

THE STRUGGLE FOR CITIZENSHIP BY THE MAKONDE PEOPLE OF KENYA

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Abstract: Lack of nationality is a global problem with approximately 12 million population being stateless. Stateless persons often find themselves in vulnerable situations in their host country which is occasioned by their lack of nationality. The lack of nationality commonly results in discrimination against stateless persons. Such discrimination is frequently made worse by the fact that minorities rarely have the same influence as the majority. Attempts have been made to address statelessness in Kenya. This study sought to explore the nationality, identity, and citizenship of the Makonde people in Kenya. The Makonde people came to Kenya from Mozambique in 1936 as labourers in European plantations in coastal Kenya. Legislative and policy shortcomings made it difficult to recognize the Makonde as Kenyan citizens both before and after independence. This made the Makonde live as stateless persons for over 50 years. After Kenya gained independence, each successive government kept on promising them nationality, however, they were never granted. The journey for Makonde identity began in 2014 through efforts of human rights and Makonde people trekking from coast to statehouse Nairobi. Following the petition by the county of Kwale to the president in 2015, the Makonde were granted citizenship in 2016 after a struggle for several decades. Although granting of citizenship should result in stateless persons enjoying their full rights, this necessarily does not happen in most cases. Despite the Makonde acquiring citizenship, they still face some challenges in enjoying full citizenship rights such as ownership of property and political representation in the government.

Keywords: Nationality, Citizenship, Statelessness, Stateless, Identity.

1. INTRODUCTION

The United Nation High Commissioner for Refugees (UNHCR) estimates that there are at least 12 million stateless persons in the world and that it has a Global Action Plan to end stateless by the year 2024 (UNHCR, 2015). Statelessness is in contravention of the right to nationality as stipulated in Article 15 of the Universal Declaration of Human Rights (UDHR) (UN, 1948). As of 2014, almost 19 countries were reporting the status of a statelessness population of over 10,000 persons: These countries include Brunei

Darussalam, Estonia, Germany, Iraq, Kenya, Kuwait, Kyrgyzstan, Latvia, Malaysia, Myanmar, Poland, Russia, Saudi Arabia, Syria, Thailand, United Arab Emirates and Vietnam. In 2014, the UNHCR launched a ten-year global campaign known as #IBelong to end statelessness by the year 2024.

According to the UNHCR 2015 report, there are approximately 721,303 stateless people in sub-Saharan Africa. However, as the majority of them have not been identified, the actual number may be a little higher. The majority of the information in the current UNHCR stateless report comes from two nations. Yet, the UNHCR has identified six African countries as having a serious statelessness problem in the area. Yet, the countries have not provided enough data. Restrictive colonial legacy and post-colonial laws are some of the reasons that contribute to statelessness. Statelessness has also been facilitated by present concerns over state succession. Moreover, a group of immigrants and minorities face discrimination, particularly from some African laws that limit citizenship rights based on ethical racial grounds.

Nationality and citizenship have been called upon to be all things that are necessary for all people: political participation, civil rights, identity, social welfare and recognition, the common good and consciousness of community (Liebich,1995:27). Nationality is the legal bond that exists between a person and a state. Nationality not only links an individual to a state but enables one to enjoy the rights of a citizen within that state. Citizenship acts as an identity for an individual to be recognized across the globe.

A person's nationality establishes a legal relationship between them and a country, and it also serves as a springboard for additional freedoms that citizens may freely use (UN, 2003). Nationality is a fundamental and inalienable human rights issue since it assures the dignity of the individual. It has also been termed as a right to have other rights. However, in the international system, there has been a systemic occurrence where nationality has been denied rendering individuals stateless. The politics of recognition has still dominated the interactions in international relations of states with the aspirations of minority groups being brought to the fore as they demand recognition (Englund & Nyamnjoh, 2004).

