

2007

An Identity Crisis? A Study on the Issuance of National Identity Cards In Kenya

Kenya National Commission on Human Rights

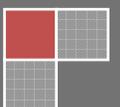


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Acknowledgements

The KNCHR wishes to acknowledge the input and support of the following institutions in making the production of this report possible: KNCHR staff and Commissioners who were part of the study team; District Commissioners, District Officers and Chiefs in Turkana, Kajiado, Wajir, Mandera, Tana River, Teso, Nairobi and Nakuru Districts; Registration officers at the NRB headquarters- Nairobi, Turkana, Kajiado, Wajir, Mandera, Tana River, Teso, Nairobi and Nakuru field offices, local leaders (women, youth, community elders, religious leaders, councillors and elders in the vetting committees) in the said districts. We thank the following NGOs for assisting the National Commission in obtaining information relating to the study as well as individuals who had experienced various challenges relating to the registration process. We are particularly grateful to the following NGOs: Maendeleo ya Wanawake, Kenya Red Cross - Kajiado, Lewet Kenya Trust - Loitokitok, Mandera Human Rights, Aldef Kenya – Wajir, Pastoralists Development Center – Wajir, Ogiek Welfare Council – Nakuru, Teso District Residents Association and Tana River Peace Initiative.

We extend sincere acknowledgement to the National Registration Bureau and all its field offices in the districts and divisions visited.

Special thanks to all individuals who provided the National Commission with crucial information that enabled preparation of this report, and in particular, the members of Parliament for Kajiado South, Teso, Turkana North, Bura and Tana River constituencies.

Acronyms

ACHPR	African Charter on Human and Peoples Rights
CBO	Community Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DC	District Commissioner
DO	District Officer
ECK	Electoral Commission of Kenya
FBO	Faith-Based Organization
ICCPR	International Covenant on Civil and Political Rights
ID	Identity Cards
IPRS	Integrated Population Registration System
KNCHR	Kenya National Commission on Human Rights
NEP	North Eastern Province
NFD	Northern Frontier District
NGO	Non-Governmental Organization
NRB	National Registration Bureau
UDHR	Universal Declaration of Human Rights

Executive Summary

It is the right of every Kenyan attaining 18 years to register and be issued with a National Identity Card (ID). A National Identity Card represents ‘proof’ of Kenyan citizenship without which an individual cannot vote, purchase property, access higher education or even obtain employment; further, those without the document find themselves victims of arrest and extortion by the police on spurious grounds. Needless to say, hindrance to easy access to critical documents like the Identity Card which enhance the enjoyment of rights and freedoms of citizens implies violation of these very rights. For all Kenyans to be guaranteed their full enjoyment of rights and freedoms, it is necessary that the registration of persons be made simple and accessible without impediment by complex procedures.

This study was therefore precipitated by numerous complaints lodged at the National Commission alleging discrimination in the issuance of Identity Cards against residents of northern Kenya, particularly those of Somali ethnic origin. In addition, it was alleged that through corruption, refugees had been issued with Kenyan IDs while on the other hand; *bona-fide* Kenyan citizens had conversely been denied registration. Further there were claims that registration officials routinely asked for bribes in order to issue IDs to the applicants. Finally, there were complaints that the process of issuance was characterized with debilitating and unnecessary delays resulting in inability to travel, to register as voters and harassment by police on account of lack of an ID.

The National Commission found the complaints to be regular enough as to be of a systemic nature hence the commissioning of this study. The main objective of the study was primarily to establish whether by policy design or default some Kenyans had been rendered second class citizens through a discriminative process in issuance of identity cards. This study thus identifies some of the prohibitive conditions imposed in the issuance of national identity cards in some areas inhabited by specific ethnic groups and the extent of alleged discrimination in the process of registration. The study also identifies the key challenges concomitant to the process of issuance of the documents. Lastly, the study proposes to the Government the necessary remedial, policy, legislative and administrative measures to improve the registration process

Further, the National Commission is concerned by the duplication of roles between the Electoral Commission of Kenya (ECK) in registering voters and the National Registration Bureau (NRB) in registering citizens who have attained 18 years which duplication is an unnecessary burden on tax payers. We see no reason why voter registration should be conducted at great expense to the tax payer while the National ID Card would more than adequately suffice for purposes of voting. This is an area that requires harmonization so as to cease the duplication of roles between national registration of citizens by the NRB and that of voters by the ECK.

Some of the key findings of the study were that;

1. The process of vetting Kenyan-Somalis, Nubians and Kenyan Arabs (Maasais and Tesos also reported similar difficulties) is discriminatory and violates the

- principle of equal treatment. Such a practice has no place in a democratic and pluralistic society.
2. The whole process of application and collection of ID cards is impeded by unnecessary delays. An ID card is a right and there is a need for a paradigm shift from the colonial objectives of identification to new paradigm of seeing identification as a form of enhancing one's opportunities to enjoy human rights and freedoms.
 3. Government officials responsible for registration in some cases demand for documents that are not provided for in law to prove citizenship such as land title deeds, screening cards and grandparents' ID cards. Further, there were numerous allegations of corruption by registration officials which were reported to KNCHR.
 4. The current registration system exacts its unofficial cost on unsuspecting applicants by affording Government officials opportunities to seek and collect rents.
 5. There is *prima facie* evidence that National Identity Cards have been issued to Somali refugees in Dadaab Refugee Camp.
 6. The office of the Principal Registrar is chronically under-resourced which has resulted in limited registration exercises (mobile), poor physical facilities, demotivated staff and lack of basic materials.
 7. The fact that registration of persons is often linked to elections has undermined the value of ID cards.

Some of the key policy, legislative and administrative recommendations the National Commission makes include the following:

1. That issuance of an ID card should be as a matter of right and not the obligation of the citizen to pursue.
2. Parliament should enact a law to harmonize national registration with the voter registration exercises conducted by ECK so as to stop duplication of roles. The National ID card is sufficient for purposes of voting and registering voters afresh constitutes an unnecessary burden on tax payers and these resources could be put to other urgent development projects.
3. Parliament should amend the Constitution to make express provision recognizing the citizenship status of immigrants who have been resident in Kenya for over 100 years such as the Nubians, Kenyan Arabs, Asians and Caucasians.
4. Establishment of the Office of Commissioner of Registrar of Persons to replace the existing structure. This would provide mechanisms of accountability and redress to victims for violation of the right to an ID.
5. The Ministry of Immigration and the Office of the Attorney General should provide clear and unambiguous guidelines on how one can prove his/her citizenship.
6. The Ministry of Finance should increase budgetary allocations to the National Registration Bureau to boost its capacity.
7. The proposed Integrated Population Registration System (IPRS) – bio-metric system of registration should be fast tracked.
8. The National Registration Bureau (NRB) should immediately investigate all allegations that refugees have been issued with Kenyan IDs.

9. NRB should initiate annual national awareness campaigns on the relevance of ID cards.

1 Introduction

1.1 Background

In mid 2006, the National Commission held public accountability forums in Wajir and Mandera Districts during which a substantial number of complaints were lodged with regard to discrimination in the process of issuance of National ID cards to residents of the two districts. These complaints were also the subject of media reports the substance of which was that:

- Residents of north-eastern part of Kenya, in particular those of Somali ethnic origin were being discriminated against in the process of issuing National Identity Cards (IDs);
- Through corruption, refugees had been issued with Kenyan IDs whereas eligible Kenyans were denied registration;
- Registration officials asked for bribes in order to issue IDs to the applicants;
- There were great and unnecessary delays in the process of issuance of ID cards, with high chances of denial of the right to vote.

