Symposium on Citizenship Issues in Sudan

Summary of Proceedings and Related Documents

Khartoum 6—7 November 2010

United Nations High Commissioner for Refugees

United Nations Mission in Sudan

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FOREWORD

Sudan has reached another crossroad.

In a few weeks, Southern Sudanese will go to the polls to exercise their right of self-determination, one of the final steps of the Comprehensive Peace Agreement. The outcome of the poll may lead to reconfiguration of Sudan into two separate states. Much legislation would follow to support and reflect this reconfiguration, but an area of specific importance is one intimately tied to the state itself: the legal status of the populations with respect to the state.

Citizenship serves not only to attach certain rights and protections guaranteed by the state to an individual, but also to define the state's relationship with the individual. Citizenship is the foundation for a network of relations that contribute to the development of a nation and its people. As such, an inclusive and generous citizenship law contributes to a dynamic society, fostering economic growth of the state. Conversely, uncertainty relating to citizenship affects communities and individuals, which in turn not only has direct social and economic ramifications, but also impacts security and occasions a heavy cost to the state.

Complex citizenship legislation can also give rise to increased costs to the state. It requires more resources to administer, and impacts heavily on the population, affecting time that could be used toward economic, social, and cultural productivity. At worst, if citizenship legislation is inaccessible to common understanding or has burdensome requirements for an individual to meet, it may lead to the statelessness of affected persons. One burdensome criterion is to hinge the determination of citizenship on ethnicity, which becomes very difficult to prove for those of mixed heritage and transborder communities. But just as burdensome are bureaucratic administrative procedures for obtaining identity documents. Moreover, the creation of a cooperative information exchange between the states to emerge from secession, and of efficient, transparent and fair dispute resolution procedures for the individual will contribute substantially to minimizing burdens overall.

To assist the Sudanese with the task of developing their citizenship laws, we are issuing this publication, which was informed by the discussions at the recent UNHCR-UNMIS symposium. Besides a summary of the proceedings and the keynote address delivered by the Assistant High Commissioner for Refugees - Protection, the publication features international best practices in the form of the International Law Commission's 1999 Draft Articles on Nationality of Natural Persons in relation to the Succession of States. The Draft Articles reflect the consensus on the current status of customary law on nationality in relation to state succession, and offer a coherent and thought-out collection of straightforward and objective provisions for consideration.

In addition, the publication reproduces the 1954 and 1961 Statelessness Conventions, preceded by a brief explanation by UNHCR on the benefits of acceding to these conventions. I strongly encourage any states to emerge from secession to follow the lead of several neighbours and ratify the Statelessness Conventions.

In closing, I congratulate the CPA parties and all Sudanese for their strides and successes in the quest for peace and development for their country, and urge all concerned to ponder the importance of this juncture and seize the opportunity to adopt inclusive, non-discriminatory, straightforward and objective standards for determining citizenship. To this end, we are reproducing the most crucial, relevant documents in a lightweight, accessible publication. I hope you find it useful and refer to it often.

Haile Menkerios
Special Representative of the Secretary-General,
United Nations Mission in Sudan

FOREWORD

With just nine weeks until the southern Sudan independence referendum, due to be held on 9 January 2011, UNHCR, organised a series of forums on one of the most crucial issues still to be agreed upon by the parties to the Comprehensive Peace Agreement – citizenship in the event of secession of South Sudan. These events – a symposium on citizenship, expert consultations on citizenship issues relating to pastoralist and border populations, and a workshop for non-governmental organizations – were part of a package of technical support by my Agency to the CPA parties and government institutions, and moreover served as a platform for dialogue and awareness raising among the wider humanitarian community and civil society of Sudan at this historic time.

Great openness and willingness to engage in discussions was shown by representatives from the north and the south, academics, experts, NGOs and international agencies, all with considerable knowledge to bring to these discussions.

Whether Sudan remains one country or becomes two states, we cannot afford to let the issue of citizenship take second or third place on the list of other very important issues associated with the referendum, as the impact of uncertain citizenship or statelessness on the lives of affected populations as well as concerned countries would be grave.

Nationality provides people with a sense of identity, protection and a wide range of rights. The lack of nationality, statelessness, can therefore be very harmful for individuals concerned. In the area of rights, issues related to non-discrimination and equality before the law permeated much of the discussion at the citizenship forums. There was also discussion on what should be the central focus of nationality legislation and international standards are one essential measure for this. On the other hand, long-standing traditions of a country are an equally important factor which will determine particularities of the decisions taken on nationality. However, the need to base connections between an individual and a state that would determine eligibility for nationality on simple and inclusive criteria, such as birth, parentage, marriage and habitual residence, was largely recognised by the participants, and there seemed to be appreciation that, whatever the criteria, race or ethnicity as the single determining factor would be the least desirable of them. Simplicity, inclusiveness, objectivity and non-discrimination are, from UNHCR's experience, the factors most likely to result in workable citizenship arrangements meeting international standards.

The absence of documentation such as birth certificates was raised throughout the citizenship forums, as it seriously complicates individuals' ability to confirm their entitlement to a certain nationality. Finally, questions relating to processes for confirming or applying for nationality arose, as did questions about how and when nationality can be withdrawn. As regards withdrawal of nationality, there was agreement on the need for cautionary approaches and the option of dual nationality as a desirable safeguard against statelessness resulting from withdrawal of nationality was also discussed.

I am very pleased that there was a great deal of appreciation at this meeting that however this is all worked out, statelessness should never be the end result for anyone and certainly not for large groups of people. Probably the most important lesson coming out of the citizenship forums, is that when people are excluded from citizenship the costs are very high – in terms of human costs for the concerned individuals, costs for the countries where they reside, as stateless people are largely precluded from contributing to the development and economy of these countries, and finally costs for entire regions as the marginalization of sections of the population is a main cause for instability and conflict. Once statelessness occurs it

can take many years, even generations to redress. Even today, 20 years after the break-up of the Soviet Union, we are still dealing with questions of statelessness and displacement resulting from it. This takes time, human resources and money, but more importantly it devastates the lives of thousands of people for many years to come.

I would like to thank all speakers and experts from both Sudan and overseas for their valuable presentations[1] and to acknowledge the funding of Humanity United which made these workshops and this publication possible. I also thank all our donors who have shown great interest in and generously supported our work in the area of citizenship and statelessness. I express my appreciation to UNMIS and other partners for our close collaboration in this vital endeavour, to the Chair of the proceedings, Ambassador Ahmed Gubartalla as well as to the UNHCR staff members who organised these events and this publication.[2]

UNHCR hopes that readers will find this publication helpful and that you will take away new ways of looking at the issue of citizenship. We look forward to continuing to support the Governments and people of Sudan in preventing statelessness and finding appropriate solutions for citizenship arrangements.

Peter De Clercq
Representative
UNHCR Sudan

[1] Opinions expressed in the presentations do not necessarily reflect the official views of the United Nations High Commissioner for Refugees or of the United Nations.
[2] Maya Ameratunga (Assistant Representative/ Protection), Bilqees Esmail (Protection Officer/ Citizenship), Wael Ibrahim (Protection Officer) and Nevena Ilic (Intern) of UNHCR Khartoum, Sudan.

KEYNOTE SPEECH

Ms. Erika Feller, UNHCR Assistant High Commissioner (Protection)

It is a great pleasure to join distinguished representatives of the Governments of National Unity and the South, academics and experts on citizenship, and members of the international community here in Sudan, as the country approaches the final phase of the Comprehensive Peace Agreement and an historic referendum on the future of South Sudan.

That this symposium is described as a technical meeting on citizenship issues does not in any way downplay the importance of the issues with which it is dealing. It is being organised by UNHCR, under its mandate and in collaboration with UNMIS, as part of a package of support we are providing to the CPA parties and government institutions. Our aim is to ensure that all possible expert resources and international and national best practices are made available to assist the parties to find the best solutions for the issues on their agenda, regardless of the outcome of the referendum. We do not underestimate their complexity and their long-term impact and are committed to continue to provide all necessary support which may be required of us.

I wish to emphasize from the outset what is at stake and why this symposium is so important. Depending on the outcome of the referendum in South Sudan, the decisions made by authorities in north and south on nationality will have an immediate impact on the lives of millions of people. If they are not well drafted, the rules establishing who is a national of whatever state can turn citizens into stateless persons overnight. What this means in practice is that the rights and opportunities of many thousands of men, women and children are effectively obliterated, and with this, for host states, the seeds of new conflict and more displacement are firmly planted anew.

The Comprehensive Peace Agreement

UNHCR has entered into this process in full understanding of the strengths and the continuing challenges for the Comprehensive Peace Agreement, within whose overall frame our discussions over the next two days must be placed.

Undeniably, despite the critiques, the Comprehensive Peace Agreement has many achievements to its credit. The Sudanese, in the north and in the south, have much to be proud of. The CPA ended one of Africa's longest running conflicts, which left an estimated 2 million dead, 428,000 refugees in neighbouring countries and 2.5 million internally displaced. Thanks to both sides, the peace has largely held for over five years. The CPA also created a framework in which both NCP and SPLM could talk with each other, map out common positions, and re-develop mutual trust - even in areas of continuing disagreement. The magnitude of these achievements, after more than two decades of continuous conflict, cannot be overstated.

Of course, there are still myriad challenges. On the eve of the signing of the CPA six years ago, SPLM leader, John Garang, captured the mood at Naivasha when he said, "We have reached the crest of the last hill in our tortuous ascent to the heights of peace." Perhaps he was being a little too optimistic when he added, "There are no more hills ahead of us, the remaining ground is flat." Without question, much work remains in the search for commonality on central issues like border demarcation, the sharing of natural resources and wealth, and importantly for today, future citizenship options, in particular for populations who fled conflict or migrated and re-started their lives in other parts of Sudan.

UNHCR's Global Statelessness Mandate

A word is in order about why UNHCR, the UN Refugee Agency, also concerns itself with such citizenship issues, which are the specific subject of your deliberations.

United Nations General Assembly resolutions have entrusted UNHCR with the global mandate to support States in identification, prevention and reduction of statelessness and protection of stateless persons. UNHCR has been given a Convention-linked responsibility to ensure that persons who become stateless receive adequate protection in the states where they reside and that the number of stateless persons is reduced through their acquisition of a citizenship. This mandate has been reconfirmed and further elaborated by UNHCR's Executive Committee, our governing body of states, which includes the Government of Sudan. The Executive Committee requested UNHCR to provide technical advice to states to adopt and implement safeguards against statelessness, consistent with fundamental principles of international law, including preventing statelessness resulting from arbitrary deprivation of nationality. This request has been coupled with one to the Executive Committee of Member States, including Sudan, to take such measures, not least in the context of state succession.

Against this background, UNHCR works closely with governments in many countries around the world to provide technical advice on what safeguards legislation should incorporate to avoid statelessness. The break-up of States, the decolonization process, and the transfer of territory between States, are all situations in which statelessness is an inherent problem.

UNHCR is keenly aware of the importance of establishing simple, inclusive, objective and non-discriminatory rules for citizenship, particularly at the time of state succession. We have learned from experience over the last two decades that when certain people are excluded from citizenship, the costs are high for everyone: for stateless people who face obstacles to enjoyment of their rights and for governments which sooner or later will need to take action to integrate stateless people or face the consequences.

There are two major differences between the situation now in Sudan and the cases of state succession which occurred in the 1990s. The first is that we now have far more expertise than we did then. We can draw on the lessons of past cases of state succession and avoid making the same mistakes. The second difference is that we now have more detailed globally discussed and agreed standards on which we can draw.

In recent situations of state succession, such as when Montenegro seceded from the Union of Serbia and Montenegro in 2006 or when East Timor became independent in 2002, UNHCR worked closely with both concerned governments (Timor Leste and Indonesia) on who should be included in the citizenry of the new state. Provision of advice in the drafting of citizenship laws in a range of countries post-independence has been another major focus of UNHCR action.

When it comes to assisting individual stateless persons, UNHCR implements technical programmes in a number of countries around the world to aid the reform of laws to prevent statelessness and ensure that stateless persons can confirm or acquire a nationality and obtain identity and travel documents. A common cause of statelessness globally is inequality between men and women when it comes to transmission of nationality to children. Although more than 30 states

retain laws which discriminate between men and women in their right to acquire, retain or change their nationality and to confer nationality on children, this number is progressively diminishing. Only since the beginning of 2009, Bangladesh, Zimbabwe and Kenya have all taken steps to remove gender discrimination in their nationality legislation. Sudan took some very welcome steps towards removing gender discrimination from its nationality laws in the 2005 revisions to the Nationality Act.

UNHCR has also been mandated through UN General Assembly Resolution 52/152 to actively promote accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which are the two international instruments providing the most detailed guidance to states on how statelessness can be avoided and what minimum treatment stateless persons should be able to enjoy. The Government of Sudan is not yet a party to these Conventions. However, already the Nationality Act 1994, as amended in 2005 to comply with the Interim National Constitution, has made quite some progress in reducing the potential for statelessness under the current law. The laws of Sudan may, as a result, now be moving in the direction where they should shortly support and enable accession, which we would encourage. In so acceding, any state makes a strong statement of commitment to the human rights of a very vulnerable group, just as it signals its interest in cooperation with the international community to reduce and eliminate statelessness. The more states accede to these conventions, the stronger the international framework to prevent statelessness becomes. This in turn reduces the potential of statelessness to become a serious cause of national and regional instability.

The CPA, Citizenship Issues and UNHCR's Interest

Our statelessness mandate and our responsibilities for the internally displaced, as the lead agency for the protection sector, interlink closely in this country. The future status, rights and durable solutions for populations with ties to both north and south – such as the estimated two million southerners in the north (estimates vary) and the northerners in the south –is also an IDP protection issue, given that it is overwhelmingly (though not exclusively) IDPs who are affected. So this subject is of concern to UNHCR and to our partners in the humanitarian community, in our efforts to support the Governments of National Unity and of South Sudan to build their capacities to protect their citizens. Two million internally displaced persons have already returned home and they need to be able to re-establish their lives not only in peace and safety, but also on the basis of legality and belonging.