The right to acquire a nationality is a fundamental right under international law. Therefore, the absence therefore creates the potential for states to abuse their power by discriminating against stateless persons indefinitely. While many states fail to realise the importance of a right to a nationality and its responsibilities coupled unto it, citizenship is an ever-present issue and often a major obstacle. This is because recognition of nationality serves as a key to access to wide range of other rights, such as health care, education, employment and equality before the law. In this respect, it is clear that persons and especially children who are stateless are some of the most vulnerable groups in the world, this is especially when it gets to access to education or healthcare (Herson & Couldrey, 2009: 4)

According to Buitrago (2011:7), statelessness is a condition in which a person is not a national of any state. Stateless persons as well as national minorities are two categories of persons who need special protection. Stateless persons lack many services such as education, security, healthcare system, land, work, international travel and justice system. Statelessness is a condition that affects people across the globe and has led to a debate about possible solutions. Statelessness has a variety of root causes, each of which is correlated with specific social, political, and economic settings. Ending statelessness requires the cooperation of numerous parties on a local, regional, and global scale.

The Challenge of statelessness started gaining attention in the 20th century after the end of the Second World War which resulted in many communities, groups and individuals dispersed to different countries. Efforts to formally guarantee the protection of stateless individuals can be linked to the promulgation of the Universal Declaration of Human Rights ('UDHR') which declared the right to nationality to every person. In subsequent years of the 1954 and 1961 conventions, more efforts were made to protect and reduce statelessness globally, with the 1954 convention furthering the protection of statelessness while 1961 furthering the reduction of stateless persons. Despite the convention on statelessness, little recognition of stateless persons continued till the 1970s and after the cold war era.

Statelessness occurs when a person is denied or deprived (for legitimate or illegitimate reasons) of its nationality (Blitz & Lynch, 2009:8) Regarding statelessness, UNHRC (2010:11) notes that persons who are stateless and have been residing for a long time on the territory have stronger rights than those who have recently arrived which fundamentally considers the duration of stay in a particular territory as key for consideration while screening and registering stateless persons to get citizenship. In Kenya, groups with historical or ethnic ties to other countries face problems with proof in the registration process and security concerns have also created obstacles (IOS, 2017). Such discriminatory policies are partly what has led to statelessness in Kenya.

According to research carried out by UNCHR in 2016, the population of stateless persons in Kenya stood at 18500. The origins of statelessness among the affected communities lay in both administrative and legal causes. These legislative and administrative causes of statelessness have denied the affected persons the enjoyment of other fundamental rights and freedom. The Kenya National Commission on Human Rights (KNCHR) indicated that stateless persons and those at risk of statelessness have not been able to enjoy their right to education, right to work and right to own property (KNCHR, 2010). Kenya has significantly strengthened minority rights protection through the new constitutions and acts of citizenship targeted towards the stateless. In addition to advancing minority rights, initiatives have been undertaken to provide citizenship to those who are stateless, with the Makonde receiving this privilege in December 2016. Even while obtaining citizenship should allow stateless people to exercise all of their rights, this inevitably does not occur in most cases.

Like other African nations, Kenya has stateless people living all around the country. In Kenya, community first came to the coast as plantation labourers in early 1936. In the aftermath of Kenya's independence, the Makonde working in the sisal plantations were neither repatriated, granted work permits nor granted Kenyan citizenship (Songa, 2021). Discrimination based on race and ethnicity in the coastal province made matters worse. Makonde people have stayed in Kenya for over 50 years, and during the same period, they have been stateless. The Makonde have over the past four decades attempted to acquire citizenship through successive governments before being granted in 2016.

The Makonde people of Kenya

The Makonde people trace their origin to Northern Mozambique. They came to Kenya as early as 1936 to offer labour on the European sugar and sisal plantations in coastal Kenya. Other Makonde in Kenya are descendants of exiled freedom fighters and refugees from the Mozambican civil war (UNHCR, 2015 p.3; Opiyo, 2017, p.19). They currently live in scattered locations in Kwale county in Kenya (Kombo,2019). The majority of the Makonde, up to 90% live in Kwale County (UNHCR, 2015p.5). There are presently four generations recorded to have lived in Kenya since they came to Kenya. Their lack of nationality in Kenya made them unable to access national identity cards and obtain services that required identity cards (Bosire, 2017).

