

## **Submission**

### **to the Human Rights Council**

at the 49<sup>th</sup> Session

of the Universal Periodic Review

# **KENYA**

## **Introduction**

1. Nubian Rights Forum, Haki Centre Organization, Haki na Sheria, Namati and the Institute on Statelessness and Inclusion make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Kenya.
2. [Nubian Rights Forum \(NRF\)](#) is a human rights organisation dedicated to promoting the rights of the Nubian community in Kenya by assisting stateless persons within the community with their applications for identity and citizenship documents. NRF trains and supports community-based paralegals who aim to empower those at risk of statelessness by navigating the Kenyan legal system.
3. [Haki Centre Organization \(HCO\)](#) is a civil society organisation based in Kenya. HCO supports stateless communities and communities facing citizenship challenges to realise their rights, access civil documentation, and undertake advocacy efforts. Our model involves working with a pool of community paralegals from affected populations to strengthen capacity of the community to effect change. HCO has a decade-long experience on statelessness focusing on resolving existing situations, preventing new cases, and protecting the rights of stateless persons. Our approaches include community sensitisation and mobilisation, legal empowerment, community skills-building, movement-building, and community-led advocacy. HCO worked with the Makonde, the Pemba, and are currently supporting people of Rwanda and Burundi origin to access their right to a nationality.
4. [Haki na Sheria \(HSI\)](#) was founded in 2010 by Kenyan Somali law students from Garissa County, studying at the University of Nairobi, in the run-up to the promulgation of the Kenyan Constitution. This was seen as an opportune moment to advocate for the end of systemic discrimination against communities in North Eastern Kenya. The organization's main focus was to support communities to access justice, including through ending religious and ethnic profiling by the government to obtain identity cards and other rights as citizens of Kenya. In 2017, HSI officially registered as an NGO

and continues to work to empower communities in Northern Kenya to access their basic rights through legal empowerment, community engagement and advocacy. In 2022, HSI expanded its geographical area of focus from Garissa to Tana River and Lamu enabling it to serve a wider population.

5. [Namati](#) is dedicated to placing the power of law in the hands of people. Namati works in partnership with community paralegals in six countries. The paralegals support their communities to protect common lands, enforce environmental law, and secure full rights to healthcare and citizenship. Together with the communities we serve, we strive to translate lessons from this grassroots experience into positive, large-scale changes to laws and systems. Globally, Namati convenes the Legal Empowerment Network, made up of more than 3,300 groups from 170 countries.
6. [The Institute on Statelessness and Inclusion \(ISI\)](#) is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI's mission is to promote inclusive societies by realising and protecting everyone's right to a nationality. The Institute has made more than 130 country-specific submissions to UN human rights bodies on the right to a nationality and the rights of stateless persons.
7. This submission focuses on:
  - I. Discrimination in accessing Kenyan nationality;
  - II. Double registration;
  - III. Digital ID.

## Previous UPR of Kenya under the First, Second and Third Cycle

3. Kenya was previously reviewed during the 8th, 21st and 35th Sessions of the UPR, in 2010, 2015 and 2020 respectively.<sup>1</sup>
4. During the 8th Session, Kenya did not receive any recommendations on statelessness and the right to a nationality.
5. During the 21st Session, Kenya received one recommendation by Portugal to '*accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*'<sup>2</sup> and one recommendation by Finland to '*pay particular attention to safeguarding the rights and safety of minorities and marginalised groups, as well as human rights defenders, refugees and stateless persons*'.<sup>3</sup> To date, Kenya has made significant progress in protecting minorities' rights. For instance, it registered the Shona in 2019 and the Pemba in 2023, and initiated deregistration of double-registered people and issuance of ID cards in 2022.<sup>4</sup> In 2024, Kenya also recognised the ID vetting process as discriminatory but issued new

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<sup>1</sup> Institute on Statelessness and Inclusion, 'ISI database on statelessness and human rights', available at: [https://database.institutesi.org/?field\\_country\\_target\\_id\[\]=168&field\\_un\\_body\\_target\\_id=All&field\\_reporting\\_cycle\\_target\\_id\\_1=All&field\\_recommendation\\_accepted\\_no\\_value=All&field\\_specific\\_special\\_procedure\\_target\\_id\\_1=All&field\\_reference\\_to\\_statelessness\\_value=All](https://database.institutesi.org/?field_country_target_id[]=168&field_un_body_target_id=All&field_reporting_cycle_target_id_1=All&field_recommendation_accepted_no_value=All&field_specific_special_procedure_target_id_1=All&field_reference_to_statelessness_value=All).