Just as our IDP mandate, so too our refugee mandate is directly implicated in the process of addressing these issues. Since the CPA, 330,000 southern Sudanese refugees have returned home from exile, with the support of UNHCR. However 70,000 more refugees remain in neighbouring asylum countries. Their decisions on whether and when to return will depend on how they assess the outcomes of the CPA, including the arrangements that will guarantee citizenship rights. It is crucial that their voluntary return is sustainable for the future. UNHCR is required by its refugee protection and solutions mandate to assist the concerned authorities to make this a reality.

UNHCR is a humanitarian, impartial and neutral UN agency which has been present in Sudan for more than forty years. The political outcome of the referendum is not our concern. That is a decision for the southern Sudanese. Whatever the outcome of the referendum, we are, though, concerned that hundreds of thousands

of Sudanese who originate in other parts of the country and find themselves on the opposite side of a new border should not become victims of partition and lose the basic protections of any State. The inclusiveness of the referendum process, enabling eligible refugees and IDPs to exercise their civic right to participate is hence of direct interest for us. In this regard, both CPA parties and the international community clearly have a crucial role to play in making this happen, and at the same time reassuring constituents that all southerners can freely exercise their right to vote, and that basic rights of all persons within north and south Sudan will be protected following the referendum.

It is unfortunate that recent delays in reaching agreement on basic referendum processes and procedures have created uncertainty and fear among southerners living in the north, evidenced by the increasing numbers of returns to the south, as well as among northerners in the south and border populations. Our strong hope is that voluntariness, not push factors, will guide decisions about when and where to move.

Expectations of this Symposium

We hope this symposium will make a valuable contribution to thinking and the search for solutions to these challenges; most importantly, that it will assist the process of framing citizenship arrangements that will meet the needs of all these diverse populations: southerners in the north, northerners in the south, pastoralists and groups living close to the north/south border who may have a history of passing easily across internal state boundaries and for whom this represents a vital element of their lifestyle and a means of sustaining their livelihood. Sudanese expatriates (refugees and migrants) who may have difficulty proving their links with the north or south, where one or more generations have been born abroad, are a further category of persons who must be kept in mind in future citizenship arrangements.

UNHCR welcomes the fact that the CPA parties have committed themselves to avoid statelessness within the framework of their negotiations. But even if statelessness is not intentionally created, there is the potential for it to result from the way citizenship frameworks are negotiated and laws are drafted. It is important to be alert to potential causes of statelessness in the current situation and to preclude them coming about through carefully constructed, transparent and accessible legislation and procedures. Let me elaborate a little on this before I close.

Statelessness may occur where nationality is withdrawn before another nationality has been acquired. Nomadic groups, displaced or migrant groups and populations at the border may be at risk of statelessness because of difficulties with proving their entitlement to nationality of either north or south. The introduction of inclusive and non-discriminatory citizenship arrangements based on appropriate ties to the state in question (birth on the territory, habitual residence, family ties), rather than ethnic origin can help to prevent statelessness. Recognition of dual citizenship or providing for a right to choose where two citizenships are available can also help reduce statelessness. To accompany the citizenship arrangements which are introduced, there must be procedures to ensure they are applied with the necessary flexibility and fairness. Individuals must be given the opportunity to confirm their nationality or appeal against a decision to withdraw their nationality, for example by demonstrating that they have not acquired any other nationality and would therefore be stateless.

Finally, in the event of some individuals who are resident in either state being for whatever reason unable to acquire the citizenship of that state, they nevertheless have rights which must be formally protected, including such basic rights as security of person, freedom of movement, freedom from arbitrary detention or expulsion, and socio-economic rights such as health, education and work.

Conclusion

In conclusion, the best possible outcome of the CPA process from our perspective would be one which achieves peace, stability and respect for human rights, which enables existing refugees and IDPs and other affected communities to retain freedom of choice regarding place of residence, and which ensures in the short and the longer term that there will be no stateless persons, nor a new exodus of refugees or IDPs.

Despite decades of conflict in Sudan, perhaps no country in Africa has a longer history of welcoming newcomers, from West Africa, North Africa and the Arab world, to settle on its soil. And while the country has endured epic struggles in search of a collective national identity, there has never been serious disagreement over the fact that the inhabitants of the continent's largest country are all Sudanese. As one long-time observer of Sudan noted, "The Sudanese have shown a remarkable capacity for reflection, reinvention and civic debate about their collective identity."

UNHCR sincerely hopes that the resolution of citizenship arrangements, which affect the lives and futures of millions of Sudanese, will find a priority place on the agendas of the CPA parties. I look forward to this symposium providing a timely contribution to this effort.

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WORKING SESSION ONE

Citizenship: International and National Legal Frameworks

His Excellency Dr. Luka Biong Deng, Minister for Cabinet Affairs, opened the symposium with some introductory remarks. He acknowledged that Sudan was entering into an historic period. Citizenship was a fundamental issue that would need to be addressed and resolved in light of the upcoming referendum on the potential independence of South Sudan. He emphasised the importance of relying on international experiences and practices whilst at the same time remaining faithful to the cultures and values of Sudan: values of co-existence and brotherhood. Decisions about citizenship should be based on the protection of individual rights and property rights. Above all, it was imperative to preserve the unique relationship between north and south Sudan.

International legal context

The first speaker in this session was Ms. Bronwen Manby of the Open Society Foundation, London. She commenced with an introduction to the UN framework on human rights. Article 15 of the Universal Declaration of Human Rights (UDHR) states that every individual has the right to a nationality and that no individual shall be arbitrarily deprived of their nationality. She outlined international conventions which address citizenship rights of specific groups, including the International Covenant on Civil and Political Rights (ICCPR, ratified by Sudan in 1986) and the Convention on the Rights of the Child (CRC, ratified by Sudan in 1990) regarding the right of every child to acquire a nationality; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, to which Sudan is not a party) concerning equal rights of men and women in respect of nationality; and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, ratified by Sudan in 1977) forbidding discrimination on grounds of race, colour, descent, or national or ethnic origin in the grant of nationality.

With regard to statelessness, the primary instruments are the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Sudan is not a party to either Convention. The speaker emphasised the limits of state discretion with regard to the determination of who is a national, reminding us that under international law, equal protection before the law is mandatory as are states' obligations to prevent, avoid, and reduce statelessness.

Within the African human rights system, the presenter cited Article 5 of the African Charter on Human and Peoples' Rights on the right to dignity & recognition of legal status (interpreted by the African Commission to include nationality), and Article 12 which specifically prohibits mass expulsions of non-nationals.

Looking at African citizenship laws in further detail, the presenter addressed discrimination in existing nationality legislation with regard to gender. Findings indicate that at least a dozen countries in Africa discriminate against women in the ability to pass nationality to their children, while half, including Sudan, discriminate with regard to granting citizenship to a foreign spouse on the basis of marriage. Aspects of racial, ethnic and religious discrimination also exist in citizenship laws across Africa.

The second speaker, Dr. Gianluca Parolin of the American University in Cairo, referred to an evolution in the legal conception of nationality. Firstly, it is no longer the state that imposes nationality, but it is the individual that has a right to nationality. Secondly, there is a trend not to use religion or ethnicity as a basis for the attribution of nationality. Thirdly, there is a move towards the principle of independence of citizenship within the family. The old concept of the head of the family determining the citizenship of the other members is declining. Finally, with respect to the consequences of birth out of wedlock, the increased recognition of maternal jus sanguinis means that the legal relevance of legitimate affiliation is declining as well.

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National legal context

With reference to the legal framework for the acquisition of citizenship in Sudan, the third speaker, Dr. Tayyab el Sammani of the Ministry of Justice, gave a break-down of the current laws on nationality in Sudan. He began by referring to Article 7 of the Interim National Constitution 2005 and its provisions on citizenship, which state that:

(1) Citizenship shall be the basis for equal rights and duties for all Sudanese.

(2) Every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship.

(3) The law shall regulate citizenship and naturalization; no naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law.

(4) A Sudanese national may acquire the nationality of another country as shall be regulated by law.

He stressed that, according to the National Interim Constitution, citizenship is based on equal rights and duties rather than race, religion or tribe, and added that dual citizenship is permitted and that nationality cannot be renounced from any citizen except according to the provisions of law.

Dr. Tayyab el Sammani referred to Presidential Decree no. 22, 2010 for its definition of the roles, authorities and competencies of national executive agencies, and its emphasis on their superiority over counterparts at other levels.

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He also cited Article 3 of the decree which stipulates that the Ministry of Interior has the competencies of civil registry, passports, nationality, national ID and immigration.

The fourth speaker, Dr. Omima Abdelwahb Abditam of the Maarouf Training Centre for Human Rights, spoke about gender dimensions of nationality law in Sudan. She began her presentation by listing international legal instruments relevant to gender issues in Sudan. In particular, she noted that CEDAW gave women the same rights as men to acquire, change or retain citizenship. CEDAW, however, is not ratified by Sudan and the speaker expressed concern that Sudan has not ratified many international instruments relating to women's rights.

She noted that the Sudanese Nationality Act 1994 gives women the right to pass on nationality to their children but expressed concern at the condition that one must apply for citizenship in order to claim Sudanese nationality through a Sudanese mother. Also, a foreign or "alien" woman can obtain Sudanese nationality by naturalisation if she is married to a Sudanese national, but a Sudanese woman cannot pass on her nationality to her foreign husband. The speaker considered that these provisions discriminated on gender grounds.

The speaker pointed out that the 1994 Nationality Act was an improvement on the 1957 Nationality Act in terms of gender equality and women's rights and gives the right of nationality to foundlings of unknown parents. In addition, the 2005 amendment to the 1994 Nationality Act provides a new definition for the father that can also include the mother of an illegitimate child.

The speaker highlighted the 1957 Convention on the Nationality of Married Women for its positive provisions: the nationality of the woman will not be affected if the marriage is dissolved or the nationality of the husband changes during marriage. Although Sudan is not party to this Convention, the speaker considered that the 1994 Nationality Act (as amended) was beginning to respond to the provisions of this Convention.

The speaker, however, recommended further improvements to the Nationality Act to ensure gender equality in acquiring, retaining and passing on nationality.

WORKING SESSION TWO

Role of the United Nations

Mr. Clark Soriano, Head of the Humanitarian Coordinator's Support Office in Sudan, presented this session dealing with the role of the UN in encouraging respect for basic international law principles and best practice regarding citizenship, regardless of the outcome of the referenda.

Mr. Soriano stated that statelessness can be an unintended consequence of citizenship arrangements. For example, statelessness could result from withdrawal of citizenship prior to the acquisition of a new citizenship or where complex administrative procedures were required to acquire or prove citizenship. He suggested that the existing laws of Sudan could be revised to meet international obligations and better prevent statelessness.

Groups at risk of statelessness due to potential secession of South Sudan include: southerners in the North, northerners in the South, nomadic and pastoralist tribes, Sudanese expatriate populations who may have difficulty proving nationality where one or more generations has been born abroad, and couples of mixed nationality and their children.

To reduce the potential for statelessness, the speaker cited principles encouraged by the UN, including:

- A commitment not to withdraw citizenship from or expel an individual without confirming that this person has acquired the citizenship of another state.
- Agreement between parties on collaborative procedures for confirming citizenship and exchanging information.
- Decisions to withdraw citizenship should be subject to review by a judicial or independent administrative body.
- Strict prohibition of mass expulsion of non-nationals, as stated in the African Charter on Human and Peoples' Rights, *Article 12(5).*
- Procedures for acquiring citizenship and for obtaining citizenship documentation should be accessible to all populations, with special provisions made for vulnerable groups and those who are likely to face particular difficulties with respect to access (e.g. nomadic and pastoralist populations, populations living in remote areas, individuals deprived of their liberty, Sudanese nationals currently residing overseas).
- Procedures for obtaining identity documentation should allow for acceptance of alternative forms of proof, including witnesses evidence and age assessment certificates (as is currently the case under Sudanese law).
- The individual's choice of citizenship should be considered wherever possible for those with links to both north and south Sudan through habitual residence, birth on the territory or family ties.
- Criteria for acquisition or retention of citizenship should not be linked to race, ethnicity or sex.
- Any agreement on citizenship should uphold property rights, the principle of family unity, the right to registration and acquisition of nationality at birth, freedom of movement, and the right of aliens to be protected from arbitrary expulsion.
- The Four Freedoms Agreement signed between Egypt and Sudan on 4 September 2004 serves as a worthy model and a starting point from which to build an agreement that respects the fundamental rights of residents. This Agreement allows for citizens of Egypt and Sudan to freely move across the international border between the two states, and grants the rights

to reside, work and own property in either country without a permit.

- Citizenship arrangements should be phased in over a transitional period. This would allow individuals affected by new citizenship arrangements sufficient time to choose their place of residence, secure property rights, dispose of property or regularise their stay in their chosen place of residence if it is not their country of citizenship.

Finally, the speaker stated that these basic principles would serve to increase certainty among the population, ultimately contributing to peace and stability for all Sudanese. The UN stands ready to further assist the negotiating parties with any guidance and support they may require to ensure a successful final chapter to the CPA.

Discussion

At the start of the discussions, the chair reminded participants that this was not a recommendations meeting or a decision-making event. This was a technical meeting intended to flesh out international and local best practices rather than directly influencing the decisions of political leaders.

- Several participants expressed concern at the lack of certainty with respect to citizenship rights in the post-referendum period. They requested that the relevant authorities should make a clear statement about what will happen after the referendum. It was emphasised that there would still be an interim period until 8 July 2011. People should know that there will not be expulsions on 9 January 2011.

- One civil society activist from Khartoum spoke in favour of dual citizenship. Such an approach would reassure people that they would be protected regardless of the outcome of the referendum. He said that the parties should commit themselves to dual citizenship as this would achieve peace and remove the sense of panic.

