



## Coalition on Nationality, Citizenship and Statelessness Empowerment (CONCISE)

### Recommendations on the Registration of Persons Bill

To : Members of Parliament, Republic of Kenya

Date : 21<sup>st</sup> September, 2016

We applaud the Government of Kenya for taking steps towards strengthening its registration and identification systems, which are important to create effective public services and inclusive social and economic development for all citizens and residents of Kenya. As currently drafted, the Registration of Persons Bill has the potential to ensure that Kenya’s systems for registering births and deaths, identifying citizens and other persons resident in Kenya, and issuing related documents are applied in a clear and non-discriminatory way to all communities in the country.

We represent communities from across Kenya, some of whom have historically faced difficulty in securing legal identity documents. We would like to highlight five key recommendations that are crucial to incorporate in order to ensure the full realization of the intent of the drafters and policy makers.

1. **The period for late birth registration should be extended and/or an alternative mechanism provided upon expiry of the system after five years.** We support the efforts of the Government of Kenya to increase birth registration rates, with the goal of ultimately covering every birth, past and present, occurring in the country. However, communities that are poor, rural, nomadic, or for other reasons traditionally have low rates of birth registration would be at a significant disadvantage if late birth registration was completely eliminated. As currently drafted, in the section titled “Period for Registration of Birth” the Bill stipulates late birth registrations can only occur during the first five years after this Bill becomes law. We recommend this time limit be significantly extended with the additional stipulation that, once the time expires, the Cabinet Secretary or regulations establish an alternative system for capturing births that are not registered within three months from the date of the birth. We also encourage the

government to use this time period for a large-scale awareness and birth registration campaign across the country.

2. **Non-possession of a birth certificate or national identification card must not restrict the Constitutional rights of citizens or residents of Kenya.** The Bill states any institution, in the exercise of its lawful function, may require production of a birth certificate or national identification card. However, non-possession of such documents should never lead to denial of rights or services guaranteed in the Constitution of Kenya. Rather, the Government of Kenya should take advantage of these additional entry points – such as schools, banks, or other service providers – to provide the person with the right or service *and* facilitate connections between the person and the needed registration and/or identification processes. The sections on “Production of Birth Certificate” and “Use of National Identity Card” should both include the language “An institution may lawfully require production of a birth certificate (ID card). Lack of such document cannot be used, however, to deny or defer rights to education, healthcare, housing, social security, and safe water as guaranteed to all persons by the Constitution. Instead, institutions providing constitutionally guaranteed services should provide service to persons lacking documentation without delay and provide those persons access to the registration/identification process.”
  
3. **The Board should establish an identification and registration committee to adjudicate over *all* applications for registration.** As currently drafted, the Bill calls for a committee only to oversee applications for registration “where the citizenship of an applicant is in doubt.” This language is extremely problematic as it would allow for two or more different systems to be applied, with risk of misuse and misapplication, arbitrariness, and discriminatory procedures. The same procedures, requirements, and burden of proof must apply to all persons seeking registration, and such guidelines should be explicit in the regulations. We recommend that the section “Identification and registration committee” read as follows:
  - (1) The Board shall—
    - (a) establish an identification and registration committee to adjudicate over applications of registration; and
    - (b) publish the rules and guidelines to be used by the committee in execution of its work. These shall outline:
      - I. Criteria for the proof of citizenship applicable to every application for registration.

- II. Grounds for rejection applicable to every application for registration.
- III. Administrative procedures and persons eligible to process applications.
- IV. Dissemination of information to applicant on the proof of citizenship required.
- V. Period of notification of the decision.
- VI. Recourse and appeal procedure related to the rejection of registration due to lack of proof of citizenship.

(2) In determining citizenship by birth, the committee shall consider such evidence as the Birth Certificate and the facts and circumstances of each application.

(3) It shall be the shared duty of an applicant and, where applicable, the competent Kenyan authorities, to prove citizenship of Kenya before being registered under this Act.

4. **Cancellation and revocation of documents of registration or identification should be allowed only in specific situations and should be clearly separated from revocation of Kenyan citizenship.** As currently provided for in the Bill, cancellation or revocation may apply when the document was obtained through misrepresentation of material fact, concealment of material facts, fraudulent means, or forgery. However, we recommend clauses such as “any other justifiable cause” should be eliminated from the Bill in order to prevent abuse. In addition, the Bill should not conflate revocation of a document with revocation of nationality. To do so would contravene Kenyan national law, the African Charter on the Rights and Welfare of the Child, and the Convention on the Rights of the Child. Most Kenyans are automatically citizens by birth and recognition of their nationality is not dependent on possession of a national identity card. The language “but such cancellation or revocation does not lead to the loss of the persons Kenyan citizenship,” should be deleted from sub-clause 5 of the section “Cancellation and revocation of document of registration and identification.”
5. **Penalties for failing to register a birth or death should not come into effect for at least five years following enactment of this Bill.** Harsh penalties of jail time or large fines for failure to register will not increase demand of registration. Instead, such penalties may be a deterrent to registration as well as disproportionately impact Kenya’s poor, rural, nomadic, or other disadvantaged communities. Kenyans who do not register within the specified timeframe may not be willing to come forward to register if they may face jail time or large fines. The Bill should specify these penalties do not come into effect for at least five years in order to allow for an intensive period during which the government

can conduct outreach and education campaigns, provide mobile registration options, and strengthen institutional capacity to reach everyone in Kenya. In addition, we recommend the maximum penalty for failure to register be five thousand shillings, with no penalty of imprisonment.

We would like to express our gratitude for the opportunity to provide input into the development of such an important piece of legislation that will enhance access to registration and identification procedures and documentation as well as ensure the Government of Kenya has the records necessary for good governance and effective service provision.

We would be delighted to offer additional assistance to the drafters or to further discuss our recommendations.

Formed on the 12th of April 2016 CONCISE (Coalition on Citizenship and Statelessness Empowerment) an interest based network of National and NGOs in Kenya working on citizenship issues and the right to Nationality. It comprises of growing network of NGOs and community groups. The objective of the network is to consolidate advocacy efforts around issues of nationality, jointly contribute to policy formulation, push for legislative reforms, community empowerment and shaping public opinion on nationality issues through civic education.

Respectfully,

For CONCISE

**Mustafa Mahmoud Yousif**

**Program Officer**

**P.O. Box 22207-00505 Nairobi.**

**Cell: +254 725 824 265**

**[www.namati.org](http://www.namati.org)**

**Skype: mustie98**