1.2 Study Objectives

As part of its mandate to promote and protect human rights of all Kenyans, the National Commission sought to establish the veracity of the above allegations and assess the challenges and prohibitive conditions in obtaining National Identity Cards. The main objectives of the study were:

- to identify challenges and prohibitive conditions imposed in the issuance of national identity cards;
- to ascertain the extent of alleged discrimination in the issuance of ID cards;
- to make policy, legislative and administrative recommendations to the Government in order to improve the registration process.

1.3 Methodology

KNCHR constituted a research team to conduct this study. The team first developed a concept paper, including identification of key issues and questions to guide the study.

A semi-structured key informant guide was developed and administered between February and April 2007 to informants in the following key categories while in some instances, focused group discussions were held:

- Provincial Administration (DCs, DOs, Chiefs and Assistant Chiefs)

- Registration officers (national, district and divisional levels)
- NGOs, CBOs, FBOs
- Local leaders (community elders and religious leaders)
- Members of Parliament
- Electoral Commission of Kenya
- Residents

The sample districts selected for field study are those inhabited by ethnic communities that transcend Kenya's boundaries. They included districts in Northern Kenya – Turkana, Mandera and Wajir, where most of the complaints originated from, and also Teso, Kajiado, Tana River, Nairobi and Nakuru. Nakuru was chosen as a non-border district for purposes of control and comparison.

Besides field study, literature review covering aspects of policy, legislation and institutional structures in relation to issuance of national IDs was conducted. These were analysed on the basis of key human rights principles of equal treatment and non-discrimination as well as the right to nationality/ citizenship.

A number of limitations were encountered during the field study. Some of the target interviewees were not available for interviews at the time. For instance, in Turkana, the research team was not able to get interviews with the Provincial Administration due to other on going administrative activities at the time. In other instances, registration officers declined to give any information due to bureaucracy. This was the case in Namanga and Kajiado district.

2 Registration of Persons in Kenya

This section gives a brief historical overview of the registration of persons in Kenya; an overview of the legal and policy framework; and the role of the National Registration Bureau (NRB).

2.1 Origins of registration of persons in Kenya

The issuance of identity cards dates back to 1915 when the colonial government enacted the Native Registration Ordinance. The objective of the registration was to supervise and control the recruitment of male Africans into colonial labour. The Ordinance made it mandatory for all male adults aged 16 and above to be registered. Upon registration, they were issued with registration papers kept in copper chained metal containers commonly referred to as “Kipande.” The Kipande was ordinarily worn around the neck.

In 1947, a new law, the Registration of Persons Ordinance, was passed to make it mandatory for all male persons of all races of 16 years and above to be registered. But under this new law, the identity cards issued distinguished between protectorate and non-protectorate persons. Although the Ordinance sought to remove discrimination based on race, it did not go further to remove gender-based discrimination. The trend continued even after independence until 1978 when an amendment was made to what has become the Registration of Persons Act (Cap 107, Laws of Kenya) to include the registration of women who had attained the age of 16 years and above. A further amendment to the Act was made in 1980 to raise the age of registration from 16 to 18 years.

The identity card has also evolved over the years. As stated above, the earliest identity card was worn around the neck by registered male Africans. Since independence, however, identity cards issued have been at two levels: First generation and Second generation identity cards. The First generation identity cards were issued until 1995 when the Government started a massive campaign to replace these cards with the Second Generation cards. A number of weaknesses that necessitated the shift to Second generation cards included: illegal registration of aliens; easy manipulation, forgeries and theft; easy duplication of identity card numbers; delays in replacing lost identity cards and double registration. In sum, these were seen as matters of national security concern.

The Second generation identity card has to some extent addressed some of those initial concerns. This has been enabled through the use of modern technology that provides a secure identification document by applying the service of computerised Fingerprint system. The Government has also gone a step further to establish an Alien Registration System. This system is used to register aliens and refugees within the borders of Kenya and to produce relevant registration certificates and Refugee Identity Cards. So far the National Registration Bureau holds bio-data of 14 million Kenyans¹. Despite this advancement in the registration of persons in Kenya, there are still questions being raised

¹ Synthesized from the National Bureau of Registration unpublished documents June 2006

whether it is effective. Comparatively, identification systems in other jurisdictions have moved to more technologically advanced biometric system something that a number of stakeholders are discussing for Kenya.

While the issuance of identity cards continued through colonial and post-colonial Kenya, the practice within the United Kingdom was different with the issuance of identity cards remaining irregular; and compulsory identity cards were finally abolished in 1951. In 2006, however, Britain introduced Identity Card Act 2006. But the essence under the new law is to keep data on individuals residing in the United Kingdom for purposes specified under the Act.²

2.2 Policy and Legal Framework

It is noted here that there are a number of practices and procedures in the registration process which are not set out either in the parent law or subsidiary legislation. The current legal and policy framework governing the issuance of identity cards is the Registration of Persons Act. However, the efficacy of the registration process is also dependent on other core laws: the Constitution of Kenya and the Kenya Citizenship Act (Cap 170 Laws of Kenya). Section 2 of the Registration of Persons Act provides that the purpose of the Act is the registration of Kenyan citizens who have attained the age of 18 years and above. The Sixth Chapter of the Constitution of Kenya is the principle framework of Kenyan Citizenship, while the Kenya Citizenship Act, spells out the procedure of acquiring Kenyan citizenship either by registration or naturalisation.

Essentially, the proof of citizenship and age are the most important elements of the registration process. In order to prove age, rule 4(2) (a) of the Registration of Persons Act, states that the registration officer shall demand the production of a birth certificate or an age assessment certificate issued by a Government medical officer of health, or a baptismal certificate issued by a minister of a recognised religious organisation immediately following his birth or some other evidence acceptable to the registration officer.

However, for proof of citizenship, the law does not specify what documentation may be used for that purpose and seems to give the Principal Registrar discretion to decide on which documents are relevant for proof of citizenship. Section 6(1) of the Registration of Persons Act stipulates that every person shall present himself before a registration officer and register himself by **“giving to the registration officer the particulars specified...”** Rule 4 (2) (b) under the Act, without specifics, states that the registrar shall “demand proof of Kenyan citizenship” from the applicant. Nonetheless, the practice has been to have all Kenyan citizens by birth to prove citizenship by producing their parent’s identity cards. Citizens by registration or naturalisation have to produce respective certificates. The fact that the law is not specific on this question translates to a lacuna where unlimited discretion is granted to the registration officer by omission.

² See section 1 of the Identity Act 2006 of the United Kingdom, generally.

In addition, the rules make it mandatory that persons applying for registration shall whenever possible do so at their place of domicile or of permanent residence.³ It is difficult to fathom the rationale for such a requirement. While Registration officials maintain that this is not a mandatory requirement it so happens that persons are often required to go to their home districts for registration as part of proving the citizenship of that person.

As noted earlier, there are other procedures and regulations on the registration of persons that are not anchored in the parent law or subsidiary legislation. The influx of high numbers of refugees and other immigrants from neighbouring countries is one of the reasons normally cited for this situation. Registration of aliens is governed by the Aliens Restriction Act (Cap 173, Laws of Kenya) and that of refugees under the Refugee Act No. 13 of 2006. The Registration of refugees commenced even before the enactment of the Refugee Act. The significance of these forms of registration is to make it easier to distinguish aliens from citizens.