- A participant from south Sudan advised against advocating for dual citizenship as a long term solution. Demographics could lead to a situation where southerners would find themselves a minority in their own country. Permanent residency offered a much better solution. Further, there should be the opportunity for long term residents in either state to acquire nationality (by naturalisation). Another participant asked a question about the economic implications of a dual citizenship arrangement and the financial consequences for the states involved.

- A representative of the Southern Sudan Bar Association reminded the symposium that there were northerners in southern Sudan as well as southerners in northern Sudan and both groups were concerned about their future. Two other participants raised further concerns about basing entitlement to citizenship rights on ethnic grounds. They considered that such criteria would lead to lack of certainty in the application of the law.

- A representative of the UNHCR stated that attributing nationality on the basis of ethnicity is problematic. It can be difficult to identify who belongs to a certain group. Some people might also experience difficulties in showing that they are of a specific ethnicity e.g. children of mixed marriages. It is therefore preferable to look at other criteria such as those set out by the International Law Commission (ILC) Draft Articles on the Nationality of Natural Persons in relation to the Succession of States: Where do you live? Where were you born? Where were you originally living? Where were your parents born? These are clear, objective criteria that would avoid confusion regarding citizenship entitlement.

- An expert participant from the Police Department, Ministry of Interior, stated that there were certain minimum standards at the international level with regard to what happens in a case of state succession. The norms at the international level should be respected.

- One participant stated that a way to avoid statelessness would be to reduce the number of people affected. Are people willing to return? What is UNHCR doing to bring these people back?

- A representative from the UNHCR stressed that return must be voluntary, safe and dignified. UNHCR was working with both Governments to ensure that these basic conditions are met and to identify other durable solutions that could be long-term solutions. There also needs to be security for those who stay and those who travel and UNHCR and other UN agencies were developing contingency plans with both governments in order to achieve this.

- One international participant raised the concern that many individuals in Sudan do not have any identity documents or documents to prove their nationality. She suggested that the symposium should also address the question of how to assist such people.

- A representative from the UNHCR stated that lack of identity documentation including birth certificates could raise a problem with proving entitlement to nationality. There needs to be a confirmation of a link to one of the two states following any potential succession and we should examine how best to do this.

- A legal adviser from the Government of South Sudan suggested that there are two schools of thought: either 1) citizenship is revoked as soon as the secession comes, or 2) the Sudanese law on nationality should apply and there is no revocation possible. Which of these two schools is correct under international law?

- Dr. Matthias Reuss of the Max Planck Institute for Comparative Public and International Law responded that the first school of thought is not supported by international law. The consensus of the ILC is that the predecessor state may not withdraw its nationality prior to the point in time that the citizen has acquired a new nationality.

The draft articles of the ILC clearly indicate that the population goes with the territory. There are three principles that follow: 1) Nationality should be defined on the basis of habitual residence; 2) If people do not live in the south, nationality of a new state of South Sudan should be acquired only by individual choice; 3) If there is a risk for people to become stateless, they do not have a choice and cannot renounce their Sudanese nationality.

WORKING SESSION THREE

Drafting Effective Citizenship Arrangements in State Succession Situations

The first speaker of the Session Three, Dr. Matthias Reuss of the Max Planck Institute for Comparative Public and International Law. Continuing from Session One, Dr. Reuss delved deeper into the 1961 Convention on the Reduction of Statelessness, citing the most relevant provisions, including the emphasis on avoiding statelessness at birth by ensuring that a child acquires either the nationality of the state where they are born or the nationality of one of their parents if that child would otherwise be stateless (Articles 1 and 4). He also emphasised the prohibition on deprivation of nationality on racial, ethnic, religious or political grounds (Article 9) or where that deprivation would render an individual stateless (Article 8); and in case of transfer of territory, the requirement of an agreement on nationality (Article 10).

The presenter proceeded to define and outline customary international law on citizenship in cases of state succession, explaining that customary law develops on the basis of consistent state practice that is generally seen to be fair and required by law ("*opinio juris*"). Although Sudan has not ratified the 1961 Convention on the Reduction of Statelessness, Sudan is bound by those articles of the Convention which have crystallised into customary international law. In the case of citizenship, this includes protection of human rights, avoidance of statelessness and no arbitrary withdrawal of nationality such as on racial or religious grounds. There is nevertheless a large scope for discretion in matters concerning nationality, which is traditionally a matter seen as exclusively within the national jurisdiction of states ("*domaine reservé*").

The 1999 ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States, when adopted by Resolutions of the UN General Assembly, became a "formalized codification of the current status of international customary law". Below are the guiding principles of the acts included in the Draft Articles:

- Everyone has the right to a nationality. Discrimination with respect to the right to retain or acquire nationality on racial, ethnic, religious or political grounds is prohibited (this is a norm of *jus cogens* from which no state can deviate).
- States concerned should take all appropriate measures to prevent persons becoming stateless as a result of state succession.
- The primary relevance of habitual residence: the successor state shall attribute nationality on the basis of habitual residence
- The predecessor state shall withdraw nationality from nationals of the successor state (except those who are residents of the predecessor state)
- Successor and predecessor states should facilitate individual choices with respect to nationality, although recognition of dual nationality is not required under international law.

Dr. Reuss drew attention to the fact that the Sudanese Interim National Constitution does indicate adherence to international human rights frameworks ratified by the Republic of Sudan. Article 27 (3) of the Interim National Constitution and Article 13 (3) of the Interim Constitution of Southern Sudan both state that "All rights and freedoms enshrined in international human rights treaties, […] ratified by the Republic of the Sudan shall be an integral part of this Bill".

Comparative experiences: state succession and citizenship arrangements in the region

Dr. Gianluca Parolin, American University in Cairo, and Ms. Bronwen Manby of the Open Society Foundation spoke on comparative experiences of state secession in the region. A number of examples were cited, including the example of the transfer of sovereignty of the Bakassi Peninsula from Nigeria to Cameroon, Following the transfer, Bakassi residents were entitled to Cameroonian citizenship but could also remain citizens of Nigeria with resident alien status in Cameroon, or leave Bakassi and resettle in Nigeria. Under an agreement reached in 2006, Cameroon guaranteed fundamental rights and freedoms to Nigerian nationals living in the Peninsula and agreed in particular not to force them to leave the zone or to change their nationality.

Another example presented was that of Eritrea and Ethiopia, focusing on the citizenship agreements surrounding the 1993 referendum on Eritrean independence. The agreement between Ethiopia and Eritrea in advance of the 1993 referendum was that "until such time as the citizens of one of the sides residing in the other's territory are fully identified and until the issue of citizenship is settled in both countries, the traditional right of citizens of one side to live in the other's territory shall be respected".

The Eritrea-Ethiopia Claims Commission found that, in the absence of clear agreement and taking into account both states' conduct before and after the 1993 referendum, "those who qualified to participate in the referendum in fact acquired dual nationality. They became citizens of the new state of Eritrea pursuant to Eritrea's Proclamation No. 1/1/1992, but at the same time, Ethiopia continued to regard them as its own nationals."

Citizenship and enjoyment of human rights

With regard to human rights in Sudan, the next speaker, Dr. Sirisio Oromo from the University of Juba, looked at the questions of citizenship, multiculturalism and identity. He pointed out that in terms of equality of citizenship rights, both north and south Sudan must do more to eliminate discrimination.

He went on to say that of course all Sudanese should be treated with equality. However, there is a failure to fully grant effective citizenship rights to all Sudanese and to allow all Sudanese to coexist. He emphasised that both Governments should guarantee and respect the rights of Sudanese people without discrimination.

Discussion

Several participants addressed the relationship between identity and citizenship. It was suggested that the question of one's identity, often based on one's ethnicity, was separate from the question of citizenship which represented a political and legal attachment to the state. Therefore one could legitimately claim to be both Nubian and Sudanese, for example. Dr. Matthias Reuss explained that in his country, Germany, many people lived with a dual identity. They may have German nationality and Turkish ethnicity and this is a growing trend in multicultural societies.

One participant highlighted the need to distinguish voting in the referendum from acquiring citizenship. Those who voted in the referendum might not vote for separation. It was a personal matter and he urged against confusion between the concepts of eligibility for voting in the referendum and citizenship. An SPLM official commented that the definition of a Southern Sudanese would be established under citizenship laws if the South secedes.

On the question of habitual residence, one participant noted that residence implies a physical address. Where did this leave IDPs who had no fixed address or permanent residence?

A speaker responded that the residency status of IDPs is not a legal issue but a de facto situation. The question is what can an individual do if they do not have any form of documentation proving their residency? There need to be procedures in place to prove residency and nationality status using alternative forms of evidence.

On the question of defining citizenship along ethnic lines, it was noted that the Democratic Republic of Congo defines Congolese nationals according to ancestry and Ethiopian nationality laws are also linked to ethnicity. The discussant queried whether the international law concepts cited by the speakers were in tune with African realities. In response, Ms. Bronwen Manby stated that the concept of citizenship based on tribal affiliation is not reflected in any international human rights instruments. The rights of the individual cannot be interfered with by arguing for the rights of a tribal group or people.

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WORKING SESSION FOUR

Meeting the Needs of Specific and Vulnerable Groups

Children and Citizenship Rights

Mr. Nils Kastberg, Representative of UNICEF Sudan, highlighted that a number of important changes had already been made to Sudanese legislation in line with the recommendations of international committees, such as the Child Rights Act 2007 and the Child Rights Act 2010 as well as the Southern Sudan Child Rights Act 2008.

However, Mr. Kastberg expressed a concern that the two parties are focusing more on the CPA and on enacting new legislation and are not acknowledging urgent issues such as the lack of birth registration procedures in Sudan which may lead to statelessness. The legislative framework is there, but the administrative arrangements are not in place.

According to the 2006 household survey, only 33 percent of all newborn children in Sudan are registered at birth. In some states in Sudan less than 2 percent of children are registered. In addition to administrative arrangements, awareness of the need to register babies whether born at home or in hospital is also crucial. For those who are not registered at birth, risks include: exploitation, forced or underage marriage, lack of access to services and lack of protection of the state.

Discussion

On children's rights, one participant raised the question of children born in the south to northern parents and those born in the north to southern parents. The future of these children was uncertain. Attempts should be made to ensure that they were not negatively affected by potential secession and were prepared for and counseled about the consequences of secession.

Another speaker drew attention to the large number of unaccompanied children in Khartoum and other northern cities. In some cases their mothers were in jail for brewing alcohol. She questioned what would happen to these children in terms of their citizenship status and called on UN agencies to conduct more research and to document these children.

A representative of UNICEF agreed with a point made about addressing the basic needs of children. She stressed that the needs of children are met through the exercise of their rights. Birth registration is essential to help the family meet the needs of the child. It also gives the state a much better basis to plan for the resources that need to be allocated to meet those basic needs - health and education in particular. UNICEF called for action in terms of simplifying documentation procedures and increasing public information at the family and community level so that parents become aware of the importance of registering the child. There are groups that require special attention, like unaccompanied children, children in institutions and children with disabilities, who would require concerted efforts on the part of various bodies in the Government of Sudan to advance towards higher levels of birth registration.

Pastoralists

Two presentations in this session focused on pastoralist communities and citizenship. Dr. Faiz Omer of the University of Juba, Department of Peace and Development Studies, outlined the mode of life for pastoralist communities at the north-south border and stated that the pattern of living in terms of the north–south annual movement has not changed over the years. The only change observed is the decreasing number of family members moving with the animals.

The presenter emphasised that a border or boundary post mean very little for the nomad, instead they follow their animals which instinctively move across lands at certain times and in certain directions.

The presentation also challenged the preconception that nomads are dependent on the south and argued that they have considerable purchasing power, enriching local economies of the host populations in terms of taxes for government authorities and money paid to native chiefs and sultans in exchange for grazing rights. In addition, nomads enrich trade exchange and local markets by bringing with them commodities for sale.

With regard to citizenship rights, the speaker pointed out that nomads consider themselves as owning the right to use the land without restrictions. However, Dr. Faiz Omer highlighted the Imbororo as one of the nomadic groups in Sudan at risk of statelessness.

In reference to rights of pastoralists and their vulnerability to statelessness, the second speaker, Dr. Sara Pantuliano from the London-based Overseas Development Institute, stated that provisions from international human rights instruments such as those mentioned in Session One can be applied to pastoralist communities. However, in addition there are specific declarations that apply to minority or indigenous communities such as: Declaration on the Rights of Indigenous Peoples; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the ILO 169 Indigenous and Tribal Peoples Convention.

Cross-border pastoralists are seen to be at an especially high risk of statelessness due to obstacles to proving their nationality. This is because their ethnicities and identities straddle international borders, because they tend to show loyalty to territory over the modern state and they are often unable to assert nationality claims due to a lack of identity documentation.

The referendum poses potential risks to border pastoralists due to the uncertainty with respect to the outcome of current negotiations on grazing rights, taxation issues and citizenship.

The speaker gave examples of border management initiatives in other countries that are host to pastoralist communities. For example the Protocol on Free Movement of People among ECOWAS Member States allows residence in sister states for up to 90 days (with travel document and health certificate). In 2000 pastoralists were issued with livestock passports, International Transhumance Certificates and travel handbooks. The challenges to these schemes cited by the speaker include extortion by border agents; language barriers; and poor socio-economic conditions in receiving states which can result in pastoralists being expelled due to competition for scarce resources. Finally, many pastoralist communities lack the requisite transhumance documentation both because authorizing institutions do not have a presence in the pertinent areas, and because many people in the communities lack the relevant paperwork, for instance, birth certificates necessary to obtain these documents.

Other regional initiatives include the COMESA Livestock Green Pass, the AU Border Programme and national legislation in West African states including the Mauritania Pastoral Code, Burkina Faso Orientation Law on Pastoralism, Niger Pastoral Code (under development) and the Mali Pastoral Charter.

