SUDANREPORT

Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote

Munzoul A. M. Assal

CMI **CHR. MICHELSEN INSTITUTE**

Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote

Munzoul A. M. Assal

CMI CHR. MICHELSEN INSTITUTE

Contents

Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote

Munzoul A. M. Assal[1]

The Comprehensive Peace Agreement (CPA) of 2005 provided southern Sudanese with the right to self-determination through a referendum vote that took place January 9–15, 2011. Formal results will be announced at the end of January, but reliable reports indicate an overwhelming vote for independence. While the CPA provides a six-month transition period following the referendum, and negotiations have begun on post-referendum issues, a great many contentious issues remain to be settled. Central among them is the question of how nationality and citizenship will be defined and handled in a future North Sudan and South Sudan.

The terms nationality and citizenship, while sometimes used as synonyms, have different meanings in different contexts. Citizenship has a precise legal definition, and provides access to specific rights. Nationality is often defined more broadly, with reference to origin and to membership in a culturally defined community.

In Sudan, however, both law and common discourse focus on nationality (*jinsiyya* in Arabic) rather than on citizenship (*muwatana* in Arabic). Because it is based on ancestry, the concept of nationality valorises ethnicity. In multi-ethnic countries like Sudan, where ethnicity provides a basis for stratification, emphasising nationality instead of citizenship results in disenfranchising the less-privileged segments of the population. There is a need to shift the emphasis from nationality to citizenship, which becomes particularly urgent as the constitutional foundation is being laid for two new states.

Under the Nationality Law of 1957 (amended 1974), nationality is based on descent, although there is also a provision for naturalisation. To qualify as Sudanese by descent, birth in Sudan is not sufficient. In the case of persons born after 1957, to qualify as Sudanese by descent, one must have been born in Sudan to at least one parent who is Sudanese by descent or by naturalisation.

While the term Sudanese or *Sudani* implies that nationality entails equality before the law and equal rights, inequality has long been part and parcel of socio-political formation in Sudan. There are hierarchies between the north and the south and between different groups within both north and south, based on religion, ethnicity, and regional or geographic origin. These distinctions sometimes make it difficult for persons belonging to certain ethnic groups to obtain certificates of nationality, particularly among those whose loyalty to the central government is in doubt (Abdulbari 2010: 24). While ethnic identity is not specifically included in the legal definition of nationality, in practice the standards of proof required are higher for members of ethnic groups which are remote from the capital region, overlap national borders, and/or have a history of immigration from neighbouring countries.

This paper combines field data with analysis. It first discusses the distinctions between nation and state and between nationality and citizenship, arguing that Sudan has never been a nation-state and therefore it will be problematic to adopt such a framework in considering post-secession challenges. As background, the paper describes some longstanding deficiencies in the legal and social frameworks governing people's access to official documents, notably nationality certificates (*jinsiyya*). This is illustrated with empirical cases that reveal how regional, ethnic, and probably class affinities affect access to these documents. Turning to post-referendum challenges, the positions of the National Congress Party and the Sudan People's Liberation Movement with respect to citizenship are analysed. Finally, the paper briefly reviews some international laws that address citizenship issues in contexts of state succession and sets forth brief recommendations.

Sudan is not a Nation-State

The debate about nationality and nationalism is not new, and there are many theoretical contributions that address issues pertaining to nation, nationalism, and citizenship. Anthony Smith (1991), Eric Hobsbawm (1990), Mahmood Mamdani (1996), Toyin Falola (2004), and Ernest Gellner (2006), among others, have placed nationalism and citizenship in broad perspective, looking at the role of history, culture, traditions, and ethnicity in the formation of nations and the concept of nationalism. Ethnic revival in many societies has turned the attention of both the public and the academic community to the issues posed by ethnic nationalism.

Francis Fukuyama (2004), Kenichi Ohmae (1993), Montserrat Guibernau (2003), and Jean-François Bayart (1993) offer critical analysis of the concepts of state, nation, and nation-state. They deal with the challenges entailed in defining state borders, the effects of globalization on the nation-state and on citizenship, and the question of sovereignty.

The concepts of nation and state are basic to any discussion of nationality and citizenship. A state is a self-governing political entity, with internationally recognized boundaries and a government that provides public services and police power. It enjoys sovereignty, meaning that no other state has authority over the country's territory, and external recognition.

A nation, on the other hand, is normally defined as a culturally homogeneous group of people, larger than a single community, which shares a common historical experience and set of institutions, generally including a common language and often a common religion. When a nation of people has a state or country of its own, this is called a nation-state. The definition of nation implies, however, that a nation can exist without a corresponding state. Large groups that overlap state boundaries, such as the Kurds who are scattered across Iraq, Syria, Iran, and Turkey, may constitute such stateless nations (Guibernau 2003).

In practice, the realities of states and nations are more complex than can be captured by these formal definitions (Malkki 1992, 1995). States may be defined precisely by international recognition. But the definitions of nation and of "nation-state" are subject to a wide range of understandings.

Sudan, with its pre-referendum boundaries, is a state, but it cannot be viewed as a nation-state, and actually it never was. Before the Turkish-Egyptian invasion of 1821, the area which came to be known as Sudan was made up of distinct sultanates and kingdoms, each of which essentially met the modern definition of a state. The Sinnar, Darfur, and Musabaat sultanates had recognized territories, governments, economic activities, social engineering, and external relations (O'Fahey and Spaulding 1974). While these entities were formally annexed to the state of Sudan in different historical periods (the last to be annexed was Darfur, in 1916), they were not, sociologically speaking, integrated into an overarching Sudanese identity. Recurrent regional movements rooted in persistent regional identities have often used violence to protest their exclusion or marginalization.