The Registration of Persons Act establishes the office of the Principle Registrar and his deputy as the office in charge of implementation of functions of the Act.⁴ The Act gives the Principle Registrar powers of appointing the provincial and district registrars. Section 5 (1) of the Act mandates the principle registrar to establish a register of all persons in Kenya that will contain the following information for each person:

- Registration number
- Name in full
- Sex
- Declared tribe or race
- Date of birth or apparent age, and place of birth
- Occupation, trade or employment
- Place of residence and postal address
- Finger and thumb impressions, and in case of missing fingers and thumbs, palm or toe and toe impressions
- Date of registration
- Any other particulars as may be prescribed

2.3 Relevance of identity cards in Kenya

The Identity Card has a crucial link to citizenship and nationality in Kenya and is at the core in determining the extent to which an individual enjoys his/her fundamental rights and freedoms within our borders

Section 10 of the Registration of Persons Act (Cap 107, Laws of Kenya) also underscores the importance of an ID card in Kenya. It states that a person may be required by an authority to produce an ID card when applying for the grant of any license, permit or other documents, or for the exercise of lawful or judicial functions. Nevertheless, a national identity card in Kenya is not an entitlement: instead the law makes it an

³ Rule 4 (1)

⁴ See Section 4 of Cap 107

obligation for all Kenyans who are eighteen years and above to register and be issued with national identify cards. Failure to do so constitutes a criminal offence.⁵

While the human rights framework guarantees persons the right to a nationality the language of Kenya's domestic law suggests that for one to enjoy the rights and freedoms of citizens, he or she must register and be issued with a national identity card. Since an identity card has attained such an important role it should be issued as matter of right for all Kenyans. Consequently, lack of or denial of an ID implies denial of the rights and freedoms accorded to citizens. See **Box 1** below.

Box 1: Sample violation of rights on denial of ID cards in Kenya

- *Violation of the right to citizenship:* Often times an identity card has been used to prove citizenship in Kenya. Lack of an identity card to eligible persons results to limited enjoyment of rights of citizens.
- *Discrimination in participating in political processes:* In Kenya, one needs a national identity card in order to register as a voter, and to exercise the right to vote. This is important in ensuring effective representation in policy processes. Failure to access an identity card has the consequence of denying a person the right to vote.
- *Impedes on the freedom of movement:* In certain circumstances, persons without identity cards are not allowed to move freely within their country. Some experience police harassment when they fail to produce an identity card while travelling. The freedom of movement is curtailed also because one requires a national ID in order to obtain a passport and other necessary travel documents.
- *Denial of the right to own property:* In other circumstances, a person has to produce an identity card in order transfer or purchase property. Further, in order to engage in normal business transaction e.g. opening a bank account, an identity card becomes a crucial document.
- *Denial of the right to access to basic social services:* Lack of an identity card may mean inability to access admission to colleges and universities, acquire a driving license, access banking services, enter government buildings and obtain services from government offices etc. In situations of emergency, relief workers, mainly in arid areas, rely on identity cards as a form of identification.
- *Denial of the right to seek and obtain employment:* Many employers often demand for an ID card without which it is extremely difficult to access employment opportunities
- *Violation of the right to marry and found a family:* Under existing statutory laws regulating marriages, one must submit proof of adult age-an ID card for purposes of registration of the marriage union

2.4 The right to an ID under regional and international human rights norms

A number of international human rights instruments highlight the importance of the right to a nationality;

1. The Universal Declaration of Human Rights (UDHR) in article 15 provides everyone with a right to a nationality and prohibits arbitrary deprivation of nationality.
2. The International Covenant on Civil and Political Rights (ICCPR) in articles 24 and 25 respectively provide all children with a right to a nationality and citizens the right to vote.

⁵ See Section 14(1)(a) of the Registration of Persons Act (Cap 107, Laws of Kenya)

3. The Convention on Elimination of all forms of Discrimination against Women (CEDAW) in article 9 guarantees women equal right with men in respect to the nationality of their children
4. The Convention on the Rights of the Child (CRC) in article 7 and 8 provide the rights of children to acquire a nationality and prohibit the illegal deprivation of their identity.
5. The African Charter on Human and Peoples' Rights recognizes the right to recognition of a person's legal status and has language throughout the Charter affirming nationality as a matter of right.

Further, the Inter-American Court of Human Rights has affirmed that nationality is the legal bond that guarantees individuals the full enjoyment of all human rights as members of the political community. Although states maintain the sovereign right to regulate nationality, states' discretion must be limited by international human rights standards that protect individuals against arbitrary state actions⁶.

⁶ See *Dilcia Yean and Violeta Bosico v. Dominican Republic Judgment* of September 8, 2005, Inter-Am Ct. H.R., (Ser. C) No. 130 (2005). See <http://www1.umn.edu/humanrts/iachr/C/130-ing.html> as at June 2007

3 Case Studies

In this section, we focus on two cases to illustrate issues of discrimination in the issuance of ID cards. The first case study focuses on the Kenyan-Somalis while the second is on Nubians. The third case then highlights the findings of the study in the control district Nakuru. The practice in Nakuru District contrasts sharply to the first two cases highlighting issues with respect to the citizenship status of Somalis and Nubians and their challenges in obtaining ID cards.

3.1 Kenyan-Somalis

Kenyan Somali ethnic group make up approximately 2.3% of Kenya's population and the bigger part of these live in North-Eastern Province, formerly known as the *Northern Frontier District* (NFD). It covers most of northeastern Kenya and is inhabited by pastoralist communities.

Kenyan-Somalis have been the subject of Somali irredentist policy since the independence of Somalia in 1960. Under colonial rule, North Eastern Province (NEP) comprised of closed districts characterized by curtailment of peoples' freedoms. The Colonial Government had imposed a deliberate policy to isolate and exclude this area and the residents from the rest of the country-a policy which was carried over after the attainment of independence. Collective punishment was used against any clan that was considered errant. There was hardly any investment in schools or hospitals. The first primary school was started in the area in 1948. In 1963 at the time of independence, NEP did not have a single secondary school.

After independence in 1963, NEP favoured sentiments to join up with Somalia and a secessionist movement led to the Shifta War and declaration of a State of Emergency. The Government of Kenya called on help from the former colonial ruler Britain and the Shifta Movement was put down through indiscriminate killing of civilians and their livestock, rape of women and the razing down of numerous manyattas. Other tactics involved the forced collection of people and putting them in collective villages while their leaders were put in detention camps. To ensure that British and Kenyan forces operating in the area had a free hand as to the choice and methods of putting down the rebellion, the Indemnity Act was put in place to shield security officers from prosecution for whatever actions they chose to commit.

Once the uprising had been effectively contained, the policy of isolation and seclusion of NEP continued through perpetuation of the colonial legacy of massively injecting resources in areas considered as high potential and deliberately overlooking marginal areas-so called low potential areas like NEP. A most interesting aspect of governance in NEP was the lack of separation of powers between the Executive and the Judiciary where the provincial administration served this dual role.

It seems that little has changed forty three years on. During the study, DOs and registrars interviewed justified discrimination of people of Somali origin in terms of

difficulties in differentiating Kenyan Somalis from Somali refugees. They further stated that by demanding for more proof of citizenship, they in essence minimized the risk of registering non-Kenyans for identity cards. While this could be a genuine concern, this guarding of risk against registering foreigners has led to a practice of registration that is discriminatory on grounds of race and ethnicity. From interviews with Kenyan-Somalis residing in Wajir, Mandera, Nairobi, Turkana and Kajiado, it became clear that they experience discrimination when it comes to registration and application for an ID. Being of Somali origin makes one's documents suspect. A Kenyan-Somali woman from Lokichogio Division, Turkana explained how she felt discriminated when she went to register for her identity card.

'I was told to wait until the others had been dealt with and I was asked to bring documents to prove that I am a resident; school leaving certificate, plot allotment, my mother's and father's ID and screening card. I complained to the officers but nothing was done.'

The team was also informed that in many cases, people of Somali ethnic group were asked to go back to their parent's home districts to apply for an ID card. It is a difficult process for those applicants born outside their parent's home districts since the chiefs and elders in those districts would not be able to identify them. In cases where applicants are asked to go back to their or parents' district of origin, many simply gave up registering hence they do not have an ID and cannot engage in many processes including voting. There are hardly any roads in the region and where they exist, they are in a state of utter disrepair. It is interesting that applicants are asked to travel to their home districts which have basically no links to the rest of the country in terms of a road network.