In conclusion, the speaker argued that there is a need for comprehensive, permanent mechanisms for status determination and movement of pastoralists. These mechanisms should be based on a bilateral agreement between governments. In addition, local level processes involving affected communities should be used in order to reach agreement on specific

provisions relating to border crossings. Matters on which agreement were required included timings and specific points for border crossings, type of activities allowed on both sides of the border, livestock routes, watering and resting places, normal, reserve and emergency grazing areas and management of security concerns.

Discussion

With respect to pastoralist rights, some participants queried which nationality would be most appropriate for communities that move between states. They need to enjoy rights in the state where they are residing at any one time. In refusing to tie themselves down to a particular land they may lose their rights in both states.

Another participant suggested that with respect to pastoralist rights there was an issue of territorial sovereignty and therefore the pastoralists must confine themselves to one state and obtain permission to pass into other states.

It was acknowledged that populations on the move could present a security concern on both sides of the border. To prevent violence at state borders, one speaker proposed that proper documentation for the nomads be provided. Movement of nomadic or pastoralist groups could thereby be monitored to ease their passage between states.

The question of peaceful interaction between nomads and sedentary communities required efforts by both northern and southern governments and the participation of local communities, both pastoralist and sedentary. One speaker stated that there were nine migratory routes and only three of the nine were actually problematic. There were agreements that led to very peaceful arrangements on some of those routes in Sudan. She encouraged learning from these experiences to find ways to support efforts by local communities to resolve conflicts.

Secondly, it was important to move forward in implementing agreements made by the south and the north on grazing rights. The CPA was a historic agreement, and part of the CPA was respect for grazing rights.

Expatriate communities -Ethiopia/Eritrea

Dr. Amare Tekle gave an account of state succession in the case of Eritrea and Ethiopia with a focus on expatriate communities. He addressed the issue of the referendum for Eritrean independence in 1993 and the role that voting and citizenship arrangements play in nation-building and regional peace-building. This historic example also demonstrates how mismanaged citizenship arrangements can lead to war and statelessness.

In the case of the referendum on Eritrean independence, the speaker identified three major challenges with regard to voting: the identification and location of “Eritrean” nationals in-country and abroad; the identification and establishment of registration regions, sub-regions and centres; and the selection of “local” observers (i.e. Eritrean elders) abroad.

The perceived successful outcome of the state succession process fell short of addressing certain problems which had to be resolved before, or immediately following, the referendum. The first significant lesson to be learned was that postponement of decisions is the major early sign of the failure of state succession.

These errors were committed by the various Ethiopian-Eritrean committees created before and after the referendum to discuss outstanding issues of mutual concern. These committees repeatedly postponed decisions on vital matters like border demarcation,

inter-state trade and investment and, of course, citizenship.

Eventually the two sides agreed that, in principle, the right of option should be granted to concerned individuals. Yet, no mechanism or procedure was established to either inform the concerned populations of both countries or to regulate the implementation of decisions. Worse still, the Ethiopian and Eritrean authorities actually further decided that an agreement on citizenship *"should await the decision on the granting of the freedom of trade and investment in either country for both nationals of Ethiopia and Eritrea."* This, as pointed out by the speaker, was to have a major negative consequence on the issue of citizenship when disagreements on the issues of trade and the border eventually led to war. The Ethiopian Government insisted that registration to vote in the referendum was tantamount to acquisition of Eritrean citizenship. Since Ethiopian law explicitly declared that any Ethiopian who acquires another nationality automatically forfeits Ethiopian nationality, tens of thousands on both sides were left in legal limbo. Many became victims of expulsion and statelessness.

EXPERT MEETING ON CITIZENSHIP
and Pastoralist and Border Communities

UNHCR organised an expert meeting on pastoralist and border populations with the aim of identifying some of the key considerations to be addressed when framing citizenship arrangements. Present at the meeting were local and international experts on pastoralists in Sudan, citizenship lawyers and technical advisers.

Background

According to the census of 1993, nomads and pastoralists make up to 11 % of the total population of Sudan. Approximately 5 million people live at the north-south border. The challenge is to preserve individual rights, traditional migration routes and livelihoods in the context of the potential creation of a new state.

Participants acknowledged that seasonal migration for some pastoralist groups had become more challenging since the signing of the CPA. There is fear amongst some pastoralist groups such as the Misseriya and Rizeigat that a potential independent state of South Sudan would bring traditional lifestyles to a halt. Southern communities likewise might wish to access the north for services such as education and healthcare and are often dependent on northern traders for access to goods and trade exchange.

There was general consensus that any agreement on citizenship must take into account the traditional lifestyles of pastoralist and border communities and the need to maintain access to existing livelihoods on both sides of the border. Any agreement must allow space for local communities to organise their lives in line with their needs and aspirations.

It was emphasised that "A border or boundary post mean very little for the nomad". Therefore high-level negotiations needed to respect the lifestyles of local communities at the border rather than trying to impose a strictly defined regime of border regulation or documentation on traditional communities.

Protection of fundamental rights

Key concerns at the level of local communities at the north-south border included access to markets and services, enjoyment of property rights, enjoyment of customary land rights, access to natural resources (including water sources) and access to traditional migration routes for pastoralist groups. Communities were also concerned about their security including protection from politically motivated and random violence. Furthermore, some participants noted that the long term desire of pastoralist groups to settle should not be prevented.

Border communities consulted by Concordis International identified a preference for a "soft border" allowing for freedom of movement for people and goods. At the same time it was important to be aware of the legitimate security concerns of States.

Citizenship arrangements cannot alone address the myriad concerns of communities at the border. However participants agreed that current negotiations on citizenship and the related issues of free movement and border regulations should allow space for local level agreements that could address these fundamental concerns. There should also be clarity about the citizenship status of border populations - not least because political representation and the right to vote are fundamental to the ability to influence political decision-making and could be denied where citizenship status is uncertain or ambiguous.

Legal Frameworks

The international framework for citizenship in cases of state succession was briefly introduced and the following points highlighted.

If citizenship is to be defined, in line with international standards, by reference to objective factors including residence, birth on the territory or ancestral ties to the territory, specific attention must be paid to pastoralist and nomadic groups who may face particular difficulties with proving entitlement to nationality through these standard definitions due to habitual migration.

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For example, local populations identify attachment to land / territory through their own principles including the concept of the Dar or ancestral homeland which is of fundamental importance to pastoralist groups. Citizenship arrangements should be framed to allow such locally recognised concepts to be incorporated into definitions of citizenship. When defining "habitual residence" for the purposes of citizenship entitlement, there should be specific consideration of the situation of individuals who often move across borders.

Defining citizenship along ethnic lines could be particularly damaging for groups at the border. Some ethnic groups are currently straddling both sides of the north-south border. It should also be noted that some tribes, such as the Baggara traditionally associated with the north spend half of their time on the southern side of the border

Depending on the level of regulation at the border, individuals may require proof of identity or nationality to cross the border. Procedures for confirming citizenship and obtaining nationality documentation would therefore be of considerable importance for border populations.

Participants emphasised the need to allow local populations and state level entities to police the border. Further, the regulation of the border would need to be carried out in a way that facilitated access for specific communities. It might be difficult for pastoralists to cross even a soft border if proof of identity were required as pastoralist groups in particular were at risk of being unable to prove their nationality.

Conclusion

It was acknowledged that the path towards legal and economic integration between north and south might be a long one. However, this goal should not be precluded by short term political deals. Whatever solution is reached on citizenship, livelihoods should be protected. Security, property, free movement and trading rights should be respected on both sides of the border, as should rights of sedentary populations.

NGO WORKSHOP ON CITIZENSHIP

UNHCR held a workshop for local organisations and NGOs to discuss the question of citizenship and citizenship rights in light of the referendum. The meeting was opened by UNHCR's Head of Protection, Maya Ameratunga, who emphasised the importance of grass roots efforts in communicating information about citizenship and advising local populations on their rights and choices with respect to citizenship. In light of the upcoming referendum, it was likely that the citizenship status of some individuals would be affected and it was vital that relevant populations were provided with accurate and up-to-date information about their rights.

Nationality in International Law

Dr. Matthias Reuss gave a presentation on the international legal framework for nationality in situations of state succession. The presentation addressed the following issues:

- Everyone has the right to a nationality in international law. Nobody should be left stateless (without any nationality) as a result of the creation of a new state.
- In situations of state succession, the newly created state is known as the successor state and the remaining state entity is known as the predecessor state.
- The key criterion for determining who should obtain nationality of the successor state is habitual residence. Other criteria such as birth on the territory or ancestral links to the territory can also be used.
- The predecessor state may revoke its nationality from those that acquire the nationality of the successor state. However, in Dr. Reuss' view the status of international law was such that any individual habitually resident in the predecessor state could not have their nationality revoked against their will.
- International standards emphasise that nationality cannot be withdrawn in a discriminatory or arbitrary way. Therefore any decision to withdraw a person's nationality should follow correct legal or administrative procedures.
- International standards provide for respect for the will of the individuals as regards nationality. Therefore, where possible, individuals should be given the right to choose their nationality if they would be entitled to the nationality of both states.

Participants asked questions about the status of those southerners in the north who might lose their Sudanese nationality. Dr. Reuss gave his opinion that whilst non-nationals did have certain rights in the country of residence, the state also had the right to regulate the stay of non-nationals in their territory. UNHCR emphasised that any decisions made to revoke or change someone's nationality must be done in accordance with pre-defined legal rules and with the right to appeal to a court or administrative process.

Citizenship Arrangements and Local Communities

FAR gave a brief update of their survey on IDP communities in Khartoum. Results of the survey have not yet been published but the initial data confirms that IDPs in Khartoum lack information about their rights and their status in the north in the post-referendum phase and this prevents individuals and families from making informed decisions about returning to the south or remaining in the north.

Participants working in Khartoum IDP settlements provided some further information on the situation for IDPs in Khartoum. In particular they highlighted the lack of available information relating to the referendum and voter registration in the IDP settlements and emphasised the need for a sustained information campaign targeted at IDP sites in order to dispel rumours circulating regarding the dangers of registering to vote in the north. There were profound concerns that southerners would not be welcome in the north after the referendum.

The participants highlighted the fact that many Khartoum based NGOs and international organisations did not have access to the camps. They were therefore concerned that there would not be adequate monitoring of the IDP settlements and that the security of individuals could not be guaranteed.

Participants agreed on the importance of access to accurate information concerning the referendum processes. They considered that the Referendum Commission should be proactive in introducing an information campaign concerning registration and voting which was targeted towards IDP settlements. It was also considered imperative to communicate information about citizenship rights as soon as an agreement had been reached between the parties.

Birth Registration

A final presentation was provided by PLAN Sudan on their birth registration activities. The presenter highlighted that registration at birth is one of the fundamental rights of the child. A birth certificate is a valuable identity document that can provide proof of entitlement to nationality and helps to guarantee access to other rights and entitlements (e.g. education, access to services, and protection from exploitation). PLAN Sudan explained that through their birth registration projects in Kassala state, the number of children registered had steadily increased. Challenges still remained with respect to access to health facilities for populations in remote locations, lack of awareness about importance of birth registration in rural communities, prohibitive cost of registration and birth certificates and limited numbers of authorised registration personnel.

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ANNEX ONE

1954 Convention on the Status of Stateless Persons

PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement, have agreed as follows:

CHAPTER I GENERAL PROVISIONS

Article 1 - Definition of the term "stateless person"

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 - General obligations

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 - Non-discrimination

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

Article 4 - Religion

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and

freedom as regards the religious education of their children.

Article 5 - Rights granted apart from this Convention
Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

Article 6 - The term "in the same circumstances"
For the purpose of this Convention, the term " in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfill for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

Article 7 - Exemption from reciprocity
1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paras 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to the rights and benefits for which this Convention does not provide.

Article 8 - Exemption from exceptional measures
With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

Article 9 - Provisional measures
Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 - Continuity of residence
1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence

within that territory.

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 - Stateless seamen
In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II JURIDICAL STATUS

Article 12 - Personal status
1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

Article 13 - Movable and immovable property
The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 - Artistic rights and industrial property
In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15 - Right of association
As regards non-political and non -profit- making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 16 - Access to courts
1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.

2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.

3. A stateless person shall be accorded in the

matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence

CHAPTER III GAINFUL EMPLOYMENT

Article 17 - Wage-earning employment
1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable that that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 - Self-employment
The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 - Liberal professions
Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

CHAPTER IV WELFARE

Article 20 - Rationing
Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

Article 21 - Housing
As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 - Public education
1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23 - Public relief
The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 - Labour legislation and social security
1. The Contracting States shall accord to stateless

persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities; remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V ADMINISTRATIVE MEASURES

Article 25 - Administrative assistance

When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph I shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without

prejudice to articles 27 and 28.

Article 26 - Freedom of movement
Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 - Identity papers
The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

Article 28 - Travel documents
The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Article 29 - Fiscal charges
1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 - Transfer of assets
1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31 - Expulsion
1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 32 - Naturalization
The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings

CHAPTER VI FINAL CLAUSES

Article 33 - Information on national legislation
The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 34 - Settlement of disputes
Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 35 - Signature, ratification and accession
1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2. It shall be open for signature on behalf of

(a) any state member of the United Nations

(b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and

(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36 - Territorial application clause
1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 37 - Federal clause
In the case of a Federal or non-unitary State, the following provisions shall apply

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the

appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 38 - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph I of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary- General of the United Nations.

Article 39 - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 40 - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 41 - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 42 - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 35:

(a) Of signatures, ratifications and accessions in accordance with article 35;
(b) Of declarations and notifications in accordance with article 36;
(c) Of reservations and withdrawals in accordance with article 38;
(d) Of the date on which this Convention will come into force in accordance with article 39;
(e) Of denunciations and notifications in accordance with article 40;
(f) Of request for revision in accordance with article 41.

ANNEX TWO
1961 Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) At birth, by operation of law, or

(b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph I of this article subject to one or more of the following conditions:

(a) That the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) That the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) That the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) That the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs I (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above-mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the

manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

a) That the application is lodged before the applicant reaches an age being not less than twenty three years fixed by the contracting state.
(b) that the person concerned has habitually resided in the territory of the contracting state for such period immediately preceding the lodging of the application not exceeding three years as may be fixed by that state.
(c) that the person concerned has always been stateless.