According to UNHRC 2015, the Makonde community lost their formal working jobs in the sisal firms and sugar plantations in the 1990s. During this time, there was an order by the Kenyan government to the employers regarding the employment of non-Kenyans. All employers were to ensure that their foreign employees were registered with the Kenyan government and had work permits. Given the high fees required for work permits, most companies opted to terminate their contracts with foreign workers including the Makonde community. After Kenya's independence, the Makonde were neither repatriated nor given Kenyan identification. However, they were given District Commissioner's (DC's) cards five years after independence. These allowed them to work and pay taxes. This situation changed when there was a change in the political regime. They were later given alien cards thereby formally recognising them as foreigners. These cards were meant for identification, especially when encountering the Kenyan police (UNHRC, 2015).

The Makonde people of Kenya have been living in the country since independence. They have been at the centre of inequality, injustice, and structural violence. They were the pacesetters and pioneers of Kenya's stateless community to be registered in the new Constitutional dispensation of Kenya (Kombo, 2018). Even after Kenya achieved independence, the Makonde opted to stay back in the country with the hope of being granted citizenship. The Makonde were rendered stateless during their entire stay in Kenya. Their children who had attained the age of 18 could not apply for identification cards and the birth of every child in their community was not recognized through the issuance of birth certificates. Access to the Kenyan national identity card is regarded as a key step for a person to prove his citizenship and a person access to the related rights and benefits (KHRC, 2015).

Makonde people struggle for citizenship

Lack of citizenship not only denies a person his/her right to live a comfortable life; it also leaves them to live an insecure life because they are forced to lead an illegal life (Van Waas,2008:12). This is due in part to the role that nationality, as membership, plays in the formation of a person's identity and the connection that they feel to the place where they live and the people around them (UNHCR, 2012:31). Legal nationality is the membership that allows individuals to access rights, to voice their concern or influence change, thus stateless individuals are fundamentally captured in a vicious circle of formalised discrimination, social exclusion, insecurity and voicelessness (Sokoloff, 2005:20). Deprivation of citizenship also entails extremely limited opportunities of economic welfare. In the majority of countries, the right to property, trade or employment is specifically linked with a person's citizenship status, this subjects stateless people to live a life full of poverty.

Opiyo (2017) writes that the challenges of legislative and policy gaps limited the recognition of Makonde as citizens during independence and after independence, a fact attributable to ethnic and racial discrimination. This is because only 42 ethnic groups are considered indigenous to Kenya. The Makonde have thus for over 50 years lived as stateless persons. The Makonde did vote in the first general elections of independent Kenya. They have been promised nationality by each successive government in Kenya. Previously, there were 3 attempts by the government to register the Makonde or issue them with identity documents, but none of the attempts resolved their statelessness situation for them.

The Kenyan Makonde are estimated to be 4000 people (UNHCR,2015). The Makonde population lives in scattered locations across a relatively large area in Kwale, Kilifi and Mombasa Counties. The majority live in Kwale County. Makonde community members have over the past years approached both Kenyan officials as well as officials from the Mozambican High Commission and Consulate in Kenya for documentation (Opiyo, 2017). However, the according to a KNHCR study conducted in 2013, the prevalence of identity documents in Makonde was less than 15% of the total population of the Makonde community, with either ownership of Mozambican or Kenyan identity cards. Some of the Makonde community members had acquired identity cards through marriage, especially the women married to Kenyan men (Opiyo,2015; Kombo,2019).