The Somali refugee question kept emerging in discussions on the issuance ID cards to persons of Somali origin. It is one of the reasons that officials used to justify stricter procedures applied to Kenyan-Somalis in the application of IDs. Investigations by the KNCHR into the matter established that indeed refugees had acquired Kenyan ID cards after bribing elders, registration officers and the provincial administration. Many of the said refugees alleged that they had come to Kenya in the early 1990s, and had paid sums of up to Ksh 2,000/- for the ID cards. Upon payment some got ID cards on the same day whereas others got theirs after a few months. They also alleged that unlike all Kenyans, they did not attach any supporting documents to their applications.

According to one of the DO's interviewed, people of Somali origin are discriminated in all districts when it comes to registering for an ID. This is mainly attributed to the question of Somali refugees i.e., "since it is almost impossible to differentiate between the two groups of people." Across the districts visited, it was noted that there were negative perceptions connected to people of Somali origin and who are viewed with suspicion by the Provincial Administration and registrars. There were reported cases of Kenyan Somalis who had been caught trying to pass off Somali refugees as their relatives in order to register them for identity cards. The apparent xenophobic attitude displayed by the provincial administration against Somalis in general is a major factor fuelling bitterness that the Government does not care about them. Further, the people from this region feel that they are exiles in their own country as the process of vetting and registration denies Kenyan-Somalis equal access to registration and acquisition of National IDs.

Further, applicants of Somali origin in Nairobi (especially Eastleigh which has a high concentration of Somalis) have to go through a vetting committee, a requirement that other ethnic groups living in the area are not subjected to. The Vetting Committee is constituted of elders with the local knowledge of the community in Eastleigh. The District Registrar at Kariokor further justified the vetting of these applicants on account “of the difficulties of distinguishing a Kenyan-Somali from a Somali from Somalia”.

Box 2: Kenyan- Somalis in Turkana District

In essence all applicants of Somali origin have to present their forms at the district registration office, whereas other applicants do so at the division level. It is important to stress that even though an applicant can prove that his parents originate from the district, he/she has to register at district level because of his/her ethnic origin being Somali. In Turkana district two levels of vetting exist. The first level is where the chief, elders and the DOs vet; in their own words the ‘obvious Turkana locals’. The second level of vetting is at district level constituting the DC, DO, National Security Intelligence Officer, Chiefs, elders and the registration officer. This level comes into effect, with respect to applicants of Somali ethnic group or where an application is questionable. In the vetting process, applicants of Somali origin are asked to prove their residence in the district with documents such as title deeds, grand-parents’ identity cards and screening cards, as explained in preceding sections of this report.

3.2 The Nubians

The second identified case study is that of institutionalised discrimination of the Nubian community in Nairobi. While it is not a border situation, every person belonging to the Nubian community has to be vetted; however, vetting committee members are Nubian elders. Nubians originated from the Nuba Mountains in the Sudan and they were brought to Kenya as soldiers by the British colonial government a century ago⁷. Today, over 100,000 Nubians live in Kenya and are scattered in several places in the country with the largest numbers found in Kibera (Nairobi). The Nubians are not classified among the recognized ethnic groups in Kenya. For this reason, all Nubians are vetted. The underlying assumption of vetting the Nubians, is that they foreigners unless proven otherwise. Mr. Adam Hussein Adam who has been involved in the Nubian case explains the situation this way:

“For a Nubian to qualify for vetting he or she just needs to say he/she is a Nubian after which s/he proceeds for vetting. Nubians are not a border community. Previously, the Government has argued that there are Nubians in Uganda and there are some in Tanzania and therefore Nubians should be vetted.... What makes this process discriminatory is that it is not uniform. Nubians are told to prove that they have more than one generational existence in Kenya. It never ends at that. For instance for a child born of a father of 70 years old today how can such a person demonstrate more than two generational existence in Kenya?”

⁷ Adam H. Adam, **THE NUBIANS AND STATELESSNESS: HISTORY IN DEFINING MORDERN LIVES**, see http://dev.justiceinitiative.org/db/resource2/fs/?file_id=17043. Because of the role their ancestors were forced to play for the benefit of the British Government during the conquest of East Africa, the Nubians were settled in the expansive 4,419 acres of Kibera land and the settlement was effectively gazetted in 1918. Even though Nubians assumed they were legally entitled to the ownership of the expansive land, the understanding of the British was that, the Nubians were to own only the houses they built and the land would remain state land.

An elder from the Nubian Vetting Committee in Kibera also agrees:

'The Nubians face more rigorous processes and scrutiny. It takes very long to obtain an ID and in some cases Nubians are simply denied IDs. This ensures further marginalization of the Nubians.'

Interviewed residents and Nubian elders however alleged that Nubians are asked to bring documents not required for applicants from other communities, such as grandparent's ID or birth certificates. The District Registrar at Kibera acknowledged the request for such proofs in relation to Nubians. However, the same was denied by the NRB in Nairobi who informed the team that adjustments had since been made via a mutual agreement with the Nubian community in 1999. The study was informed that Nubians were previously asked to provide parents' and grand parents' proof of birth through birth certificates, but these have since been abolished on the realization that most of them did not have the documents unlike Europeans, Asians and Arabs for whom it was mandatory to register as early as 1946. Presently, NRB states that Nubians are only required to provide proof of birth of self, and are vetted by committee made up of Nubian elders.

It is clear therefore that the guidelines and requirements for registration are different for Nubians in Nairobi District. Some respondents in Nairobi indicated that vetting also exists for other tribes for those whose parents are from border districts.

3.3 A comparison with Nakuru District

Situated in the Rift Valley Province, the larger Nakuru district has a population of 1,187,039 (1999 census) and covers an area of 7,242 sq km. The registration office in Nakuru Town is accessible and was at the time of the study undertaking mobile registration under the Rapid Results Initiative. KNCHR found Nakuru residents well informed regarding the process of acquiring IDs.

For registration of Kenyan citizens (non Somalis), the following documents are required to accompany an application for an ID:

- a) Copies of parents' IDs
- b) Proof of age (birth certificate, baptismal card, school leaving certificate)
- c) Letter from area Chief

KNCHR found that no cost is levied to obtain an ID though residents spoke of having to bring their own photographs. While this was acknowledged by the Registration Officer, KNCHR was informed that was no longer the practice as the Office had acquired films and applicants no longer have to bring their photographs. The department has one vehicle which serves the 16 divisions of the larger Nakuru District.

Discrimination

The Registration Officer, the provincial administration and the residents acknowledged that there was differential treatment to Somalis which was rationalized as necessary due to the difficulty of differentiating Kenya Somalis from refugees. Applicants from the Somali community were therefore asked to go back to the home districts of their parents

where apparently, they can easily be identified by their Chiefs. This requirement is not necessary for Kikuyu, Kamba, Luo or other applicants whose parents do not originally hail from the District.

The DO was emphatic that Somalis are discriminated in all districts in the application of IDs. Once more, the argument was that “*it is impossible to differentiate between Kenyan Somalis and Somali refugees*”. While the DO did acknowledge that it was irrational to send back only Somali applicants to the home districts of their parents which in some instances they had never been to, he observed that in situations where a district office had gone to register Kenyan Somalis at the district level, such applications were eventually rejected in Nairobi by the national vetting committee

From the foregoing, it emerges that the process of registration is not applied equally. While the officials argue that fear of registering non-Kenyans is why they refer applicants for IDs to their home districts- this practice appears to specifically target only the Somali community and not other ethnic communities. If it is true that the authorities find it hard to distinguish Kenyan Somalis from Somalis of Somalia, why isn't this standard applied to other ethnic communities found both in Kenya and in neighbouring Uganda or Tanzania such as the Luo, the Luhya, the Maasai, the Kuria and the Sebei/ Sabaot? How different is a Luo from Tanzania or Uganda from that from Kenya?