Article 2
A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

Article 3
For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

Article 4
1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

(a) At birth, by operation of law, or

(b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph I of this article subject to one or more of the following conditions:

(a) That the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
(b) That the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
(c) That the person concerned has not been convicted of an offence against national security;
d) That the person concerned has always been stateless.

Article 5
1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child

born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article I of this Convention.

Article 6

If the law of a Contracting State provides for loss of its nationality by a person' s spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

Article 7

1. (a) If the law of a Contracting State entails loss or renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality;

(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

Article 8

1. A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) In the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) Where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph I of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its

retention of such right on one or more of the following grounds, being grounds existing in its national law at that time

(a) That, inconsistently with his duty of loyalty to the Contracting State, the person:

(i) Has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
(ii) Has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) That the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

Article 9

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

Article 10

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer.

A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a Party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

Article 11

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

Article 12

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph I of article I or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph I of article I or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of article I of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

Article 13

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

Article 14
Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

Article 15
1. This Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavor to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

Article 16
1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

(a) Any State Member of the United Nations;
(b) Any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;
(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 17
1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.2. No other reservations to this Convention shall be admissible.

Article 18
1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph I of this article, whichever is the later.

Article 19

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary- General.

2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary- General of the United-Nations denouncing this Convention separately in respect to that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

Article 20

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

(a) Signatures, ratifications and accession under article 16;
(b) Reservations under article 17;
(c) The date upon which this Convention enters into force in pursuance of article 18;
(d) Denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

Article 21

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

DONE at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all members of the United Nations and to the non-member States referred to in article 16 of this Convention

ANNEX THREE

UNHCR Statelessness Conventions Campaign

Why States Should Accede to the 1954 and 1961 Statelessness Conventions

Stateless people are the overlooked millions who are not recognized as nationals of any State. Statelessness is a global issue, with an estimated 12 million persons worldwide affected. While some regions have larger stateless populations than others, every continent is confronted with statelessness.

Stateless persons often fall through a protection gap because too few governments have adopted concrete measures to address their concerns. Pursuant to its mandate from the UN General Assembly and guidance from the Executive Committee, UNHCR is committed to changing this.

In anticipation of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness, UNHCR has launched the Statelessness Conventions Campaign, encouraging States to accede to that convention as well as the 1954 Convention relating to the Status of Stateless Persons. These conventions provide a legal framework to prevent statelessness from occurring and to protect people who are already stateless.

Below are six reasons why it is in States' interests to accede to the 1954 and 1961 Statelessness Conventions:

1. The statelessness conventions set global standards.

The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness provide the international legal foundations for addressing the causes and consequences of statelessness, which are not addressed in any other treaty.

The 1961 Convention is about preventing statelessness from occurring and thereby reducing it over time. The convention sets clear rules according to which States must grant nationality to children so that they do not become stateless at birth. It also prevents statelessness later in life, for example, when people become stateless as a result of failed attempts to become naturalized.

The 1954 Convention recognizes that statelessness continues to occur. It therefore seeks to ensure that stateless persons have a status and enjoy minimum standards of treatment until such time as their predicament can be resolved. The 1954 Convention sets the internationally recognized definition of who counts as a stateless person.

2. **The statelessness conventions help to resolve conflict of law issues, and prevent individuals falling through gaps between citizenship laws**.

With increased global migration and the rise of intermarriages between citizens of different States, more and more individuals are confronted with complex legal and procedural requirements to establish their citizenship. Accession to both statelessness instruments ensures increased legal transparency and predictability with respect to other States, as more States accept the baseline global rules enshrined in these treaties.

3. **Preventing statelessness and protecting the stateless contribute to international peace and security and prevent forced displacement.**

Citizenship provides people with a sense of identity and is fundamental to full participation in society. Because they are not citizens of any State, stateless persons often comprise the most disenfranchised segments of society. Several large stateless situations occur in border regions between States, in recently independent States or in countries that

have experienced significant migration flows. In the absence of clear rules to prevent statelessness such as those in the 1961 Convention, disputes can occur between States over whether specific individuals or populations are nationals.

Similarly, tensions may arise where stateless populations are not afforded minimum standards of treatment such as under the 1954 Convention. Destitute stateless populations are vulnerable to violent conflict and in some contexts have been forcibly displaced, either within the borders of the countries of their long-term residence or across international borders, creating refugee crises.

In acceding to the statelessness conventions, States can help prevent forced displacement by addressing one of its causes. The more States accede to the statelessness conventions, the stronger the international framework will be to prevent statelessness and therefore address a potential cause of instability.

4. Reducing statelessness improves social and economic development.

In acceding to the statelessness conventions, States undertake to identify potential stateless populations and take measures to prevent and reduce statelessness within their borders. States thereby obtain a more accurate picture of not only the populations who are in need of State protection and services, but also those who can contribute to the economic and social development of States.

The Asian Development Bank, the Inter-American Development Bank, and the European Commission have undertaken various studies that confirm the link between citizenship, providing legal identity, and social and economic development. Efforts to reduce statelessness are not necessarily costly – simple legislative or administrative reforms can have a significant impact by ensuring that all people with significant links to a State have citizenship. That said, identifying and addressing the risks of statelessness could have a positive impact in allowing for larger swathes of society to participate fully in a country's economic and social development.

5. Resolving statelessness promotes the rule of law and contributes to the better regulation of international migration.

Reducing statelessness and identifying and regularizing the status of stateless persons contribute not only to economic and social development, but also to the broader respect for the rule of law in all societies. In today's age of widespread global migration, all States benefit from efforts to resolve statelessness, as reciprocal acceptance of minimum rules on citizenship contributes to better regulation of international migration flows.

6. Acceding to the statelessness conventions underscores a State's commitment to human rights.

Several international human rights instruments affirm the right to a nationality. But the Statelessness Conventions are the only UN treaties that provide practical steps that assist States in realizing this right. By acceding to the statelessness conventions, States demonstrate their commitment to human rights and their cooperation with the international community to reduce and eliminate statelessness and respect the dignity of all individuals in need of protection.

ANNEX FOUR

UNHCR ExCom Conclusion No. 106 (LVII) 2006

Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons

The Executive Committee,

Remaining deeply concerned with the persistence of statelessness problems in various regions of the world and the emergence of new situations of statelessness,

Recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality and noting that the issue of statelessness is already under consideration by the United Nations General Assembly within the broad issue of State succession,

Expressing concern at the serious and precarious conditions faced by many stateless persons, which can include the absence of a legal identity and non-enjoyment of civil, political, economic, social and cultural rights as a result of non-access to education; limited freedom of movement; situations of prolonged detention; inability to seek employment; non-access to property ownership; non- access to basic health care,

Noting that despite some progress, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have only been ratified or acceded to by a limited number of States, sixty and thirty-two States respectively,

Recalling the right of every person to a nationality and the right not to be arbitrarily deprived of one's nationality as enunciated by the Universal Declaration of Human Rights and referenced in human rights instruments such as the Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child,

Recalling that all human beings are born free and equal in dignity and they are entitled to the rights and freedoms enshrined in the Universal Declaration of Human Rights, without distinction of any kind,

Reaffirming the responsibilities given to the High Commissioner by the United Nations General Assembly to contribute to the prevention and reduction of statelessness and to further the protection of stateless persons,

Recalling its Conclusion No 78 (XLVI) on the prevention and reduction of statelessness and protection of stateless persons as well as Conclusions 90 (LII),95 (LIV), 96 (LIV), and Conclusions 99 (LV) and 102 (LVI) with regard to solving protracted statelessness situations,

(a) *Urges* UNHCR, in cooperation with governments, other United Nations and international as well as relevant regional and non-governmental organizations, to strengthen its efforts in this domain by pursuing targeted activities to support the identification, prevention and reduction of statelessness and to further the protection of stateless persons,

Identification of Statelessness

(b) *Calls on* UNHCR to continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality residing in their territory, in cooperation with other United Nations agencies, in particular UNICEF and UNFPA as well as DPA, OHCHR and UNDP within the framework of national programmes, which may include, as appropriate, processes linked to birth registration and updating of population data;

(c) *Encourages* UNHCR to undertake and share research, particularly in the regions where little research is done on statelessness, with relevant academic institutions or experts, and governments, so as to promote increased understanding of the nature and scope of the problem of statelessness, to identify stateless populations and to understand reasons which led to statelessness, all of which would serve as basis for crafting strategies to address the problem;

(d) *Encourage* those States which are in possession of statistics on stateless persons or individuals with undetermined nationality to share those statistics with UNHCR and calls on UNHCR to establish a formal systematic mechanism for information gathering updating and sharing.

(e) *Encourages* UNHCR to include in its biennial reports on activities related to stateless persons to the Executive Committee, statistics provided by States and research undertaken by academic institutions and experts, civil society and its own staff in the field on the magnitude of statelessness;

(f) *Encourages* UNHCR to continue to provide technical advice and operational support to States, and to promote an understanding of the problem of statelessness, also serving to facilitate the dialogue between interested States at the global and regional levels;

(g) *Takes note of* the cooperation established with the Inter-Parliamentary Union(IPU) in the field of nationality and statelessness, and notes further the 2005 Nationality and Statelessness Handbook for Parliamentarians which is being used in national and regional parliaments to raise awareness and build capacity among State administrations and civil society;

Prevention of Statelessness

(h) *Calls on* States to facilitate birth registration and issuance of birth or other appropriate certificates as a means to providing an identity to children and where necessary and when relevant, to do so with the assistance of UNHCR, UNICEF, and UNFPA;

(i) *Encourages* States to consider examining their nationality laws and other relevant legislation with a view to adopting and implementing safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality; and requests UNHCR to continue to provide technical advice in this regard;

(j) *Notes* that statelessness may arise as a result of restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation without having secured another nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien

or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices; and requests UNHCR to continue to provide technical advice in this regard;

(k) *Stresses* that in the event of State succession, the concerned States put in place appropriate measures to prevent statelessness situations from arising as a result and take action to address such situations;

(l) *Encourages* States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws;

(m) *Calls upon* States Parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime, to respect their obligation to assist in verifying the nationality of the persons referred to them who have been smuggled or trafficked with a view to issuing travel and identity documents and facilitating the return of such persons; and, encourages other States to provide similar assistance;

Reduction of Statelessness

(n) *Encourages* States to give consideration to acceding to the 1961 Convention on the Reduction of Statelessness and, in regard to States Parties, to consider lifting reservations;

(o) *Encourages* UNHCR to reinforce its cooperation with other relevant United Nations agencies to assist States to reduce statelessness, particularly in protracted statelessness situations;

(p) *Encourages* States, where appropriate and while taking note of the United Nations General Assembly Resolution 60/129 of 2005, to consider measures to allow the integration of persons in situations of protracted statelessness, through developing programmes in the field of education, housing, access to health and income generation, in partnership with relevant United Nations agencies;

(q) *Encourages* States to safeguard the right of every child to acquire a nationality, particularly where the child might otherwise be stateless, bearing in mind Article 7 of the Convention on the Rights of the Child (CRC), and further encourages UNHCR to cooperate with UNICEF and UNFPA to provide technical and operational support to this end;

(r) *Encourages* States to actively disseminate information regarding access to citizenship, including naturalization procedures, through the organization of citizenship information campaigns with the support of UNHCR, as appropriate;

(s) *Encourages* States to give consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons and, in regard to States Parties, to consider lifting reservations;

(t) *Requests* UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and

granting a status to stateless persons;

(u) *Encourages* States which are not yet Parties to the 1954 Convention relating to the Status of Stateless Persons to treat stateless persons lawfully residing on their territory in accordance with international human rights law; and to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation;

(v) *Encourages* UNHCR to implement programmes, at the request of concerned States, which contribute to protecting and assisting stateless persons, in particular by assisting stateless persons to access legal remedies to redress their stateless situation and in this context, to work with NGOs in providing legal counselling and other assistance as appropriate;

(w) Calls on States not to detain stateless persons on the sole basis of their being stateless and to treat them in accordance with international human rights law and also calls on States Parties to the 1954 Convention relating to the Status of Stateless Persons to fully implement its provisions;

(x) *Requests* UNHCR to further improve the training of its own staff and those of other United Nations agencies on issues relating to statelessness to enable UNHCR to provide technical advice to States Parties on the implementation of the 1954 Convention so as to ensure consistent implementation of its provisions.

ANNEX FIVE

Draft Articles on Nationality of Natural Persons in relation to the Succession of States (1999)

PREAMBLE

Considering that problems of nationality arising from succession of States concern the international community,

Emphasizing that nationality is essentially governed by internal law within the limits set by international law,

Recognizing that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948 proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of the Child of 1989 recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the reduction of statelessness of 1961, the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,

Part 1 GENERAL PROVISIONS

Article 1

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles

Article 2 Use of terms

For the purposes of the present articles:

(a) “Succession of States” means the replacement of one State by another in the responsibility for the international relations of territory;

(b) “Predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States;

(c) “Successor State” means the State which has replaced another State on the occurrence of a succession of States;

(d) “State concerned” means the predecessor State or the successor State, as the case may be;

(e) “Third State” means any State other than the predecessor State or the successor State;

(f) “Person concerned” means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) "Date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates

Article 3 Cases of Succession of States covered by the present article
The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4 Prevention of Statelessness
States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

Article 5 Presumption of Nationality
Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession

Article 6 Legislation on nationality and other connected issues
Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 7 Effective Date
The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

Article 8 Persons concerned having their habitual residence in another state
1. A successor State does not have the obligation to attribute its nationality to persons concerned who have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 9 Renunciation of the nationality of another State as a condition for attribution of nationality
When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 10 Loss of Nationality upon the voluntary acquisition of the nationality of another state
1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 11 Respect for the will of the person concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.
2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.
3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.
4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.
5. States concerned should provide a reasonable time limit for the exercise of the right of option.