The promulgation of 2010 Kenya's new constitution restored hope to the minority groups in Kenya. This did not exclude the Makonde who were among the marginalized and minority groups that got into Kenya as labour migrants. The new constitution cancelled discrimination of nationality and allowed dual citizenship. The parliament of Kenya passed the Citizenship and Immigration Act of 2011 which provides that within 5 years, all stateless persons must be registered as Kenyan citizens (Opiyo, 2017). According to Opiyo minority rights protection for stateless persons still faces some limitations. They were now eligible for the application for Kenyan citizenship. This was a new dawn for the Makonde people of Kenya, it motivated them to fight for their citizenship making them granted citizenship in 2016 and recognized as the 43rd ethnic community.

The passing of the constitution in 2010, gave hope to the stateless persons in Kenya, and this renewed the Makonde peoples' interest in seeking nationality under the Kenyan constitution. The journey to grant nationality to the Makonde community began in 2014 through the effort of human rights organizations in the coastal province. The Makonde got a boost from their initiative to acquire citizenship in 2015 when the Kwale county government recognized the efforts of the Makonde community and thereafter petitioned the President to recognize the Makonde as citizens and issue them with identity documents (Kombo, 2019).

Makonde community members have over the past four decades made attempts to receive identification documents through formal and informal methods. Formal methods involve vetting the community members who apply for documentation. Previously before citizenship, when the Makonde applied for identity cards they had to undergo a vetting process. The vetting process in the community took place between 1970 and 2013(Opiyo, 2017). When applying for identity cards, those People who live in areas where vetting applies, are required to produce additional documentation compared to other Kenyan citizens (Manby, 2018:33).

The Identity vetting process in Kenya's administration of identification has faced much criticism from African and international human rights institutions and Kenya's own human rights institutions and civil society organisations. Among Kenya's own constitutional and other official government bodies, discrimination, corruption and inefficiency in the administration of national identity cards have been condemned by the Truth, Justice and Reconciliation Commission (TJRC), the Kenya National Commission on Human Rights, the Commission on the Administration of Justice (Ombudsperson), and the Ethics and Anti-Corruption Commission (EACC). An example is the TJRC report of 2013 which showed that communities in North Eastern and Upper Eastern regions of the country and Muslims, in general, have suffered discrimination for decades regarding their right to citizenship and associated identity documents (Manby, 2018:32).

Due to the Makonde people's agony over citizenship, the Makonde community members with the assistance of Kenya Human Rights Commission (KHRC), Haki Center, Muslims for Human Rights (MUHURI), Kenya National Commission on Human Rights (KNHRC), and Kwale County government staged a walk trekking against statelessness on 10th October 2016 from Kwale to State House, Nairobi to meet the president after several failures in an attempt to seek an audience for registration as a stateless person. The Makonde were granted nationality through a presidential decree in December 2016, and with this came the privilege to enjoy right like other Kenya (KHRC, 2016). The rallying call for the Makonde in the struggle for their right to nationality in Kenya had always been "Ugeni huu, mwisho lini?" Swahili for "Until when will we be excluded?" This played into the need to belong, their need to be Kenyans, and their need to fully enjoy their rights; which they were not enjoying as stateless persons (Kombo, 2019). It was this persistent struggle and rallies that led to the Makonde being granted nationality and being identified as one of the Kenyan communities.

2. RESEARCH METHODOLOGY

The study was conducted using the descriptive research design which offered a chronology of events as they unfolded over time. A qualitative approach was significant because it allowed an in-depth collection of data to ascertain the attitudes, feelings, and opinions concerning the theme under study. The study site was Kwale County. The study targeted both males and females Makonde above 50 years within Kwale County who were knowledgeable about the struggle for nationality by the Makonde people. Purposive and snowballing sampling techniques were used to select the sample for the study. Twenty participants were interviewed. The study used both primary and secondary data. Primary data was derived from the one-on-one interaction with participants using interview schedules and Key Informant Interviews, oral interviews, and focus group discussions. Question guides and questionnaires with open-ended responses were also used. Secondary data was obtained from critical analysis of books, articles, papers, thesis, and dissertations. Analysis of data began in the field to avoid loss of important information as much of it was based on people's memory. Analysis of data began by creating themes of collected