<sup>2</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Kenya', 20 March 2015, A/HRC/29/10.

<sup>3</sup> Ibid.

<sup>4</sup> UNHCR, 'UNHCR applauds Kenya's efforts to resolve stateless situation of Pemba community', 2023, available at: <https://www.unhcr.org/news/press-releases/unhcr-applauds-kenya-s-efforts-resolve-stateless-situation-pemba-community>.

guidelines that do not yet ensure a fair and equal process of ID for all Kenyans.<sup>5</sup>

6. During the 35th Session, Kenya received one recommendation by Cote d'Ivoire to '*consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness*'<sup>6</sup> and one recommendation by Mexico to '*implement a comprehensive birth registration programme, in order to prevent limitations on the right of minorities to nationality*'.<sup>7</sup> To date, little has been done to increase comprehensive birth registration programmes, contrary to the Sustainable Development Goal (SDG) 16.9. Minority groups continue to face challenges in accessing birth certificates. These include distance barriers and increase on application charges (from 90 Kshs to 200 - 500 Kshs).

## Kenya's international obligations

7. Kenya is not a party to either the 1954 Convention on the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. However, Kenya has international obligations to protect the right to a nationality and the rights of stateless people on the basis of other UN treaties to which it is a party. These include, among others:
  - International Covenant on Civil and Political Rights (see article 24.3);
  - International Covenant on Economic, Social and Cultural Rights (see articles. 2.2 and article 3);
  - Convention of the Rights of the Child (see articles 2, 3, 7 and 8);
  - Convention on the Elimination of All Forms of Discrimination against Women (see article 9);
  - International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii));
  - Convention on the Rights of Persons with Disabilities (see article 18).
8. In 2019, the Kenyan Government made seven pledges during the High-Level Segment (HLS) at the Global Refugee Forum to eradicate statelessness in Kenya:<sup>8</sup>
  - By 2020, recognise and register as Kenyan citizens members of the Shona community who qualify for citizenship under the law (fulfilled);
  - By 2021, accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (not fulfilled);
  - By 2023, complete legal reforms to address and remedy statelessness in Kenya permanently (not fulfilled);
  - Re-establish the taskforce on statelessness (temporary fulfilled as their tenure lapsed in 2021);
  - Continue to provide protection to stateless persons and those at risk of statelessness to ensure they enjoy their basic human rights (in progress);

<sup>5</sup> Ministry of Interior and National Administration, 'Ministry on course to deliver pre-election promises', 2024, available at: <https://www.interior.go.ke/ministry-course-deliver-pre-election-promises#:~:text=We%20have%20changed%20the%20old,required%20for%20certain%20ethnic%20groups..>

<sup>6</sup> Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Kenya', 20 March 2020, A/HRC/44/9.

<sup>7</sup> Ibid.

<sup>8</sup> Global Compact on Refugees, 'Pledges & Contributions', available at: <https://globalcompactrefugees.org/pledges-contributions>.

- Validate and implement the draft National Action Plan to Eradicate Statelessness (not fulfilled); and
  - Enact a new Births and Deaths Registration Act that provides safeguards to prevent statelessness (in progress).
9. At the HLS in December 2023, the Kenyan Government reaffirmed its commitment to progressively work towards the eradication of statelessness by 2027.<sup>9</sup>
- Review, update, and validate the draft National Action Plan to Eradicate Statelessness followed by its implementation by 2027;
  - Recognize and register as Kenyan citizens, members of stateless communities, and stateless persons who may not have been identified and who qualify for citizenship under the law by 2027;
  - Complete legal reforms to address and remedy statelessness by amending the Kenya Citizenship and Immigration Act 2011 by deleting sections 15(2), 16(2), and 17(2). This will remove the time limit for registration of stateless persons and migrants by 2024; and
  - Accede to the 1954 Convention relating to the status of stateless persons and the 1961 Convention on the Reduction of Statelessness by 2027.
10. Kenya has additional regional obligations to protect everyone's right to a nationality in the country, including the African Charter on the Rights and Welfare of the Child and the African Charter on Human and Peoples' Rights. In March 2024, the African Union also adopted the Protocol to the African Charter on Human and Peoples' Rights relating to specific aspects of the right to a nationality and the eradication of statelessness in Africa which represents a significant step forward in the protection of everyone's right to a nationality in the region.<sup>10</sup>