4 Findings

This section provides the findings of the field study and literature review conducted by KNCHR. The sub-sections represent the critical areas that the research focused on ranging from the whole registration process, institutional structure and how it operates and its capacity. The section also highlights findings in specific case studies.

4.1 There is lack of adequate clarity on the documents required to support an application for an ID

Three kinds of evidence are required in the application process: –

- (1) *Proof of age*
- (2) *Proof of citizenship and*
- (3) *Proof of residence.*

The National Bureau of Registration has provided the following guidelines:

a) For proof of birth, any of the following may be used:

- Birth certificate
- Baptismal certificate
- School leaving certificate
- Age assessment certificate from a medical officer
- Child health card
- Notification of birth
- Letter from the Provincial Administration – Chief/Assistant Chief
- Sworn affidavits (for late registration)

b) For proof of one's citizenship, one may be required to produce:

- Parent's ID card, and in some cases, grandparents ID
- Certificate of registration as a Kenyan citizen (Kenyan by registration or naturalization)
- A letter from the civil service attesting to parents' employment by Government and a copy of the parent's civil service ID.
- Any other document/information that will be asked for by the registration officer.

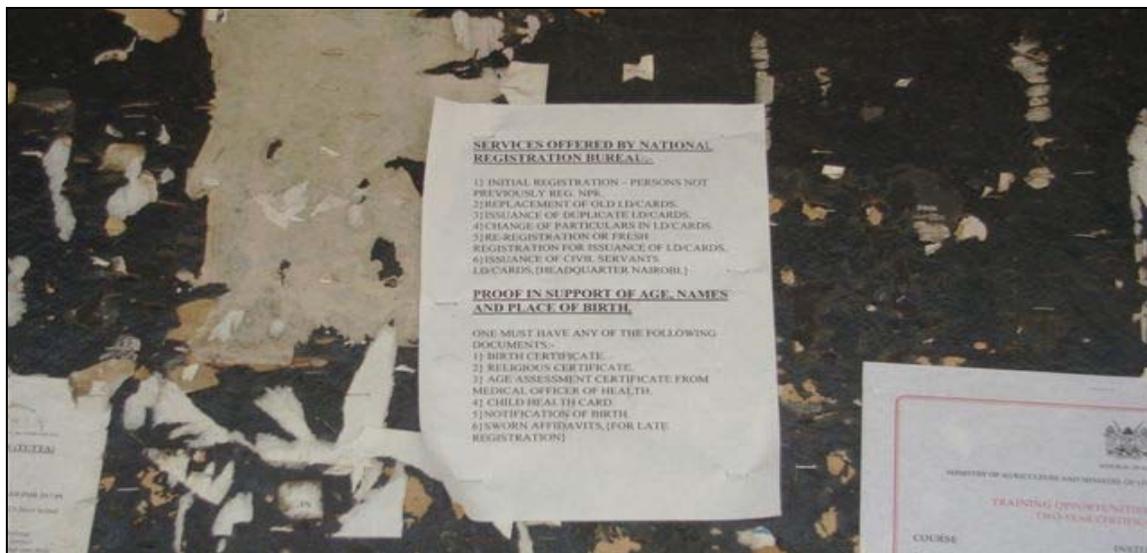
c) For proof of residence, one may be required to produce:

- A title deed
- Agreement of sale of land
- Water and electricity bills
- Letter from the area Chief

Other than a birth certificate, baptismal card or age assessment certificate, most of the other requirements are not enumerated in the Registration of Persons Act or its rules. The lack of direction and extremely wide discretion given to registration officers to determine

‘any other document/information,’ leaves room for abuse, arbitrariness and unreasonable demands on the applicants resulting in unfortunate consequences.

The NRB informed KNCHR that such requirements were local initiatives which later became institutionalized without formal approval. Registration officers are allowed to “use all necessary processes to prove citizenship’ and that ‘the key is satisfaction of the registrar since they are accountable for all persons registered’. Despite the fact that such practices had been scrapped by way of circulars in August 2006, the findings tell a different story. Residents of Kajjado, Tana River, Turkana, Teso, Wajir and Mandera districts, for instance, alleged that they had been asked to produce title deeds or letters of allotment when applying for an identity card. But in most of these districts, residents neither have title deeds to land nor is land registered to individuals as most of the areas are trust land, making the demand unreasonable.



Picture 1: Requirement when applying for ID card on Notice Board in Lodwar Town. Among the requirement, screening cards for Kenyan Somalis and title deeds are not included, (KNCHR 2007)

In the case of the Nubians in Kibera and persons of Arab origin, they are required to present their grandparents’ ID cards, or in other fashion, prove that they have more than one generational existence in Kenya. The NRB explained that such requirements were in order under section 87(1) of the Constitution where a person’s citizenship is determined by the citizenship status of the parent and where the citizenship status of the parent was not clear at the time of independence, and then the grandparent’s status of citizenship ought to be determined.

The difficulty experienced in the legal status of Nubians is caused by two factors: the first is that Kenyan citizenship is linked to ethnic identity and Nubians are yet to receive official recognition as a Kenyan ethnic grouping. The second factor is the constitutional failure to provide definite transitional clauses with respect to citizenship status of immigrants who had obtained residence in Kenya several years prior to independence. Consequently, there has been a systemic violation against Nubians and other Kenyans

deemed of foreign origin since independence with respect to citizenship laws and issuance of identity cards.

4.2 The National Registration Bureau

In the course of the study, there was focus on the capacity and environment under which the district registration offices worked. Broadly, the delivery of registration services to citizens depended also on the office facilities, infrastructure and human resources. The following were observed.

4.2.1 Inadequate field offices and equipment

The conditions observed at registration offices at district and divisional levels did not reflect the importance of these offices. In the districts of Turkana, Tana River, Teso, Wajir, Mandera and Kajiado, the office facilities were in a deplorable state. Most of these offices lacked space and basic equipment and furniture. In Bura district headquarters, for instance, the office comprised of two rooms with a leaking roof, missing floor boards and open walls. At Amukura division of Teso District, the registration office had been allocated a corner space in a room shared with the Ministry of Agriculture. Only two seats were available for the five officers who served the public while standing.



Picture 2: NSSF building (nairaland, 2007) that hosts NRB headquarters sandwiched by Bura registration Office (KNCHR, 2007)

Other than Nairobi, none of the offices visited had a computer. Most of the work is done manually. This was in contrast with what was happening in the sister ministerial departments. Most officers also complained of lack of proper means of communication such as telephone lines. For instance in Garsen division of Tana River District, it was reported that “all its communication had to go through the district office at Hola (headquarters), which is more than 100 km away.”

On transport facilities, the Government had made effort to buy vehicles for the district offices. However, most of the vehicles were reported to be “grounded” while others such as in Teso district had remained in the garage for almost three years. In essence, this state of affairs compromises on the efficiency and effectiveness of the department and in particular, mobile registration.

4.2.2 Inadequate funding

Funding for the department of registration has over the years been inconsistent. There were indications that major funding occurred only when “it is about an electioneering year.” Most of this funding is specifically meant to facilitate the registration of new persons to enable them register as voters. The inconsistent funding of the department results in lack of infrastructure, human resource and general capacity development of the department.

Limited budgetary allocations hindered NRB’s ability to meet public expectations at district and divisional levels. KNCHR was informed that all districts received equal funding irrespective of size, population or special considerations. On transport component, as a case in point, it was reported that each district received Ksh 30,000/- per quarter for transport (fuel and vehicle maintenance). Considering the vastness of districts such as Tana River, Marsabit and Turkana, such an amount is clearly inadequate. The implication of this is that some parts of the districts have not been visited by mobile registration for the past five years; limiting the access to IDs by such residents.

