hall I

was asked for my wife and daughter's clinic cards. I brought these cards back but I was told that they were not stamped. I had to return to the hospital and get them stamped. I took the stamped cards back to City Hall but could not find the person I was dealing with. After many visits, I found the officer and he told me to fill in a form B3. The form asked the names of the child, the father, and the mother and the date of birth of the child. I filled out the form. I then had to take the form to the Chief and Sub-Chief for signatures. I returned the form to the City Hall on Tuesday, 4 February 2006. I am still waiting for a response. I do not feel good about this process. The reason they are giving me all these hurdles is that I have a Nubian name.<sup>129</sup>