Article 12 Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

Article 13 Child Born After the Succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 14 Status of Habitual Residents

The status of persons concerned as habitual residents shall not be affected by the succession of states.

Article 15 Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the Succession of States by discriminating on any ground.

Article 16 Prohibition of arbitrary decisions concerning nationality issues

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

Article 17 Procedures Relating to nationality Issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of states shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 18 Exchange of information consultation and negotiation

States Concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

Article 19 Other States

1. Nothing in the present articles requires states to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned who have become stateless as a result of the succession of States, as nationals of the state concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

Part II PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Section 1. Transfer of part of the territory

Article 20 Attribution of the nationality of the successor State and withdrawal of nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

Section 2. Unification of States

Article 21 Attribution of the nationality of the successor state

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

Section 3. Dissolution of a State

Article 22 Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8:
(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;
(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 23 Granting of the right of option by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.:

Section 4. Separation of Part or Parts of the Territory

Article 24 Attribution of the Nationality of the Successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8:
(i)Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State.

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25 Withdrawal of the nationality of the predecessor State

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(a) Have their habitual residence in its territory;

(b) Are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c)Have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26 Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of article 24 and paragraph 2 of article 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

ANNEX SIX

International Law and the Right to a Nationality in Sudan

Bronwen Manby, Open Society Foundations*

Summary

Among the many critically important choices that Sudan is facing in the context of the referendums on the status of South Sudan and Abyei are the criteria that will be established to determine citizenship of the new entities. This paper argues strongly that the negotiating parties should reject ethnicity as the basis for determining membership of the new polities and instead adopt the non-discriminatory norms established by international human rights law, providing for citizenship to be granted on the basis of any appropriate connection to the territory, respecting the rights of individuals to opt for the nationality they prefer, and with the default option based on habitual residence.

The fundamental basis of citizenship: what is the vision for the new states in Sudan?

It is not for nothing that the definition of citizenship[1] has been among the most difficult issues to settle in the painful negotiations that led up to the January 2011 referendum on the possible secession of South Sudan. The decision on criteria that result in Sudanese citizens keeping their nationality of the Republic of Sudan or becoming citizens of the new state of South Sudan is not merely a technical matter, but goes to the heart of the vision that the National Congress Party (NCP) and the Sudan Peoples' Liberation Movement (SPLM), the ruling parties in each entity, each have for the continued existence of a smaller Sudanese state, or for the new state of South Sudan (whatever its ultimate name may be). The decision is also urgent, since, all being well, the new state of Southern Sudan will come into existence on 9 July 2011, at the expiry of the Comprehensive Peace Agreement that led to the referendum.

Is the membership of each of the new entities to be determined on the basis of ancestry and perceived identity, excluding those who are not "sons of the soil", on the basis that their loyalty must lie elsewhere – or will it be more inclusive, drawing on the international framework of human rights, the norms of non-discrimination and due process, to imagine a nation that can include all those who have their home on the territory and follow the laws of the land, whatever their ethnic and geographical background? Can Sudanese from north and south overcome the history of decades of civil war, the hostility between different populations that has resulted, the memory of atrocities that are not far in

* Senior Programme Adviser, Africa, Open Society Foundations. Email: bronwen.manby@osf-london.org. This paper was first presented at an InterAfrica Group / Justice Africa workshop on the human rights consequences of the Sudan referendum held on 6-7 December 2010, Addis Ababa.

[1] Citizenship and nationality are used as synonyms throughout this paper, both in the sense of 'jinsiyya' in Arabic. See Bronwen Manby, Citizenship Law in Africa: A Comparative Study, Open Society Foundations 2nd edition, 2010, for an explanation, and for more detail on many of the issues explored here. See also BronwenManby, Struggles for Citizenship in Africa, Zed Books, 2009, for further analysis of many of the country case studies. Both available in full text at www.afrimap.org.

the past? Can their leaders draw rather on the long traditions of commerce and migration, intermarriage and cultural exchange, to articulate a new vision of each country that acknowledges the commonalities of history, however painful it has sometimes been, and the strong linkages that exist today between all the peoples of what is now Sudan and that will remain even when and if the South secedes?

Among many in Sudan and much wider afield – across Africa but also across the world – the instinctive response to the question "who are we, the citizens?" is that "we are the natives, the people who have always been here". Everyone who is not a "native" is therefore a foreigner, or at best a guest. But this "instinctive" response is very poorly adapted to today's world of post-imperial states and global migration, where populations have moved – or been moved – across or within borders that have often changed. No country can hold onto the myth – which was always a myth – that its citizens share "one blood"; and the dangers of a fixation on loyalty and belonging based on blood and soil were amply demonstrated by the history of 20th century Europe. It was the violence of the 1939-45 world war that provided the shock to the international system that led to the foundation of the international human rights regime that we have today. The complex of UN treaties adopted in the second half of the 20th century that aim to guarantee equal protection of the law and non-discrimination for all come out of a recognition that discrimination on the basis of ethnicity and race had brought genocide and catastrophe. And as the human rights regime developed, the experts and states involved drew also on – and reinforced – the belated rejection of the European subjugation of Africa (and elsewhere) and the second-class citizenship given to the colonised peoples in those territories.

In practice, non-discrimination on ethnic, racial and religious grounds is not only a matter of principle, but also a foundation for a stable state. Exclusion and discrimination sow seeds of political unrest, economic collapse and war. For Sudan, though late in the day, it is not so late that an inclusive definition of citizenship for both north and south cannot be established.

International law and the right to a nationality

The Universal Declaration of Human Rights adopted in 1948 is clear on the foundational nature of nationality for the recognition of other rights. Article 15 provides that "[e]very one has a right to a nationality" and that "[n]o one shall be arbitrarily deprived of his nationality." The International Covenant on Civil and Political Rights does not discuss the citizenship of adults, but recognises the right of "[e]very child … to acquire a nationality." The UN Human Rights Committee has interpreted states duties under the ICCPR to include the obligation to "adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.[2]" The Convention on the Rights of the Child also guarantees the right of every child to acquire a nationality, placing a duty on states parties to respect this right. The 1961 Convention on the Reduction of Statelessness, which entered into force in 1975 (though it still has relatively few ratifications), makes it a specific duty of states to prevent statelessness. Article 1 mandates that "A

[2] General Comment No. 17: The Rights of the Child (Art. 24 of the International Covenant on Civil and Political Rights) (1989).

Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless." Even if a person would not become stateless, the convention forbids denationalisation "on racial, ethnic, religious or political grounds." More broadly on non-discrimination, the International Convention on the Elimination of Racial Discrimination requires that the right to nationality not be denied for discriminatory reasons. The Convention on the Elimination of All Forms of Discrimination against Women provides that women must be granted equal rights with men in respect of citizenship.[3]

At African level, the African Charter on Human and Peoples' Rights, adopted in 1981, does not contain a provision on nationality. However, the African Commission has found that the provision in Article 5 that "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status" prohibits attempts to denationalise individuals and render them stateless. Article 12(5) of the African Charter also contains a specific ban on mass expulsions based on national, racial, ethnic or religious grounds – a ban included in the painful knowledge of expulsions that had already taken place by 1981, when the Charter was adopted. The African Charter on the Rights and Welfare of the Child repeats the provision of the UN Convention on the Rights of the Child on the right of a child to acquire a nationality and also requires states parties to "undertake to ensure that their Constitutional legislation recognises the principles according to which a child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."[4]

The sum total of these provisions, and the jurisprudence that has built up in the UN, African, Inter-American and European bodies responsible for the interpretation of the treaties, is to limit state discretion over the grant of citizenship, by requiring measures to reduce statelessness, including the grant of nationality to children who would otherwise be stateless, and by prohibiting discrimination in granting citizenship and the arbitrary deprivation of citizenship. As recently stated by the Inter-American Court of Human Rights:

> *"Although the determination of who is a national of a particular state continues to fall within the ambit of state sovereignty, states' discretion must be limited by international human rights that exist to protect individuals against arbitrary state actions. States are particularly limited in their discretion … by their obligations to guarantee equal protection before the law*

[3] Sudan has ratified the ICCPR, ICERD and CRC, but not CEDAW nor the Convention on the Reduction of Statelessness (which nonetheless provide guidance on the accepted international standards in these areas).

[4] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa places strong non-discrimination requirements on states in general, but is weak on citizenship rights, allowing discrimination in the right of spouses to pass citizenship to each other, and allowing exceptions to the equal rights of men and women to pass nationality to their children where 'this is contrary to a provision in national legislation or is contrary to national security interests.' (Art 6(h)).Sudan is a party to the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child, but not to the Protocol to the ACHPR on the Rights of Women in Africa.

and to prevent, avoid, and reduce statelessness."[5]

State succession

The Sudanese case of state succession is one of transfer of territory rather than dissolution of a state: the Republic of Sudan will be a continuing entity, even when the South secedes. There are important consequences that follow from this legal situation: in particular, all those who currently have Sudanese nationality will continue to hold it until such time as the law of the Republic of Sudan is changed. One of the most important issues will be the determination of the basis on which Republic of Sudan nationality may be withdrawn (if at all) from the new Southern Sudanese.

The principal guidance on the international law in cases of state succession consists of draft articles adopted by the International Law Commission.[6] These are not formally binding, though the UN General Assembly has invited governments to take their provisions into account when dealing with the issues and they do provide authoritative guidance on the accepted norms of international law in this area. Article 1 reflects the understanding of customary international law that "Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned." Further articles provide that states must take "all appropriate measures" to prevent statelessness arising from state succession, and that persons shall not be denied the right to retain or acquire a nationality through discrimination "on any ground."

The basic assumption outlined by the ILC Draft Articles is that the nationality of a successor state will be attributed to persons on the basis of habitual residence in whichever territory is relevant. In addition, states "shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned." In particular, a state shall grant a right to opt for its nationality to persons who have an "appropriate connection" with that state if they would otherwise be stateless. The commentary on the Draft Articles explains that a right to opt has been common practice in many cases of state succession, and that it can help to resolve problems of attribution of nationality where jurisdictions overlap. An "appropriate connection" can mean habitual residence, a legal connection with one of the constituent units of the predecessor state (this refers primarily to membership of one of the units of a former federal state that is being split up), or birth in the territory of a state concerned. But "in the absence of the above-mentioned type of link between a person concerned and a State concerned further criteria, such as being a descendant of a person who is a national of a State concerned or having once resided in the territory which is a part of a State concerned, should be taken into consideration." It is notable that the Draft Articles place lower priority on descent from a national of the state than on habitual residence or birth in the territory: this is probably counter-intuitive to many people, as the only existing firm statements on

[5] Dilcia Yean and Violeta Bosico v. Dominican Republic, Inter-American Court of Human Rights, 2005.
[6] International Law Commission, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries, 1999.

future nationality in the case of Sudan already illustrate.[7]

Ethnicity and citizenship in comparative African perspective

The referendum criteria

The Machakos Protocol and the Comprehensive Peace Agreement (CPA) provide that "the people of South Sudan have the right to self-determination." This right was enshrined in the interim constitutions for Sudan and Southern Sudan that followed the peace agreement. But who are "the people of South Sudan"? The Interim Constitution for Southern Sudan and the legislation establishing the eligibility for individuals to vote in the referendum on the independence of South Sudan provide two parallel definitions, one based on ethnicity, the other on residence. The Southern Sudan Referendum Act provides that:

> The voter shall meet the following conditions:
>
> 1) be born to parents both or one of them belonging to one of the indigenous communities that settled in Southern Sudan on or before the 1st of January 1956, or whose ancestry is traceable to one of the ethnic communities in Southern Sudan; or,
>
> 2) be a permanent resident, without interruption, or any of whose parents or grandparents are residing permanently, without interruption, in Southern Sudan since the 1st of January 1956;…[8]

Category (1) of these criteria reflects an understanding of citizenship based on descent. Category (2) expands this understanding to include people who are or have been permanently resident in the territory, providing an important non-discriminatory basis for recognition as a voter in the South Sudanese referendum and future citizen: "northerners" resident in the South are accepted as having a voice.[9]

Based on this definition for South Sudan, the criteria for continuing citizenship of the Republic of Sudan would at minimum be based, it is logical to assume, on mirroring criteria: allowing both for permanent residents and for those who are members of "indigenous communities" to remain or become citizens. Although the category based on residence softens the approach, and this is important, a primary framework for citizenship law based on ethnicity would nonetheless not conform to international principles of nondiscrimination, nor

[7] International Law Commission, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries, 1999.

[8] Southern Sudan Referendum Act, 2009, section 25, unofficial translation. The other criteria are: "3) have reached 18 years of age; 4) be of sound mind; 5) be registered in the Referendum Register". Similar criteria are provided for the referendum on the status of Abyei: see further below.

[9] The referendum act also removed the gender discrimination residually present in the original provision in the Interim Constitution for Southern Sudan, which had provided that "For purposes of the referendum … a Southern Sudanese is: (a) any person whose either parent or grandparent is or was a member of any of the indigenous communities existing in Southern Sudan before or on January 1, 1956; or whose ancestry can be traced through agnatic or male line to any one of the ethnic communities of Southern Sudan; or (b) any person who has been permanently residing or whose mother and/or father or any grandparent have been permanently residing in Southern Sudan as of January 1, 1956…."

accord with the law in place in the majority of other African states. The criteria to vote in the referendum may have relevance to the debate on future nationality law in the two territories, not least because they reflect the instinctive understanding of many people in Sudan of the nature of nationality; but there is no reason in law why the criteria for attributing nationality in either state following secession of the South should follow the referendum voting criteria – and, this paper argues, many reasons why they should not.