## Snapshot of statelessness in the country

11. According to UNHCR, there are approximately 9,800 stateless persons in Kenya.<sup>11</sup> However, the real figure is unknown as it is impossible to obtain definitive reliable statistics on statelessness. During the 2019 Kenya national population and housing census, 33,358 individuals were identified as persons of undetermined nationality, an indication that many more people could be stateless.<sup>12</sup>
12. The main stateless populations include the Rundi, persons of Rwandan origin, and individuals of Asian descent. Minority groups, cross-border populations, and descendants of historical migrants are at risk of becoming stateless, mainly as a result of discriminative as well as inconsistent practices in ID issuance and limited access to birth registration and documentation.

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<sup>9</sup> Ibid.

<sup>10</sup> Citizenship Rights in Africa Initiative, 'Press release on the adoption of the Protocol to the African Charter on Human and Peoples' Rights relating to specific aspects of the right to a nationality and the eradication of statelessness in Africa', 2024, available at: <https://citizenshiprightsafrika.org/press-release-on-the-adoption-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-relating-to-specific-aspects-of-the-right-to-a-nationality-and-the-eradication-of-statelessness-in-af/>.

<sup>11</sup> UNHCR, 'Global Trends 2023. Statelessness', available at: <https://www.unhcr.org/global-trends>.

<sup>12</sup> Statistical Commission, 'Country examples of data collection on statelessness', 2022, available at: <https://unstats.un.org/unsd/statcom/53rd-session/documents/BG-3f-Country-examples-of%20data-collection-on-statelessness-statistics-E.pdf>.

13. The statelessness situation in Kenya is generational as stateless children often acquire the statelessness of their parents. This is because there are no legal and administrative safeguards to ensure that children who would otherwise be stateless acquire nationality at birth or at the time of registration.
14. Stateless people have no or limited access to the rights that are core to the ability to participate fully in society, such as education, health care, financial services, employment, owning a business or property, mobility, and vital documents, among others.
15. While it is commendable that Kenya removed gender discrimination in nationality law, in practice, women still find it challenging to confer nationality to their children and on an equal basis as men.
16. In addition, Kenya does not have a statelessness determination procedure. The term of an ad hoc national taskforce that was established to identify and coordinate registration of stateless persons expired in August 2021.

## Kenya's national laws

17. The Kenya Citizenship and Immigration Act 2011 (KCIA, 2011)<sup>13</sup> is the primary legislation that guides and guards access to citizenship in Kenya, providing necessary provisions to give effect to Chapter 3 of the Constitution of Kenya 2010. The KCIA, 2011, for the first time defined a stateless person and provided a criterion for stateless persons and their descendants to apply for citizenship. Moreover, Section 22(1)(g) of the Act provides that every citizen is entitled to the issuance of personal identification and registration documents, including a birth certificate, a certificate of registration, a passport, a national identification card, and a voter's card, where applicable. Further, Article 53 (1)(a) of the Constitution gives every child the right to a name and nationality from birth, whereas Article 14(4) of the Constitution of Kenya and Section 9 of the KCIA, 2011 provide for mechanisms that ensure foundlings below 8 years old acquire Kenyan citizenship by birth.
18. Despite significant strides towards progressive nationality law, a number of gaps remain. The KCIA, 2011 falls short of international requirements and standards in terms of statelessness identification procedures. The time limit placed on the definition of statelessness by KCIA, 2011 makes it inconsistent with the definition of statelessness provided by Article 1 of the 1954 Convention Relating to the Status of Stateless Persons. Moreover, Section 16 of the Act defines a migrant as *"a person who voluntarily migrated into Kenya before the 12<sup>th</sup> December 1963 and has been continuously living in Kenya [...]"*<sup>14</sup> This means that the Act does not include the cases of those who were born in Kenya to foreign parents and become stateless due to conflicts in the nationality laws of the country of origin of the parents and the provisions in the Kenyan laws. In addition, Sections 15, 16, and 17 of the KCIA, 2011 have a time-limited provision that lapsed on August 31, 2021, and with it the mandate of the national taskforce for identification and registration of stateless persons in Kenya.

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<sup>13</sup> The Kenya Citizenship and Immigration Act 2011.

