

World Directory of Minorities and Indigenous Peoples - Kenya : Somali and other nomads

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Profile

Although reliable pre-2009 data is not available, the size of the Somali population in Kenya appears to have steadily increased since independence to an estimated 2,385,572 according to the 2009 population census. This effectively places Somalis at 6.2 per cent of the national population, making them the sixth largest ethnic community in Kenya. These figures were controversial as previous estimates in the 1989 and 1999 census had put them at around 1 per cent of the population, leading authorities to question the 2009 census figure as inflated by recent immigration. However, other commentators have argued that previous surveys have repeatedly underestimated Kenya's Somali population due to their limited understanding of pastoralist social structures and restrictive definitions of who could be classified as 'Kenyan' that left many long-term residents of the country of Somali origin uncounted.

Kenyan Somalis have settled in most parts of the country, but they are known to predominantly occupy four counties of Mandera, Garissa, Wajir and Tana River, all of which border Somalia. There are significant numbers of Kenyan Somalis on the coast and in most urban areas of Kenya. The large majority of Kenya's Somalis are Muslim and are traditionally pastoralists who rear cattle, goats and camels. Camels are their primary asset and source of livelihood. Most Somalis living in urban areas are small-scale businessmen.

Whilst Kenya has made progress in dealing with statelessness affecting some minority communities, such as Nubians and Makonde, the situation of its Somali community -- the largest community affected by the risk of statelessness in the country -- remains very problematic. The

Somali community in Kenya consists of both descendants of a cross border community originally living in the far north of Kenya and more recent migrants and refugees who have fled ongoing instability and violence in Somalia. The spread of violence from Somalia into Kenya, with numerous terrorist attacks claimed by the armed extremist group Al-Shabaab or demonstrated to involve Somalis, has led to increasingly indiscriminate targeting of the community in security crackdowns. Large refugee flows, regular violent attacks and the fact that almost all Somalis are Muslim, in contrast to Kenya's largely Christian population, have together contributed to both official and social discrimination against the Somali community. In this context, there have also been increasing efforts to limit the recognition of citizenship of those of Somali origin.

Historical Background

During the colonial period the area occupied by the Somalis was referred to as the Northern Frontier District, which served as a buffer between the British Kenyan colony and areas colonized by the Germans and Italians to the north. The Somali population of northern Kenya was well established and had been in existence for multiple generations by the time of Kenya's independence. There are thus two groups of Somalis in Kenya: those whose ancestors have lived there for many generations and others who are refugees who fled the civil war that plagued neighboring Somalia since the late 1980s.

When Somalia achieved independence in 1960, while Kenya was still under colonial rule, Somali politicians appealed to the British colonial authorities either to assign Kenya's northern area to Somalia before Kenyan independence or to allow a referendum to see if the population chose to secede from Kenya. An informal plebiscite at the time found that the overwhelming majority of the largely ethnic Somali population wished to secede. This resulted in a military push by the government of Kenya to secure the Republic of Kenya, including the previous Northern Frontier District, resulting in the period of civil strife commonly known as the *shifita* war. While this conflict formally ended in 1967, in practice sporadic secessionist violence and banditry persisted for several decades in the region. During this period the Somalis were heavily marginalized and victimized by the government. Evidence gathered by the Truth, Justice and Reconciliation Commission (TJRC) suggests that hundreds of people were massacred during this period. The exclusion of Somalis was such that until 1983, not a single Somali ever sat in the cabinets of the Moi or Jomo Kenyatta governments.

In 1989, amidst the continued threat of secession, reprisal attacks and the displacement numerous Somalis fleeing the civil war in Somalia, the Kenyan government introduced a form of screening for Kenyan Somalis before issuing them with identity cards in accordance with section 8 of the Registration of Persons Act. It states that, '[T]he Principal Registrar requires all persons of the Somali ethnic community resident in Kenya who are eighteen (18) years and above to attend before the registration officers at the center specified in the second column of the schedule and furnish such documentary or other evidence of the truth of their registration between the 13th November, 1989 and 4th December, 1989.' Through Gazette Notice No. 5319, dated 7th November 1989, a task force referred to as the Yusuf Haji Taskforce received documentary evidence in accordance with

Gazette Notice No. 5320 and issued special verification certificates to persons it considered genuine Kenyan Somalis. This was the foundation of profiling and vetting of Somalis for citizenship.

During this period there was a massive influx of Somali refugees into Kenya. Over time the refugee camps became better equipped, with basic services such as education and health care that many Kenyan Somalis in the marginalized northern areas of Kenya were unable to access. As a result, some Kenyan Somali parents enrolled their children as refugees to secure the social amenities provided to refugees. This created the complex and unusual situation of Kenyan citizens by birth being enrolled as refugees. In 1998 Kenya faced its first major terror attack, which was followed by several others in subsequent years. This acrimonious history set the backdrop for the persistent difficulties experienced by many Kenyan Somalis to have their citizenship recognized.