data. Tape recorded data was transcribed and typed. The collected data were further coded and analysed thematically and periodically according to the study objectives. Secondary data was subjected to textual analysis and interpretation to test the relevance and accuracy of the document. This was achieved by examining the expertise background of the authors, the correspondences of the content with other sources (both primary and secondary), and the context under which the text was written. Presentation of the analysed data was in form of narrations followed by first-hand quotations from primary respondents. Throughout the research procedure, legal and ethical difficulties were observed. These included obtaining all necessary research permits, providing all participants with a consent form, adhering to the principle of voluntary participation, ensuring confidentiality of participants information and ensuring anonymity of the participants during data collection. All the participants were also informed of the goal of the study by the researcher.

3. STUDY FINDINGS

Makonde people status after acquiring citizenship

Nationality and citizenship relate to the link between an individual's rights and obligations on the one hand, and the State on the other. The absence of this link forces a community or an individual to be stateless. Statelessness leads to marginalisation and exclusion from the socioeconomic and political opportunities accessible to those who own citizenship. After the Makonde people acquired citizenship, they were issued with Kenya national identity card, this meant that the Makonde people were now eligible to access government services like any other Kenyan citizen. The Makonde community members have been able to benefit from some of the citizenship rights such as employment, education, the right to vote and healthcare. However, they have not been able to get full access to some services such as ownership of land and participation in politics.

Benefits the Makonde people acquired after receiving citizenship

Without citizenship, stateless persons do not have the right to education, healthcare, property, or vote and thus, no voice in the political process (UNHCR, 2006:6). Basically, a stateless person has no 'right to have rights' (Arendt, 1967:296). Such individuals are not only being currently deprived of their basic human rights, but they do not have any hope to bring any change in the future as well. Preventing and reducing statelessness is one of the effective ways to solve the root cause of such problems.

The 1992 Declaration of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities also mention in a detailed view that minority rights are far from being realized. Among other efforts, the promotion and protection of the rights of minorities require addressing disparities in social indicators such as employment, health and housing since they often fall victim to multiple discrimination and may lack access to, among other things adequate housing, land and property and even a nationality (UNHRC, 2010 :7).

Some of the rights that the Makonde people are currently enjoying after being granted citizenship include; the right to employment, healthcare, education and the right to vote.

Employment

The right to work has been experienced among the Makonde people since some are now employed by the government. The Makonde can now work just like any other Kenyan. Some Makonde people were picked to be in the uniformed services of Kenya: These are in National Police Service (NPS) at the Kenya Police Service (KPS) unit, the Kenya Prisons as wardens and the Kenya Defence Forces (KDF). Owing to having a national ID card, the Makonde can freely travel and look for economic opportunities elsewhere.

Healthcare

The right to healthcare is progressive and Makonde enjoys the right to healthcare just like any other Kenyan. The Makonde people have not yet experienced any form of discrimination in the right to healthcare. They have been able to receive health services in any clinic or hospital that they went to. After the acquisition of the national identity card, some have been able to be registered under National Hospital Insurance Fund (NHIF) and used the card in both inpatient and outpatient services. Apart from receiving better healthcare, the Makonde people who are 70 years and above, have been able to access the right to social security in the public support offered by the government to dependent adults. The scheme is available in Kenya popularly known as the Inua Jamii programme. This programme is given to older persons past the age of 70 years. The older Makonde have been enrolled on the government-sponsored fund for old age. They always go to the public

administration offices to get the cash which has helped their families in a big way. They say that immediately they were registered as Kenyans in October 2016, government officials from the national government registered them and now they feel like Kenyans.