Ethnicity in comparative African citizenship law

Most African nationality codes adopted after independence respect the basic UN principles of non-discrimination, at least on the face of the law. Very few African constitutions or nationality laws provide the foundation for their citizenship in an ethnic or racial definition. Those that do are:

- Sierra Leone, Liberia and Malawi: each of these has law providing that only persons "of negro descent" or "of African race" can be citizens by birth; in Liberia people not "of negro African descent" cannot be citizens at all. Some other countries provide for privileged access to citizenship for those of African descent (Mali, Ghana) who would not qualify on the principal criteria, but the basic provisions of the law on citizenship are non-discriminatory.
- Uganda, DRC, Somalia, Swaziland and Nigeria: all have provisions drawing to a greater or lesser extent on ethnic or cultural criteria. In Uganda, the constitution has a schedule listing the "indigenous communities" who are entitled to nationality by birth. Though DRC's 2006 constitution relaxes previous rules and provides wider access to nationality than before, its first premise is that nationality of origin is granted to "every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence". Somalia's1962 citizenship law gives nationality to any person "who by origin, language or tradition belongs to the Somali Nation". Swaziland's law allows, in addition to more standard provisions, for recognition of citizenship on the basis of allegiance to a member of the traditional Swazi leadership, ensuring that those who are not ethnic Swazis find it very difficult to obtain recognition of citizenship. Nigeria also primarily refers to those who are descendants of "a community indigenous to Nigeria", though it allows for children of naturalised citizens to become citizens by birth, removing the discrimination on the second generation (this indigenous preference is also reflected internally, within Nigeria's federal system, with disastrous results[10]).

In other countries, discrimination on the basis of ethnicity is routine in administrative practice relating to citizenship, even if not explicitly enshrined in the terms of the law itself. In Côte d'Ivoire government policy brought increasing difficulties for northerners and Muslims to obtain recognition of nationality from the late 1990s. Though this discrimination was not explicit in the law, the nationality code dating from independence gave nationality to anyone born in the territory "unless both parents are foreigners": who was a "foreigner" was never defined, but came in practice

[10] See, for example, Human Rights Watch, "They Do Not Own This Place", Government Discrimination Against "Non-Indigenes" in Nigeria, 2006.

to include many people who never saw themselves as foreigners since they had lived all their lives in Côte d'Ivoire, though their ancestral origins lay to the north of the country -- or within the country but to the north of boundaries that had existed at some point during the colonial period and were moved many years before independence. In Zimbabwe, challenges to the ruling party led to changes in the law that stripped of nationality anyone who had the theoretical entitlement to another nationality, even if they had never actually held that nationality; most of those affected were descendants of migrants from neighbouring Zambia, Mozambique and Malawi. In Madagascar, thousands of people whose origins lie in the Indian subcontinent cannot obtain papers. In Kenya, the Nubians – Sudanese taken to Kenya in the colonial era – and Kenyans of Somali ethnicity as well as many other minor ethnic groups have faced enormous challenges in getting the identity cards and other papers that prove their right to belong. In several west African countries the widely dispersed Mandingo and Fulani (peul, in French) are frequently subjected to verbal or physical attack on the grounds that they are not "native".

The best illustrations of the dangers of defining citizenship on the basis of ethnicity lie in DRC and Côte d'Ivoire. At the most extreme, exclusion from the polity on the basis of presumed disloyalty, often determined on the basis of a last name – which has lasted generations in many cases, affecting people who know no other home – breeds resentment and rebellion. As one of those fighting in Côte d'Ivoire stated: "we needed a war because we needed our identity cards". Counter-examples are Senegal or Tanzania, whose citizenship laws and practices are generous, and which have reaped the benefit in social peace. The lesson for Sudan: defining nationality on the basis of ethnicity, or applying discriminatory criteria in practice, is a recipe for trouble. Even if not immediately, the long term consequences are likely to be negative.

What sort of connection to north or south Sudan should provide a right to nationality of either state?

If the negotiating parties agree that ethnicity will not be the basis for sorting the current population of Sudan into two groups, on what basis should nationality be granted in the new states? What should be the default position for attributing nationality, and what would be the "appropriate connection" (to put it in the terminology of the ILC Draft Articles on state succession) that gives a person with the right to opt for one or other of the two nationalities (or both, if dual nationality is allowed). The following paragraphs set out what would be the preferred or acceptable positions under international law.

Habitual residence

The starting point for any discussion rests on habitual residence. The assumption in international law, as restated in the ILC Draft Articles, is that in case of state succession a person will be attributed nationality in the place where they are habitually resident (unless they exercise a right to opt for the other nationality, on which more below).[11]

[11] Note that the type of nationality attributed would be nationality from birth; this rule in cases of state succession must be distinguished from the residence qualification applied for naturalisation as a citizen in 'normal' times.

In the first instance this means that people who are habitually resident in the North and have no connection with the South should continue to hold the nationality of the Republic of Sudan without any change to their status. Similarly, current Sudanese nationals who are habitually resident in the South and have no connection with the continuing Republic of Sudan (other than their citizenship on the date of secession) should be automatically given South Sudanese nationality.

In addition, this basic assumption has the important implication that those "southerners" who were displaced during the civil war and are now living in what will remain the Republic of Sudan should retain their Sudanese nationality, absent any expression of their will to the contrary. Similarly those "northerners" resident in the South would become South Sudanese. Although it is apparent that many will find this a challenging assumption, experience has shown that a default position based on any other principle than habitual residence will lead to large numbers of people finding themselves stateless in and/or expelled from their homes, including those who were born there and have never lived anywhere else. If habitual residence is completely unacceptable to the negotiating parties as the default position, then the other criteria suggested by the ILC Draft Articles and other international law should be considered, including in particular the place of birth of the person concerned. There are serious human rights consequences attached to the exclusion that would result from a default position based on highly subjective and discriminatory criteria such as membership of an ethnic group; consequences that may last for decades.

The definition of habitual residence is not fixed in international law, and would thus be up to the parties to determine by negotiation, though there is jurisprudence from various bodies at both international and national levels establishing certain limits on the length of time and other elements that might qualify a person to be treated as habitually resident. Perhaps most relevant in the case of Sudan is a decision of the UN Human Rights Committee in a case about the rights of recently arrived residents of New Caledonia to vote in a referendum on independence of the territory from France. The Committee found in that case that a ten year period of residence to qualify to vote was not unreasonable.[12] However, as noted above, rights to citizenship following a referendum on independence need not follow the same rules as those established for the right to vote in the referendum itself.

For the most part the idea of habitual residence as the default principle has the merit of being conceptually simple. The conceptually complicated question on habitual residence relates to the situation of pastoralists who regularly migrate between the two new states: where is a person habitually resident who is on the move for much of the year across (what has now become) an international border? On what basis can one define habitual residence that allocates members of pastoralist populations to the side of the border that is most acceptable both to them and to the sedentary populations with which they have relations? (More on this below.)

Option for those with an 'appropriate connection' to both territories

The presumption expressed in the ILC Draft Articles is that a person who has an "appropriate connection" to both successor territories should be

[12] Gillot v. France, Human Rights Committee, U.N. Doc. A/57/40 (2002).

given the right to choose his or her preferred nationality; this right of option is expressed particularly strongly when the state succession is due to the separation of a part of the territory of a state to create a new state, while the predecessor state continues to exist, as is the case in Sudan.[13] That is, a person habitually resident in north Sudan who also has an appropriate connection to South Sudan should have the right to opt for the nationality of South Sudan. If the person takes no action, he or she should be presumed to remain a citizen of the Republic of Sudan. Persons who have an appropriate connection to the territory that will remain the Republic of Sudan and are habitual residents of South Sudan shall have the right to confirm their nationality of the Republic of Sudan. If they take no action, they will be attributed the nationality of the new South Sudanese state.

The parties would have to agree what an "appropriate connection" would be beyond habitual residence: but it should include at minimum birth on the territory (possibly with an exception for pastoralist populations: see below), former habitual residence on the territory, birth or habitual residence of parents (or grandparents) on the territory, and other family connections to the territory (spouse or children with an appropriate connection).

In any event, a child born after the date of the succession of states who has not acquired any other nationality at birth must according to the international principles have the right to the nationality of the state on whose territory he or she was born. Only a few countries in Africa provide a right to nationality for all children born on the territory without further conditions, but this group forms a majority when combined with those that apply the rule that a child born in the territory who is still resident there at majority, and/or a child born in the territory of one parent who was also born there, becomes a national by right. These provisions avoid at minimum the multi-generational exclusion and statelessness that has destabilised Côte d'Ivoire and DRC: but they need to be effectively implemented in practice and not just written down in law. They should apply equally to the continuing Republic of Sudan and the new state of South Sudan.

The Eritrean option

In Eritrea, the answer given to the question "Who will be an Eritrean?" following the creation of the new state appears at first sight to deploy the "obvious" answer based on ethnic origin. But the definitions in the law in fact base citizenship rather on the international norm of habitual residence, while providing a cut-off date for automatic citizenship that was far in the past and avoided giving nationality to recent arrivals in the territory. The provisional government in Eritrea adopted a nationality law before the 1993 referendum was held, on the basis of which eligibility to register in the referendum was determined. This law (which is still in effect) gives Eritrean nationality to any person born to a father or mother of "Eritrean origin". However, "Eritrean origin" is then defined without reference to ethnicity, and instead as (descent from) "any person who was resident in Eritrea in 1933".[14] (The equivalent cut-off date in

[13] Draft Articles on Nationality of Natural Persons in relation to the Succession of States, Article 11 and Articles 24-26.

[14] Eritrean Nationality Proclamation (No. 21/1992). A 1933 Italian colonial decree had defined as Eritrean "subjects" all persons (with the exception of Italian citizens"), residing in the country before the end of 1933."

Sudan would presumably be 1956.) Persons who had been residents of Eritrea between 1934 and 1951 could apply for citizenship by simple application with evidence of residence (though persons who had "committed anti-people acts during the liberation struggle" were denied this right). Those who had "entered Eritrea legally and been domiciled in Eritrea for a period of ten years before 1974" could apply for naturalisation, subject to further conditions, including renunciation of any other nationality. Others can similarly naturalise on the basis of residence for at least 20 years. Though restrictive in some ways – the 1933 date is very long ago, while the 20 year regular naturalisation period is very long – many people of "non-indigenous" ethnicity were in practice fully recognised as Eritrean by right through the application of this law. Those who obtained Eritrean nationality in 1993 included many people of mixed parentage, descendants of Europeans who had come to Eritrea during the colonial period, members of groups who had somehow stayed in Eritrea while en route to or from Mecca for the Haj, and so forth.

3rd country residents

The situation of current or former Sudanese citizens who are resident in third countries is somewhat more complex. International law would have no problem in principle with provisions that exclude from the discussions those who have obtained the nationality of the country where they are now resident (or another country): it would be up to the two states to determine which of these people they allow to have their nationality (provided the rules did not discriminate on the basis of sex, race, ethnicity, religion, etc). If they do not have the nationality of a third country then similar rules should apply as to those who are resident within the borders of the current Republic of Sudan (north or south) and have appropriate connections to both new territories: they should have the right to opt for the nationality of South Sudan or (and, if dual nationality is allowed) to retain their nationality of the Republic of Sudan. More difficult is the case of people who have not obtained a third nationality but do not express any will: the least problematic assumption from an international law perspective, given difficulties of proof of last place of habitual residence, would be for them to be presumed to retain the nationality of the Republic of Sudan.

Dual nationality

Historically, dual nationality was discouraged in international law. One of the earliest international conventions dealing with nationality, the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, was aimed as much at minimising dual citizenship as at providing that everyone had a nationality, by harmonising citizenship practices among states. However, the trend today is very much in the opposite direction. While at the time of independence from colonial rule most African states did not allow dual nationality, today 33 countries in the continent allow their nationals to hold another passport (a few of these only for those who are citizens by birth, a handful of them requiring permission of the authorities). Among those countries that have changed the rules in the last 20 years to allow dual nationality are Angola, Burundi, Republic of Congo, Djibouti, Gabon, Gambia, Ghana, Kenya, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, and Uganda – as well as Sudan; in several other countries the issue is actively under discussion.

New states are always more nervous about the idea of dual nationality. Sudan after the likely state succession is no different in this regard. It seems unlikely, though not impossible, that the negotiating parties will agree to the idea of dual nationality for those who could in theory have the right to citizenship both in the continuing Republic of Sudan and in South Sudan. However, since the 1994 citizenship law, Sudanese in general have had the right to hold two passports – though it is not known how many have taken up this possibility. In any event, given that the citizenship law of the Republic of Sudan will remain in force until amended, those who become nationals of South Sudan are likely to have dual nationality with the Republic at least for a while, unless South Sudan requires renunciation of previous nationalities.

In many ways, continued acceptance of dual nationality would be the best outcome, legally speaking, for the two states. There would remain difficulties around negotiating border issues or movement of pastoralists (see below), but agreements on these points should in principle be easier to reach where legal status is not an issue. There are various options on dual nationality: obviously it makes no sense for everyone who is currently Sudanese to have the right to nationality of both successor states, while a right to dual nationality for all those who are eligible for Southern Sudanese nationality is not likely to be accepted by the Republic of Sudan. The most plausible version would probably be for individuals to opt for or be attributed a primary nationality when they have an appropriate connection to both states, including the withdrawal of the nationality of the Republic of Sudan from those who acquire Southern Sudanese citizenship, but then allow them also to apply for naturalisation in the other state according to the normal processes of law – which provides a greater level of control and comfort for each party on issues of state security. More generously, those with an appropriate connection to both states could be presumed dual nationals from the time of secession of the South.