<sup>14</sup> Ibid.

19. Other gaps in law are:

- There are no legal safeguards for children born in the country who would otherwise be stateless;
- There is no appropriate procedure to register foundlings and children who would otherwise be stateless;
- There is no legal safeguard to protect foundlings between 8 and 18 years; and
- Procedures to apply for citizenship for stateless persons through registration are not clear or easily accessible, and the possibility of submitting an application for registration as a Kenyan citizen is subject to a time limit set by law.

## **Issue I – Discrimination in accessing Kenyan nationality**

20. Discrimination of minority groups, gaps in nationality law, and limited access to birth registration and documentation are the main causes of statelessness in Kenya. Currently, the Rwanda and the Rundi are the known major statelessness individuals in Kenya. These two stateless communities have very strong ties to Kenya, having lived in the country since 1945 and 1959, respectively, and self-identify as Kenyan. Despite strong links with the country, these communities remain in limbo and continue to face crippling challenges associated with statelessness and lack of documentation, limiting access to rights and basic services.

21. In general, barriers to birth registration and documentation that disproportionately affect certain populations, such as the requirement to submit ID cards of parents, restrictions in late birth registration, and distance to registration centres, compounded recently by increased costs of acquiring documentation, cause and perpetuate the problem of statelessness.

22. On the other hand, inconsistent practices in ID issuance and/or in determining who belongs and who does not, such as discriminatory vetting (higher threshold of eligibility for others), have put many people at risk of statelessness just because of their ethnic or religious identity. Affected populations include Nubians, people from the Nyasa and Pare communities in the coastal areas, the Galje'el and Sagaf communities residing in the Tana River area, as well as some people of Kenyan Cushitic/Somali descent (Daasanach, Sakuye), as well as Muslim Kenyans from any ethnic background. Long-term refugees and particularly their descendants born in Kenya are also at risk of statelessness.

## **Issue II – Double registration**

23. In Kenya, double registration refers to Kenyan citizens who have registered in the refugee database, preventing them from obtaining a National Identification (ID) card.<sup>15</sup> Tens of thousands of Kenyans, particularly from border communities such as Garissa, Wajir, Mandera, and Lamu, have been affected by double registration. Exact numbers vary, but estimates suggest that upwards of 40,000 individuals are trapped

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<sup>15</sup> Amnesty International, 'Navigating the legal landscape of double registration in Kenya', 2024, available at: <https://www.amnestykenya.org/navigating-the-legal-landscape-of-double-registration-in-kenya/>.

in this status.<sup>16</sup>

24. The main reasons why this occurs is due to (i) border communities' vulnerability as many individuals live near refugee camps in Dadaab and Kakuma and are registered as refugees to access essential services such as food and healthcare during periods of crisis and prolonged drought; (ii) lack of documentation as some Kenyans, especially from marginalized communities, end up being registered as refugees due to the lack of access to proper documentation, rendering them ineligible for basic rights and services; and (iii) inefficient registration systems as the Government has not been able to effectively manage and reconcile registration data which has led to overlapping systems, trapping individuals in bureaucratic limbo.<sup>17</sup>
25. As a result, these individuals are at risk of being stateless within their own country, unable to participate in civil and political processes or access government services. Such individuals are unable to obtain national IDs, which are crucial for accessing education, employment, healthcare, and voting rights. Moreover, they face significant barriers to accessing financial services, mobile money, formal employment, and land ownership, exacerbating their socio-economic marginalisation.
26. Multiple affected individuals and civil society organisations have been advocating to achieve change by filing petitions, protesting and engaging in advocacy campaigns to highlight their plight.
27. In 2016, the Kenyan Government issued directives allowing individuals who had mistakenly registered in the refugee database to apply for deregistration. However, this process has been slow and inefficient.<sup>18</sup> In 2019, The Ministry of Interior with the support of the United Nations High Commissioner for Refugees (UNHCR) initiated a deregistration vetting process where 14,000 were vetted. As a result of this vetting, 12,000 were issued with their identity document in January 2022.<sup>19</sup> In 2024, the Kenyan Government again started the second round of deregistration process. Applicants are still waiting to be issued with their IDs. However, there is still a large number of affected people who have not been able to enjoy such rights.<sup>20</sup>

### Issue III – Digital ID

28. Digital ID systems in Kenya, including Huduma Namba and Maisha Namba, have raised significant human rights concerns that should be addressed in the Universal Periodic Review. While these systems aim to streamline access to services and improve governance, they risk disproportionately impacting marginalised communities, such as ethnic minorities and stateless populations like the Nubians, Pemba, Kenyan Somalis, and other minority groups. Digital ID is promoted as a tool for improved access to

<sup>16</sup> Jillo Kadida, 'State begins process to de-register Kenyans from UNHCR database', the Star, 2023, available at: <https://www.the-star.co.ke/counties/coast/2023-08-11-state-begins-process-to-de-register-kenyans-from-unhcr-database>.

