



SUDAN CITIZENSHIP SYMPOSIUM

KEYNOTE ADDRESS

BY

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Khartoum, 6 November 2010

Introduction

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.

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 and the 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 to prevent statelessness resulting from arbitrary deprivation of nationality. This request has been coupled with one to the Executive Committee 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 successions and avoid making the same



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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 by governments 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



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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, and 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.