4.2.3 Shortage of materials for application and processing of IDs

There were several reported cases of shortage in the supply and availability of necessary materials for ID card production. This resulted in delays in the registration process. Such delays also resulted into apathy and despondency among desiring applicants in remote places such as Turkana and Tana River districts. Crucial materials that were reportedly in short supply included:

- application forms (computer paper)
- films at district (application) levels,
- printing materials (security paper) at headquarters (processing level)

Scenarios were reported where only a third of applicants present at a mobile registration could actually register due to lack of application forms.

According to NRB, some of the shortages were occasioned by contractual/procurement bureaucracies experienced by the department for over two years.⁸ At the time of the study, NRB reported that “for purposes of the crash program, only a short-term contract (one year) has been entered into with suppliers and subsequent to this, longer-term contracts would be entered into.”

⁸ KNCHR was informed that the contract for 2nd generation IDs ended on 30th May 2005, and this has occasioned delays since 2006 with a heavy carry-over which was being dealt with in the crash registration programme. Printing of the backlog Identity Cards commenced in mid-February 2007. The research team was informed that it is the Ministry of Immigration and Treasury that are responsible for contracting.

In view of the shortage of materials, some officials at the district and divisional levels have allegedly been engaged in unethical practices. In some cases, applicants were forced to pay for application forms and films at exorbitant costs. In other cases, applicants were being asked to obtain copies from “specific vendors who were in collusion with registration officials to extort money from innocent applicants.” In all these cases, no official receipts are issued.

4.2.4 Inadequate staffing at the NRB

Generally, NRB faces staffing challenges. It was established that before commencement of the crash registration programme, registration offices around the country suffered staff shortages. In Tana River for instance where the crash programme had not yet commenced at the time of the study, the entire district had eight registration officers. Garsen division had only two officers and Bura division had 3 officers. In Turkana, the largest district in the country, the divisional level offices had only one registration officer each.

The situation had only improved with the commencement of the crash programme in early March, 2007, when additional officers were recruited in the country. However, the hiring of the new officers was on a one-year contract. This means that capacity gaps at the end of the one year contracts will continue to be felt within the department. It is also an indication of lack of commitment on the part of the State to register people consistently through out the year and especially since 50% of the population is under 15 years of age which means that a good proportion of Kenyans turn 18 every month.

Most of the registration officers complained of lack of motivation in their work. As a result most of the well trained officers are lured to other sister institutions such as the National Social Security Fund and Kenya Revenue Authority.⁹ In explaining the situation, NRB stated that the exit of qualified staff members was occasioned by better terms of employment offered by the other institutions.

In upcountry regions, registration officers complained of the system being centralized and concentrated in Nairobi. A case in point was training or educational opportunities available for staff members. It was reported that there is no equal or equitable distribution of such opportunities to people working in the district offices. The consequences are that no new skills are developed among a cross section of the work force and that the upward career growth among the staff is limited.

4.3 Innovation through mobile registration

Mobile registration is a pro-active instrument used by the NRB in rural districts, including border districts, to increase access to IDs at divisional and location levels. Many of the districts visited are vast, with poor infrastructure and long distances to the divisional headquarters where IDs are issued. Tana River District, for instance, is approximately 300 kms wide and many of its inhabitants lead a nomadic lifestyle. Turkana, the largest district in Kenya has few divisional offices that are far apart. One of its divisions, Loima, does not have a registration office, despite being located approximately 90 Kilometres from Lodwar town where there is a full-time office. As

⁹ This is common with finger-prints experts.

such, residents cannot easily access the registration offices. Mobile registration is therefore an essential process to access applicants at the local levels.

However, the study found that mobile registration is hampered by limited resources in terms of personnel, vehicles for transport, and lack of funds to facilitate registration officers. Hence mobile registrations are quite infrequent and erratic, whereby in some divisions, they had not been attended to in five years. In Bura and Garsen divisions, the registrars had no vehicle to conduct mobile registration while in Galole the one vehicle they had was broken down. In Buna division, Mandera district no mobile registration had been initiated since 2002. The same goes for Loima division in Turkana district.

Given these challenges, registrars are forced to be innovative including borrowing vehicles from other departments, the DC's office, NGOs and even politicians. And where this succeeded, they would still need funds for allowances and accommodation for officers and vetting committees, and sometimes the funds are either insufficient or totally unavailable in contrast to the allowance allocations for top civil servants. During the three-months crash registration process conducted in early 2007, for instance, adequate funding commensurate with the task was not provided. Teso district with four divisions was for instance given Ksh. 120,000 for the entire process to cater for transport, accommodation and subsistence of vetting committee members, including allowances during mobile registration.

Furthermore, questions were raised on why all districts in the country were being given an equal amount of funding, without taking into account the differences in size, population, challenges faced and lifestyles of the inhabitants. Another issue of concern was the involvement of local politicians in providing logistic support such as his/her vehicle to transport officers to register persons in a certain area. Such involvement is likely to raise concerns of bias in the registration process. Such cases were reported in Turkana and Kajiado districts.

While the NRB has been registering high numbers during mobile registration, there are also issues relating to delivery of the ID cards. In most cases, once the ID cards have been produced and dispatched, often the applicants have to take individual initiative to collect them at the divisional or district offices. In other cases, the department has used local chiefs to reach out to the applicants but that has not been all that successful. The many ID cards lying uncollected from points of collection proves the need for a more structured approach to ensure actual collection by the applicants or a better framework for dissemination.



Picture 3: Over 60 ID cards dating back to the year 2000 remain uncollected at a chief's office in Kakuma (KNCHR, 2007)



Picture 4: Over 50 voters' cards remain uncollected at a chief's office in Kakuma (KNCHR, 2007)

4.4 Delays in processing applications

Delays in the issuance of ID cards from the time of application to the time of collection were common complaints received across the districts. The official waiting period between the time of application and collection is at least three months. But this timeline was not observed in many cases meaning that most Kenyans in affected areas have lost faith in the system. Some people who had not applied for ID cards in spite of attaining 18 years were categorical in stating that “it does not make any difference to apply for one [ID card] since many people go and do not come back with ID cards.” The delays could be discussed at two levels: *delays not officially acknowledged* and *delays officially acknowledged*.

Delays not officially acknowledged are those that occur in what should be considered normal levels of operations. But the State was reluctant in admitting that such delays existed regardless of complaints. As a way of illustration, at Loima division in Turkana

district five informants out of ten had been waiting for ID cards dating back to 2002. Residents in Merti location, Tana River District also complained about delays and three out of five residents interviewed showed their waiting cards dating back to 2001 and 2004. A 23 year old man informed the team that he had been to the registration office to pick up his identity card several times and each time he was asked to go back as it had not yet arrived. On requesting for an explanation for the delay, he was not given any, and at the time of the study he was about to give up. According to him, the time and money spent on visiting the office was simply not worth it.

Delays officially acknowledged consist of the period 2006 to early 2007. In this case, most applicants who had applied for ID cards as early as January 2006 had not received their ID cards by the same time in 2007. The official explanation for the delays was that the capacity of the production machine could not cope with the demand. But the crucial aspect of it related to delayed procurement of new contractors upon the termination of the previous contracts. While the latter reason provided a valid excuse there was poor communication by the department to the general public. Most of the people interviewed had little information or were not generally aware of the problem.

Another cause of delays, whether acknowledged officially or not, includes the high centralization of the process in Nairobi. This means that all applications have to go to the National Registration Bureau in Nairobi for verification and eventual printing of ID cards. The applications are sent in hard copies by regular mail. Once the ID cards are produced, they are sent back to the respective districts via regular mail. This process, according to the NRB, is supposed to take approximately 30 days. But residents from the sample districts (with the exception of Nairobi) reported that in reality the feedback process could take as long as 2 years.