<sup>17</sup> Kenya National Commission on Human Rights and UNHCR, 'Out of the shadows. Towards ensuring the rights of stateless persons and persons at risk of statelessness in Kenya', 2010, available at: <https://www.knchr.org/Portals/0/GroupRightsReports/Statelessness%20Report.pdf?ver=2018-06-06-203131-577>.

<sup>18</sup> Jillo Kadida, 'State begins process to de-register Kenyans from UNHCR database', the Star, 2023, available at: <https://www.the-star.co.ke/counties/coast/2023-08-11-state-begins-process-to-de-register-kenyans-from-unhcr-database>.

<sup>19</sup> Stephen Astariko, 'Garissa residents to resume vetting process for ID cards', 2022, available at: <https://www.the-star.co.ke/counties/north-eastern/2022-05-11-garissa-residents-to-resume-vetting-process-for-id-cards>.

<sup>20</sup> Haki Na Sheria, 'Press Statement', available at: <https://www.the-star.co.ke/counties/coast/2023-08-11-state-begins-process-to-de-register-kenyans-from-unhcr-database/>; and Haki Na Sheria, 'Crafting a democratic blueprint: Designing digital identity systems for the people', available at: <https://drive.google.com/file/d/1MwPqQNWMqK-tAdXU3bsN1FqYAsEJvji5/view>.



service delivery (e.g., e-Citizen services), financial inclusion, and enhanced national security. This framework is referred to as Digital Public Infrastructure (DPI).

29. However, the rollout of the National Integrated Identity Management System (NIIMS), known as Huduma Namba, in 2019 was problematic.<sup>21</sup> It was implemented without establishing proper legal frameworks, such as a comprehensive Data Protection Act, public participation, or transparency. The system also involved the collection of sensitive personal data like DNA, bank details, and GPS information, raising concerns about privacy violations.
30. Many marginalised individuals already face barriers to acquiring basic identification documents due to historical injustices and discriminatory vetting processes that have affected millions of Kenyan citizens. Without these documents, they cannot access essential services. The introduction of digital ID has only deepened this exclusion, as access to the system often depends on possession of a national ID, which they struggle to obtain.
31. The Kenyan government's lack of clear legal frameworks and adequate data protection measures also leaves citizens vulnerable to potential misuse of their personal information. Furthermore, limited outreach and insufficient digital literacy efforts for rural and vulnerable populations have made the system less inclusive.

## Recommendations

1. Based on the above information, the co-submitting organisations urge the reviewing States to make the following recommendations to Kenya:
  - I. Ensure that Kenya's identification and digital ID policies are inclusive, transparent, and protective of human rights. This includes addressing the challenges faced by marginalised communities (e.g. elimination of ID vetting and affirmative action for those affected by vetting), ensuring data protection, and providing meaningful opportunities for public participation in the development of the identification and digital ID framework.
  - II. Amend the Kenya Citizenship Law to introduce full legal safeguards to protect every child's right to a nationality and prevent childhood statelessness in all cases in line with international obligations under the Convention on the Rights of the Child.
  - III. Ensure every child's right to immediate, free birth registration and certification for all children, regardless of their parents' identity, status, or documentation.
  - IV. Amend the Kenya citizenship law to remove the time-limited provision on registration of stateless persons and establish sufficient regulations to facilitate easy access to registration by stateless persons.
  - V. Re-establish the national taskforce for identification and registration of stateless persons with a clear mandate to identify and register all eligible stateless

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<sup>21</sup> Nubian Rights Forum and others v Attorney General and others, available at: <https://khrc.or.ke/publication/judgement-on-niims-huduma-namba/>.



individuals in Kenya.

- VI. Accede to the 1954 Convention relating to the status of stateless persons and the 1961 Convention on the Reduction of Statelessness.