Current Situation

Kenyan Somalis currently hold key official positions in all branches of government. For instance, as of late 2017 there are three Somali cabinet secretaries, the leader of majority government in parliament is a Somali, and Somalis have 8 per cent representation in Parliament. One of the judges of the Supreme Court is a Somali who was the Acting Chief Justice during a period when the Chief Justice and Deputy Chief Justice were retired.

However, the systematic discrimination against ethnic Somalis is far from over. In 2014, the Somali community was subjected to extensive profiling and victimization as the government attempted a crackdown on extremist militia groups. This was accompanied by anti-Somali statements by politicians and in the media, with the conflation of Somalis with terrorists and refugees being common. In this context of mistrust and suspicion, the process of acquiring national identity cards for Somalis has become very protracted.

Although the laws on citizenship in Kenya do not require group membership along ethnic or linguistic lines, in practice citizenship is typically awarded by descent and one's ethnicity may be a crucial factor in deciding whether a person is judged eligible for identity documents. This is critical as it determines whether someone is regarded as a citizen by birth (*jus sanguinis*), a citizen with lesser entitlements through registration or alternatively a non-citizen who is therefore at a risk of being stateless if citizenship is denied altogether. While it is not uncommon for communities that straddle international borders to face challenges with nationality, the barriers experienced by Kenyan Somalis in securing their citizenship are particularly high, as highlighted repeatedly in research by human rights groups in Kenya. While other communities such as Nubians and border populations have been subjected to vetting, the specific and arbitrary targeting of Somalis as an ethnic group is at a different level.

In processing an application for citizenship, for example, Somalis are frequently asked to meet unreasonable requirements such as the provision of a land title deed in an area where no subdivision has taken place or the land is owned collectively by the community. They may also be asked for documentation such as the death certificates of their grandparents to establish their lineage, even though their parents may have died at a time when the issuance of death certificates in the northern

region of Kenya was not routine. Whereas some of these hurdles have been removed, government officials still require Somalis to attend with both of their parents to apply for identity documents. The parents will usually have their biometrics taken to help in the verification process. In addition they have to face a vetting committee to establish that they are Kenyan Somalis by birth. This means that while other communities can apply and acquire identity documents in school, Kenyan Somalis do not have this privilege.

The vetting has been in place since 1989 in Kenya, but it existed without the force of law until 2015 when it was introduced in law by the Security Laws Amendment Act. Section 6 of the Registration of Persons Act reads:

(1) A registration officer may require any person who has given any information in pursuance of this Act or rules made thereunder to furnish such documentary or other evidence of the truth of that information as it is within the power of that person to furnish.

(1A) The Director may establish identification committees or appoint persons as identification agents to assist in the authentication of information furnished by a parent or guardian.

These processes can delay the issuance of identity cards significantly, as vetting is often periodic and conducted in a central location that may not be readily accessible. Furthermore, as most Kenyan Somalis are pastoralist, the procedures may not align with their seasonal lifestyles. Consequently, whereas unpublished research by the Kenya Human Rights Commission (KHRC) found that other Kenyans by birth ordinarily require between 8 and 28 days to acquire a national identity card, Somalis belonging to border communities -- while they ought to take at most 38 days -- typically have to wait between three and six months to get a national identity card. During any period of unrest or insecurity, or after government officials have been attacked by Al-Shabaab, the process of issuance of identity cards can be halted for a year or more. This results in late registration of persons who thereafter require another level of vetting. Even where Kenyan Somalis have acquired identity cards, they are now undergoing fresh vetting procedures when applying for Kenyan passports or replacement national identity cards. This has resulted in a very large number of ethnic Somalis resident in Kenya without valid identification documents.

Research has found that the counties inhabited by Somalis in northern Kenya face very high rates of corruption in accessing documentation. In 2016, members of parliament representing the Somali community negotiated a political settlement that allowed for the striking out of over 40,000 Kenyan Somalis who had been registered in the refugee database for economic reasons or to access opportunities, even though they were Kenyan residents.

Way Forward

There are a variety of factors, both external and internal, that continue to impede the status of the Somali community in Kenya. In particular, there needs to be a standardized system of vetting and registering nationality documents in place to ensure the process is verifiable and is not used to deny people documentation on the basis of their identity. This will also help reduce and combat

corruption. Additionally, the Kenyan government needs to adopt proposed requirements that Kenyans are registered and their biometrics recorded between the ages of 12 and 17 to avoid late registration.

The Vetting Committee should also have representatives from the county governments where Kenyan Somalis reside to help devolve services and increase accountability for the provision of documentation.

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