Education

It was evident that, before the acquisition of citizenship, the Makonde community members never felt marginalized in the pursuit of primary and secondary education. However, the community members were limited in pursuing college and university levels of education due to a lack of identity cards. In addition, the community members before faced difficulties in accessing the local bursaries for their children. However, after the issuance of identity cards, it allowed many community members to have identity cards, and pursue higher education. In addition, the acquisition of identity cards has enabled community members to apply for bursaries like other community members. This has enhanced equity in educational opportunities among the Makonde people.

Right to vote

With the acquisition of identity cards, most of the community members were able to express their first constitutional right in the Tuesday, 8 August 2017, general election. This allowed the community members to participate in the election of national and local leaders. The Makonde community members who for years were excluded in the voting process now feel like other Kenyans.

Citizenship rights that the Makonde people have not access

Some of the rights the Makonde people have not been able to enjoy despite acquiring citizenship include:

Right to land

Gaining legal title to land and protecting from confiscation seems appears to be a problem among stateless persons (Sokoloff,2005:20). A number of countries have passed laws that restrict stateless people from ownership of land (Hathaway,2005:516). Although the acquisition of citizenship by the Makonde community members has helped the community members to enjoy various rights. The same cannot be said concerning the right to own property, particularly land. Community members still face hurdles in land ownership, and the processing of land ownership documents is still a challenge to the Makonde community members. Land ownership is still a big issue among the Makonde who are viewed by the natives as outsiders. The locals feel that the Makonde community are foreigners who are not supposed to own land in such places. They have stayed in the country for decades, specifically since 1936 but they do not own the land. They do not have title deeds or any other documentation for the security of tenure in that piece of land.

Political Participation

Political participation is an issue that is intrinsically linked not only notions such as allegiance and national security, but also with the fundamental concept of sovereignty. Only those who are “members” of that particular sovereign body are entitled to a say in decision making. The local communities within the coast have not fully accepted the Makonde as one of them instead view them as non-natives. This has fuelled suspicion among the various ethnic groups which still view the group as inferior to them. Lack of political representation is one of the ways through which the enjoyment of rights has been limited among the Makonde community. It was revealed that members of the Makonde community are viewed as outsiders in political representation, as such the community members are castigated in their attempts to vie for any local position. This is because the native communities are not ready to elect a person from the Makonde community. The discrimination in Kenya is evidenced by the distinction between so called ‘outsiders’ (those who are not natives of that area) and that of ‘insiders’ which continue to be central to conflicts in various parts of Kenya (Kanyinga,2014: 34).

4. CONCLUSION

The study focused on investigating nationality, identity, and citizenship in Kenya a case of the Makonde people. The study revealed that governments tend to decide who their citizens are, this makes them responsible for legal and policy reforms that are necessary to effectively address the issue of statelessness. The study further indicated that after promulgation of the 2010 constitution, Kenya has made huge strides towards the eradication of stateless. This is evident in the provision of the 2010 Constitution as well as in the legal and institutional frameworks governing citizenship issues. The decision to recognise the stateless Makonde as Kenyan citizens demonstrates Kenya’s commitment towards ending statelessness. Unlike in the

pre-2010 dispensation, the constitutional and legislative frameworks work towards protecting the affected communities. Furthermore, the case of the Makonde being granted citizenship is a clear indication of Kenya as a country working towards the eradication of statelessness by granting citizenship to the affected communities.

The study has shown that without citizenship, stateless people are not entitled to legal standing within a nation and all the rights and freedom that come with it. Looking at the case of the Makonde people, It- can be concluded that the Makonde community have enjoyed several benefits that have come with the acquisition of citizenship. These benefits include freedom of movement, the right to healthcare, the right to vote, economic entitlement and the right to education. However, despite their acquisition of citizenship, it has not resulted in the full enjoyment of rights as expected. The Makonde still have limitations in enjoying the right to own property in their areas of residence and having an opportunity for political participation.

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