In the case of Eritrea's secession, the 1992 nationality law provided that those who already had another nationality (and who had therefore in principle ceased to be Ethiopian, since Ethiopia's law did not allow dual nationality) were allowed to keep their other nationality. For those born or acquiring Eritrean nationality since 1993, dual nationality is only allowed with permission of the authorities. Ethiopia's failure to amend its 1930 nationality law following the referendum in order to confirm the status of people who could be regarded as of Eritrean origin but who chose to remain in Ethiopia, was the source of major problems when war broke out. Around 75,000 of those with a presumed right to Eritrean nationality were expelled, 15,000 more than those who had registered to vote in the referendum (around half a million people of Eritrean origin were believed to live inside the new boundaries of Ethiopia at that time). Condemning the arbitrary nature of many of these expulsions, the Eritrea-Ethiopia Claims Commission, set up by the comprehensive peace agreement of December 2000 that ended the war between the two countries, found that :

> Taking into account the unusual transitional circumstances associated with the creation of the new State of Eritrea and both Parties' conduct before and after the 1993 Referendum, the Commission concludes that those who qualified to participate in the

Referendum[15] in fact acquired dual nationality.

This was despite the fact that Ethiopian law did not then and still does not allow dual nationality. Although the situation for people of Eritrean ancestry in Ethiopia has improved since the adoption of a new nationality law in 2003, many in practice still face difficulties in establishing their nationality.

Withdrawal of nationality

When it comes to the provisions for withdrawal of Republic of Sudan nationality, there is a difficult balance to be struck between due process protections, political acceptability and practicality of implementation. While international law contains strong guarantees against the arbitrary deprivation of nationality, it is not practical to require the Republic of Sudan to carry out an individual procedure for the withdrawal of nationality from every single person who becomes South Sudanese. The default position should probably be that, even if dual nationality is allowed in principle, those persons who are presumed to have become South Sudanese on the basis that they are habitual residents of South Sudan and have no connection to the north lose their Republic of Sudan nationality on the date of secession. If dual nationality is allowed automatically on the date of secession, the question of withdrawal would not arise for those with an appropriate connection to both territories. If dual nationality is not allowed, or if it is allowed only after choosing a dominant nationality and then applying for naturalisation of the other state, automatic withdrawal would apply also to those who are habitually resident in the South and have an appropriate connection to the North but have not confirmed their intention of retaining Republic of Sudan nationality during the transitional period allowed. Those who are habitually resident in the north and do not opt for the nationality of the South would not have their nationality withdrawn. In any case, however, there should be a fallback provision that if a person whose nationality of the Republic of Sudan has been withdrawn claims that this was unlawful he or she must have the right to appeal the withdrawal in the courts of the Republic of Sudan. In addition or alternatively, there could be an appeal to a joint adjudication mechanism set up by both new governments to determine cases where nationality is in doubt.

The ILC Draft Articles (and other principles of international law) clearly provide that the Republic of Sudan may not withdraw its nationality from those habitually resident in the north of Sudan who have an appropriate connection to the South (ie especially the former IDPs resident in and around Khartoum), unless they have in fact opted for the nationality of the South and only at the time they acquire the new nationality. Similarly, the Republic of Sudan may not withdraw its nationality from people habitually resident in a third state who were born in or, before leaving Sudan, had their last habitual residence in the Republic of Sudan or who have any other appropriate connection with the Republic of Sudan. In any event, they may not do so without verifying that the person has another nationality.

[15] That is, among other things, they had in fact registered as Eritrean nationals under the 1993 nationality proclamation (and were not simply qualified to do so).

Pastoralists: Habitual residence, appropriate connections and grazing rights

The Abyei referendum criteria

The Abyei Protocol of the CPA and the Abyei Area Referendum Act 2009 provide for a separate referendum for the Abyei area, to determine whether it remains a special administrative region of north Sudan or becomes part of South Sudan. Those who can vote in this referendum are:

> (a) Members of the Ngok Dinka Community;
>
> (b) Other Sudanese residing in Abyei Area in accordance with the criteria of residency,
>
> as may be determined by the Commission according to section 14(1) of this Act [establishing the powers of the Abyei Area Referendum Commission]; …[16]

Thanks to deep political disagreements between the negotiating parties, the Abyei Area Referendum Commission referred to has never been set up, so that the residence criteria have not been established; nor other issues related to border demarcation, wealth sharing and voter registration agreed.[17] Accordingly the Abyei referendum was not held at the time of the general referendum on the status of South Sudan.

In practice, the people whose "residence" has been controversial for the purposes of the Abyei referendum are the mainly pastoralist Misseriya Arabs, who traditionally migrate to Abyei for a part of every year though the "home base" for most of them is in North Sudan. The Sudanese government argues that the Misseriya are residents of Abyei for the purposes of the referendum; but their status is disputed by the SPLM and the Ngok Dinka community. The status of other non-Ngok Dinka as residents of Abyei has been less contentious.

International principles

There is an almost total lack of international law or national precedent relating to the determination of nationality of pastoralist or nomadic groups, even in Africa, where migratory pastoralism is very common.[18] This paucity of law and jurisprudence is reflected in the difficulties that many pastoralist groups whose grazing territory is transboundary or close to national borders have had in establishing

[16] Abyei Area Referendum Act, 2009, Section 24. As for the referendum on the status of the rest of South Sudan, the other criteria are "(c) Not less than 18 years of age; (d) Of sound mind; (e) Registered in the Referendum Register."

[17] The Abyei Protocol also provided for the delineation of Abyei to be undertaken by an international panel of experts, the Abyei Boundary Commission. A Commission was formed and submitted its report to the Sudanese government in 2005, which, however, refused to accept them. The SPLM agreed in 2008 to the referral of the issue to the Permanent Court of Arbitration (PCA) in The Hague. In July 2009, the PCA redrew the boundaries of Abyei. The ruling was accepted by both parties.

[18] The Council of Europe adopted a rather general Recommendation in 1983 that urged member states to facilitate the recognition of nationality for nomadic populations. The Recommendation suggested the following criteria for consideration in establishing a link on the basis of which nationality should be granted: whether the state is "the state of birth or origin" of the person concerned or the "state of origin" of his or her immediate family; whether it is the state of habitual residence or frequent periods of residence of the person (provided the residence is not unlawful); and the presence in the state of members of the person's immediate family. Committee of Ministers Recommendation No. R. (83)1, 22 February 1983.

citizenship in any particular country. Many of these communities live, in effect, outside the legal framework of citizenship and its attendant rights and responsibilities.

In principle, the rules governing the attribution of nationality to the pastoralist groups in Sudan should ideally follow rules that are similar to those for the rest of the population; and they should avoid definitions of citizenship that follow ethnic boundaries, since such rules tend to create statelessness for individuals whose ethnicity is not clear cut, as well as to harden identities in a way that can be used as the basis for conflict. Though the technicalities pose some challenges, they are by no means insurmountable: the fundamental difficulties here are political.

It is in the case of migratory groups that the right to opt for one or other nationality would perhaps be most useful, as the ILC says, to help resolve "problems of attribution of nationality to persons concerned falling within an area of overlapping jurisdictions of States concerned."[19] An automatic right to dual nationality would, legally speaking, resolve these questions even more easily; but, as noted above, is likely to be politically unacceptable.

In any event, there will be a need to define both habitual residence and the other "appropriate connections" that could give a right to opt for the nationality of either state with the position of migratory pastoralist groups in mind. There will also be a need to define the location of habitual residence that would be dominant (assuming that a person who migrates might be argued to have several habitual residences) in the absence of an expression of will, and thus the attribution of nationality on a default basis according to the rules described above.

For the purposes of opting for one or the other nationality, it seems reasonable to provide a definition of habitual residence that provides relatively generous accommodation to the particular situation of migratory groups. Thus, rather than requiring a continuous period of residence, the definition of "habitual residence" could include a cumulative period of residence over several years, reflecting the fact that a particular person may have developed stronger ties and wish to identify with the place visited for the majority of the year on an annual basis, rather than the place that is their home, their "dar". Under this definition, it is possible that a person (and not just a pastoralist migrating between the two states with livestock) could be "habitually resident" in both successor states in Sudan (this is not at all in conflict with international legal precedent on the same issue). The other "appropriate connections" applicable in the case of migratory pastoralist groups would also need some modification. In international law, and in practice in similar cases of state succession, birth on the territory is presumed to form an appropriate connection. In the case of pastoralist groups, a provision that birth on the territory alone forms such a connection may prove to be unacceptable to those communities where the pastoralists are just "passing through". It may therefore be necessary to provide a definition of appropriate connection that combines birth with a minimum residence requirement (as in the case of habitual residence perhaps a cumulative residence requirement) before any right to opt for nationality is conferred.

The attribution of nationality is more difficult if a person who has two habitual residences, one each side of the border, does not in fact take steps to opt

[19] Note 6 to Draft Article 11

for one or other nationality. The simplest option here in legal terms would be for such an individual to be presumed to retain the nationality of the Republic of Sudan (they would of course be free to change their nationality at a later date, but the nationality of the Republic of Sudan should not be withdrawn from them on the date of secession). Alternatively, but perhaps more problematically, the dominant habitual residence of those who move with their livestock during part of the year could be defined in relation to their "dar", their "home". Legal criteria to establish where this is could include the place where these populations spend the rainy season and where they cultivate crops, if they do so, and where their permanent residences are and members of their family may remain during the dry season -- even if in practice the individual has spent the majority of each year away from that place. As a matter of fact, in most cases of cross-border migratory pastoralist groups this would imply continuing citizenship of the Republic of Sudan.

In the course of developing these definitions, it should be possible in principle – albeit politically difficult in practice – to resolve the status of members of the Mbororo and other originally "West African" migrant communities, whose status as "Sudanese" has historically often not been recognized, even though they have been resident in Sudan for generations. In addition, the drafting of specific criteria on the citizenship of partially or fully nomadic populations should provide a legal foundation for the grant of nationality in future to members of cross-border pastoralist groups (thus in principle helping also to reduce allegations of the abuse of nationality law for political purposes such as have arisen in Darfur in recent years).

Whatever the nationality regime, rights of access to grazing and water that were previously negotiated between pastoralists and settled communities should continue to be regulated according to existing agreements between the communities and possible new agreements between the governments of the two states in relation to management of the border zone. Rights to enter a country are not guaranteed to non-nationals, but in practice pastoralist groups regularly cross borders throughout the region, while there are useful precedents on agreements to facilitate cross-border movement by pastoralists especially at West African level, agreed by ECOWAS, in bilateral agreements between West African states, and at national level.[20]

Evidentiary problems

Any nationality agreement will depend critically on the rules of proof and documentation that are applied to show entitlement to one or other (or both) nationality. This is likely to be a difficult problem in Sudan, where it is estimated that only one third of children under the age of five were registered at birth (the percentage of adults is not known), and other forms of documentary proof may be hard to come by. There will be a need to agree the composition of tribunals (ideally including persons likely to take both sides of the argument in any

[20] See for example, Loi n°01-004/du 27 février 2001 portant Charte pastorale en République du Mali; Agreement Concerning Transhumance between the Republic of Mali and the IslamicRepublic of Mauritania, 19 September 1989; Loi n° 2000-044 portant Code pastoral en Mauritanie; Decret No.97/007 PRN/MAG/EL du 10 janvier 1997 fixant statut des terroirs d'attache des pasteurs (Niger); Réglementation de la transhumance entre les états membres de la CEDEAO Décision A/DEC.5/10/98 of 1998 and C/REG.3/01/03 of 2003. See also "Legislation to Support Crossborder Livestock Mobility",COMESA Policy Brief Number 14, February 2010.

particular case) that can determine cases of nationality in the first instance (with appeal to the courts), and the sorts of proof that will be accepted – oral statements or affidavits from the person concerned, statements by community elders or other credible witnesses etc.

Rights of non-nationals

While not directly relevant to citizenship determinations, negotiations around citizenship issues should clearly include as much agreement as possible between the parties on the rights of non-nationals. The "Four Freedoms" agreement between Sudan and Egypt is frequently mentioned; perhaps more useful, because within the framework of more general multilateral treaties, are the similar provisions on freedom of movement, labour, residence & establishment within the framework of COMESA (of which Sudan is a member but has not ratified the relevant protocol), or ECOWAS or the EAC (not directly relevant to Sudan, but providing useful precedents on which the negotiating parties could draw). International human rights law of course provides that the great majority of rights are to be enjoyed by nationals and non-nationals alike.

The main rights not guaranteed to non-nationals in international law are political rights (the right to vote in national elections, stand for and hold public office, etc), though a state may choose to allow them. In practice many do, for example: citizens of EU member states have the right to vote in local and EU elections in other EU countries; within the Commonwealth many countries (including the UK) allow other Commonwealth citizens to vote (in both national and local polls) if legally resident; in the USA some states allow non-nationals to vote at different levels. In Sudan, it may well be helpful to provide pastoralist communities, for example, some degree of political voice at local level in the territories through which they pass: in some cases such arrangements are already in place, providing a formalised basis for disputes to be resolved.

Under international human rights law, non-nationals lawfully in the territory of a state have the right to liberty of movement and to choose their place of residence within that state and the right to leave the state. Permissible restrictions on these rights are very limited and can only be imposed if they are consistent with other rights. Moreover, under Article 12 of the ICCPR, every person has the right to enter his or her "own country". The Human Rights Committee, responsible for monitoring the treaty, has interpreted "own country" to include "at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien", which would include southern Sudanese resident in the north who – if an agreement cannot be reached to the contrary -- are no longer citizens of the Republic of Sudan following the secession of the South.[21] The ILC draft articles on state succession

21 See Committee on Human Rights, General Comment No. 27: Freedom of movement (Art.12): 02/11/1999; CCPR/C/21/Rev.1/Add.9: "20. The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of

provide that habitual residents "shall not be affected by the succession of states" and that states "shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto."

Recommendations

In summary, this article argues that the nationality laws of both successor states in Sudan should:

- Not discriminate on the basis of ethnicity, race, religion, gender or any other ground prohibited in the international human rights treaties;
- Provide those who have a connection to both states with a right to opt for their preferred nationality during a transitional period;
- Allocate a default nationality on the basis of habitual residence, if a person fails to opt; or, if that is rejected outright by the negotiating parties, allocate nationality on the basis of other non-discriminatory criteria, especially place of birth;
- At minimum, permit dual nationality by naturalisation following the option for or allocation of an initial nationality;
- Provide guarantees against statelessness.

their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them...."