While this study has not quantified the costs occasioned by these bureaucratic delays, it is clear that Kenyans are paying dearly for this inefficiency. If one was to ask how much it costs to travel to the district headquarters, it appears that the delay imposes an extra burden especially on poor Kenyans living in marginal areas and they thus have to pay more on account of the longer distances to the headquarters.

4.5 Un-official costs: allegations of corruption

Another consequence of limited funding is what many of the informants termed as ‘un-official costs’ or demands for payment for which no receipts are issued.

The Government previously levied a fee of Ksh 50 for new applications. But through an official circular the cost was scrapped off in March 2006 by the Government. However, the larger part of residents interviewed in all 8 districts had a different encounter in terms of costs of obtaining an identity card. These costs varied from station to station, and from individual to individual. Whenever the payments are made, no receipts were issued. For instance, in Amukura division, Teso District, residents interviewed alleged that they paid the following, for which no receipt was issued:

- 20/= to the assistant chief

- 50/= for the ‘yellow form’
- 50-100/= for photo
- 500/= as a ‘fine’ for late registration
- Varied costs for photostat copies of vetting profomas

The experience of paying between Ksh 50-100 for the identity card photo seemed to repeat itself across districts with those in Tana River District alleging that they paid Ksh 200. A similar case was reported in Lokitang in Turkana District. On further interrogation with the respective Provincial Administration and registration officers, some stressed that an identity card is issued free of charge thus questioning the veracity of those allegations. While others, for example the Provincial Administration and registration officers in Amukura, acknowledged that due to shortage of materials, applicants were sometimes asked to pay for films for photos, or to bring their own photographs. Those not willing to pay were forced to wait until such materials became available. Furthermore they explained that since the registration office does not provide vetting profomas, applicants are required to cover the costs of photocopying these documents, which charges varied from studio to studio.

A similar scenario of direct charges to applicants was highlighted by one of the MPs interviewed. He stated that a lot of energy had been put into the mobile registration but the funding remained quite limited. As an alternative, the MP and the registration officers had asked applicants in the locations to cover the costs of allowances of the officers during the mobile registration. In the case of his constituency, each applicant paid approximately Ksh 300. The DOs and registrars who acknowledged the existence of such costs all justified these costs with the argument that ‘work has to be done’.

Elders interviewed in Garsen talked of experiences where they had to pay the registration officer to receive their identity cards once the cards had arrived from Nairobi. The elders accused the respective registrar of “having his drawer full of identity cards, which would only be handed over for *something small*”.

‘Whenever we request for registration, we are asked by the registration office to pay for fuel costs, provide transport, and prepare accommodation and meals. We are also asked to pay for the costs of the vetting committees. Anyone who does not pay is discriminated. They provide to those who can afford. There are cases where all the requirements are given but still if you are not ready to part with some money then you miss that chance. .’

In Mandera District, the research team witnessed the area chief collecting money from applicants at a mobile registration.

The un-official costs levied on applicants however small, was a discouragement to many poor nomadic pastoralists living in the interior parts of districts such as Turkana and Tana River. The impact especially on the poor segments of society is especially harsh. Public ignorance on procedures of application and entitlements contributes greatly to exploitation by officers in the field.

4.6 Vetting Committees

Vetting committees are established with the objective of identifying Kenyans for the purposes of registration and issuance of ID cards. Vetting is a requirement without any legal or official basis for the registration of applicants resident in urban settings and border districts. The NRB emphasized that the fear by the state to register foreigners is one of the key motivating factors in conducting vetting to establish residence and citizenship of the applicant.

Vetting committees are however not established under the Registration of Persons Act. In trying to establish the legal basis of the vetting committees a number of informants talked about guidelines and circulars which could not be specified. Nonetheless, the vetting committees appeared to have a structure of representatives quite similar across the border districts. The vetting committees comprise of:

- The DO – Chair and convener
- The registration officer – Secretary
- Chiefs
- Village elders (representing different (ethnicity/ categories)
- Intelligence officers

Responses on the functions of the vetting committee demonstrated confusion and misunderstanding by officers in the field including a DO. There was also lack of awareness on guidelines regulating the appointment of elders to the vetting committees. Furthermore, it was not clear who had the final authority in the committees. Some indicated that it was the elders, some the chief, while others thought it was the DO/ DC.

There were complaints of lack of transparency in the vetting exercise. These accusations were mainly made against elders and chiefs in the committees. Some residents in Wajir, for example, thought that the role of the vetting committee was to collect money for the chiefs. In Turkana, applicants talked of paying “*pesa ya wazee*” (elders’ fee) to the vetting committee. Some had been discouraged to apply for ID cards because they could not afford to pay the money. One of the explanations given for this was that the elders were not usually paid their allowances on time. Further, that the allowances were not commensurate to the work done by the elders.

The vetting exercise which in our view is without any legitimate basis has created room for abuse. Lack of uniform guidelines and approved methods of identification gives the elders even greater powers which may lead to discrimination since their judgement is not immune from their pre-conceptions, stereotypes and tribal affiliations. The vetting process therefore risks becoming a subjective assessment and not an objective process of identifying who is Kenyan and who is not based on objective criteria.

4.7 Elections

As mentioned earlier, identity cards play a crucial role in the exercise of a person’s civic right to vote. As such, during an election year there is high demand for voter’s cards hence ID cards. In the period leading to the commencement of the study, there were

reported cases of persons, mainly the youth, being denied ID cards to enable them register as voters.

At the time of study, both the NRB and ECK had campaigns to register persons for ID cards and voters respectively. Despite the concurrent registration, it was obvious that the newly registered persons (for IDs) could not be registered as voters since IDs are not given on the spot. Explanation given by the ECK officials was that the registration of voters at the time targeted persons who had received ID cards and those who desired to transfer their voting stations. As opposed to the high turnouts observed at the registration of person's centres in Teso District, the study team witnessed many situations where ECK clerks were sitting idle in their registration booths. Perhaps one of the reasons for this is the one year delay (2006 – 2007) in the issuance of ID cards to applicants that made it impossible for them to avail themselves to register as voters.

In order to ensure proper coordination with the two registration exercises, ideally, the ECK registration programme should be conducted at least six months after the NRB crash registration programme. Nevertheless, NRB and ECK emphasised that the two institutions coordinated well and were satisfied.

It was mentioned earlier, that NRB only features prominently during an election year, i.e., as a means to enable eligible voters to register for elections and for this reason, funding to NRB only increased during an election year. This poses the question of how the Government can mobilize resources, in a short time, to facilitate a crash registration programme for IDs but cannot sustain it in the long-term. It also implies that the Government only recognizes the importance of an ID card in so far as elections are concerned, but not for other crucial purposes as already noted in this report. This means that political interests of those in Government tend to supersede the day-to-day interest of Kenyans.

5 Concluding observations

Registration of persons and issuance of ID cards is core in determining the extent of enjoyment of human rights and fundamental freedoms by Kenyans. In the course of this study, the National Commission found that some specific ethnic groups face almost insurmountable challenges in obtaining ID cards. Further, the study highlights areas that hinder the effective and efficient registration of persons in Kenya including; historical prejudice, ethnic stigmatization, a weak policy and legislative framework, lack of institutional capacity and general government disinterest in the department of registration of persons.

There is a strong institutionalised link between citizenship and ethnicity in the issuance of identity cards. The Study found that the registration system applied different and stricter rules with respect to Nubians, Kenyan Somalis and Kenyan Arabs as opposed to other Kenyan ethnic groups. This approach offends the tenets of equal treatment and has no place in a pluralistic and democratic society. Denying specific ethnic groups Identity Cards is not only discriminatory; it also enhances opportunities for rent seeking and further marginalizes these communities. The numerous cases of corruption and extortion reported by the citizens against public officers in remote districts were adequate proof.

Kenya's system of national registration is further opaque without sufficient safeguards for promoting accountability and good governance within the National Registration Bureau. Concerns raised by the state on national security in the course of registering persons cannot be over-looked. However the measures adopted by the Government to guard against registering foreigners, such as vetting without proper structures and guidelines, have resulted in Kenyan Somalis, Nubians and Kenyans Arabs being subjected to unnecessary hurdles in their quest for National Identity Cards. We suggest that a proper system of documentation and registration of all births of children to Kenyan parents would alleviate fears of registering foreigners since these children would automatically on attaining 18 years be entitled to IDs.

The end result of such a policy is that many of the affected communities despite knowing the importance of ID cards do not seem motivated enough to apply for them. Their apathy stems from years of systemic discrimination and from past experiences when they attempted to get registered. The Government, and the NRB have done very little to raise public awareness on the importance of an identity card and the procedure for acquiring it. Ignorance of the applicants has therefore led to manipulation including making forced unofficial payments. It has also led to the problem of late registration among those who were eligible to vote, that was witnessed in many districts.

Findings in this study thus demonstrate that the general policy and legal framework for registration of persons is not applied equally as the study in Nakuru demonstrated. There is therefore need for reform in terms of equal application befitting the democratic context of Kenya today.

6 Recommendations

In view of the findings above regarding the registration process, and taking into account issues of rampant bureaucratic corruption, ethnic discrimination of a systemic nature and capacity weaknesses of the registration department, the National Commission makes the following recommendations towards redressing and reforming the process to enable the NRB to serve Kenyans more effectively and efficiently.

Short-Term Recommendations

6.1.1 Allegations of corruption and bribery in the registration process

The Government through the Office of the Principle Registrar of Persons should:

- Immediately investigate and unravel credible allegations that Somali refugees in Dadaab refugee camp have been issued with Kenyan identity cards.
- All culpable persons should be apprehended and charged in a court of law.
- All such ID cards issued to refugees to be immediately withdrawn from the possession of such refugees.
- The registration officials responsible should be identified and prosecuted.

6.1.2 Elections

The National Registration Bureau should:

- Disseminate the 300,000 ID cards that reportedly have remained uncollected at various centres to ensure that the owners are able to exercise their right to vote in the coming general elections.
- Conduct nation-wide sensitization campaigns and create mechanisms to enable the collection of such IDs, for example, through chiefs, local CBOs and religious organizations.

6.2 Medium and Long-term Recommendations

6.2.1 Elections

While ideally both the ECK and NRB should collaborate in planning for ID-Voter registration programmes, it is also clear that this duplication is an unnecessary burden on tax payers. We see no reason why voter registration should be conducted at great expense to the tax payer while the national ID card would more than adequately suffice for purposes of voting. This is an area that requires harmonization so as to cease the duplication of roles between national registration of citizens by the NRB and that of voters by the ECK.

6.2.2 Funding and resources

The National Commission recommends that budgetary allocations to NRB should not be tied to elections. Due to past marginalisation of the department, it is recommended that:

- The Ministry of Finance increases the budgetary allocation to the National Registration Bureau at the national and district levels starting in 2008/2009 financial year. For instance, the amount expended in paying gratuities to Members of Parliament is more than sufficient to meet the needs of the registration bureau. Priority should be given to development of physical infrastructure at the district level, personnel recruitment and installation of production machines.
- All District Registrars should be allocated computer facilities to be able to create records, which then can be sent to national office as soft copies. Computerization will improve efficiency in the registration process significantly and reduce delays.
- Budgeting to district offices should take into consideration specific regional needs based on population size, geographical coverage, and people's social, economic and cultural lifestyles.
- Harmonization with the ECK registration to avoid duplication needs to be considered as a matter of priority.

6.2.3 Proof of Citizenship, Residence and Vetting

The National Commission recommends that:

- The Ministry of Immigration and the Office of the Attorney General provides clear guidelines on how one can prove his/her citizenship.
- Parliament to consider amending the Constitution to make express provision recognizing citizenship status of immigrants who have been resident in Kenya for over 100 years such as the Nubians, Coastal Arabs, Asians and persons of European descent.
- NRB should develop a framework on objective criteria to be used in identifying Kenyans regardless of their ethnicity or race.
- Further, the law should be amended to reduce the wide discretion of the registration officer to demand additional information to prove citizenship.
- The demand on applicants to prove residence should be abolished.
- The National Commission recommends that *vetting based on ones ethnicity* should be abolished and where vetting is conducted, proper guidelines should be developed to address among other things: appointment of committee members, allowance amount for committee members, approved methods of identification and a minimum number of vetting meetings per year.

6.2.4 Decentralization

To reduce delays, the National Commission recommends that the Government through the Ministry of Immigration should commit itself to decentralize production of ID cards starting 2008 to end in 2011:

- The Government to decentralize production of ID cards to provincial level so as to ensure services is closer to districts (public) while at the same time maintaining some level of control.
- The Government should ensure full computerization to enable the provincial centres to access data with ease. It will enable the NRB to monitor the work of the District Registrars through the central register and would only require soft copies of registration forms.
- The Government should recruit more staff and also provide in-service training of registration officers on: ethics and integrity, aspects of registration including finger printing and photography.

6.2.5 Use of bio-metric system of registration - IPRS

The National Commission recommends that:

- The Ministry of Immigration in conjunction with others should fast-track formulation and implementation of the proposed Integrated Population Registration System (IPRS) – bio-metric system of registration. The targeted period of completion should not be later than 2012.

6.2.6 Institutional Structure

The National Commission recommends a complete overhaul of the institutional structure as follows:

- Establishment of the office of Commissioner of Registrar of Persons as opposed to the current situation. The Commissioner will discharge his mandate independently with full budgetary support from government. This will also provide the required paradigm shift from colonial concepts of ID cards.
- The establishment of the Office of Commissioner of Registrar of Person should be anchored in law governing registration of persons as opposed to the NRB that has no legal foundation.

6.2.7 Monitoring - reduction of corruption and discrimination

To promote accountability, the National Commission recommends that:

- The NRB should develop clear guidelines on monitoring and accountability of registration officers. Such guidelines should also include in-built regular meetings and communication and frequent visits by officers from the headquarters to district and divisional levels.
- The guidelines should further include a complaint and redress system to enable victims of violations to lodge their complaints. The system should be independent from the provincial administration.

6.2.8 National awareness campaign on national identity cards

The National Commission recommends that:

- NRB should initiate a national awareness raising campaign regarding the issue of IDs not only to focus on the need to have an identity card but also in order to reduce corruption that has permeated the process by empowering citizens to understand the process.
- The media campaign should include radio and television adverts, production of simple IEC materials on the process of registration and other aspects relating to requirements and costs.
- All relevant information regarding registration should be placed on notice boards and at public places to ensure accessibility.

6.2.9 Review of the Legislative Framework

Owing to the weaknesses established in the legislative framework, the National Commission proposes that the Registration of Persons Act should be replaced with a new legislation. The review should be spearheaded by the Kenya Law Reform Commission in conjunction with the relevant ministry and other stakeholders. The time frame for the work is 2008-2009. The new legislation should be able to:

- Provide for an ID card as a right as opposed to an obligation. This will provide a paradigm shift from the colonial objectives of identification to new paradigm of seeing identification as a form of enhancing one's opportunities to enjoy human rights and freedoms.
- Provide for the establishment of the Office of the Commissioner of Registration in order to enhance accountability and efficiency in the system.
- Provide proper mechanisms of accountability and redress to victims of violation of the right to an identification.
- Provide a clear framework of identifying Kenyans regardless of their ethnicity or race.
- Provide for a clear management structure and mechanisms of appointing professional staff among others.

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