One thorny issue at the Doha peace negotiations on Darfur was the question of whether it should remain a single, unified region.[2] The Darfur armed groups at the negotiating table insisted that Darfur was historically one region and ought to remain as such. They thus called for a regional identity based on what all the different ethnic groups in Darfur share.

In addition to regional identities, the existence of cross-border ethnic groups also complicates the question of Sudanese nationality and citizenship. These groups include the Nuer, Annuak, and Gumuz, along the Sudan-Ethiopia border; the Azande (Sudan and Democratic Republic of Congo); the Zaghawa (Sudan and Chad); the Beni Amer (Sudan and Eritrea); and the Bishariyyn and Ababda (Sudan and Egypt). These border-straddling groups represent challenges not only for Sudan, but also for neighbouring states. A related problem has to do with population movements and shifting identities (Ahmed 1979), as groups, some of them nomadic herders, move in and out of the political and geographic space of Sudan. Cross-border groups, mobile populations, and loose ethnic boundaries will all have implications for citizenship rights in a divided Sudan.

Nationality and Citizenship are not Synonymous

As noted above, while the terms nationality and citizenship are often used interchangeably, they should not be regarded as synonymous. Citizenship is closely linked to the concept of rights defined by international and national law. Nationality is a more ambiguous term than citizenship, and one closely associated with subjective understandings of community. It may refer to membership in an ethno-national group that need not be established as an independent state (Bauböck 2006: 17).

One logical way to make the distinction would be simply to consider nationality as the country where an individual was born, while reserving citizenship for the legal status conferred by a state (Shafir 1998; R. Smith 2001). Thus an individual born in Sudan to Sudanese parents and having Sudanese citizenship at birth could become a Norwegian citizen, for example, while retaining Sudanese nationality (understood as country of birth).

National laws also generally distinguish types of citizenship, with different regulations for those acquiring citizenship at birth and those acquiring citizenship by a defined process of naturalisation. Citizenship at birth in turn may be defined as determined by place of birth (*jus soli*) or by ancestry (*jus sanguinis*).

Countries that follow a *jus sanguinis* policy grant citizenship based on ancestry or ethnicity; this is related to the concept of a nation-state common in Europe. Countries that use *jus soli* grant citizenship to anyone born in the territory of the state, a policy practiced by many countries, including the United States. Some European countries, despite the fact that they have big immigrant communities, retain *jus sanguinis* as the main principle governing the acquisition of citizenship by immigrants' children; this leaves naturalization as the main mode for acquiring citizenship by the population of immigrant descent. For example, after World War Two, "in countries such as Switzerland, Germany and Austria, second and third generation migrants were considered foreign nationals and had access to nationality on the same terms as first generation migrants" (Kraler 2006: 45). In addition to birth and naturalisation, citizenship can also commonly be obtained through marriage to a person holding the citizenship (*jure matrimonii*).

By failing to distinguish between nationality and citizenship, Sudanese law and discourse blur the distinction between cultural origin and rights given by the state. They also give particular emphasis to ancestry ("nationality by descent"), and in practice citizenship by naturalisation is regarded as an inferior status. A senior Sudanese immigration officer affirms that "nationality by birth gives more

---

[2] The Doha peace talks between the government of Sudan and the Justice and Equality Movement (JEM) started in February 2009. When the negotiations with JEM reached an impasse, another faction, the Liberation and Justice Movement, joined the negotiation.

rights than nationality by naturalisation."[3] The current nationality framework in Sudan encourages differentiation even between those who are nationals by birth, due to the prevalence of the hierarchies mentioned earlier. In practice, Sudan still uses ethnic affiliation as a basis for authenticating citizenship claims by persons belonging to ethnic groups domiciled in Sudan; birth certificates are viewed as insufficient. It is more difficult for members of border ethnic groups to obtain nationality certificates or other legally acceptable identity cards since such groups maintain links with more than one country. In a country where registration of births and deaths is very incomplete, ascertaining who is a national and who is not is a daunting task. This opens the door to corruption and lack of professionalism in dealing with the question of nationality.

The exercise of the right of self-determination for southerners that started on January 9, 2011, reveals the predicament of the nationality framework, which does not guarantee equal rights to citizens. We see now, more than ever before, the need to move policy from an emphasis on nationality to an emphasis on citizenship.

Neither the 1957 Sudanese Nationality Act (amended 1974, 2005) nor the 2003 Nationality Act of New Sudan, drafted by the Sudan People's Liberation Movement (SPLM), provides the basis for such a shift. The Sudanese Nationality Act, referring to persons born since 1957, specifies that they will be Sudanese by descent only if at least one of their parents is Sudanese by descent or by naturalisation. For persons born before 1957, the provisions are more complicated but are also based on the principle of descent.

The SPLM Secretariat of Legal Affairs and Constitutional Development introduced the New Sudan Nationality Act in December 2003. It defines "New Sudan" as "land, airspace and territorial waters under the control of the Civil Authority of the New Sudan comprised of Equatoria, Bahr El Ghazal, Upper Nile, Nuba Mountains and Fung Regions and any subsequent areas that may come under its control."[4] As does the 1957 Act, this law emphasizes the principle of descent. A person born before 2003 shall be a New Sudan national by descent if "he was or his parents, his grand and great grandparents were born in the New Sudan," *and* "he belongs to one of the tribes of the New Sudan."

Negotiations on defining nationality and citizenship for the two successor states are both confidential and, by all accounts, inconclusive. It is therefore important to stress the need for a break with the existing concept of nationality. Nationality, as defined in both the Sudanese Nationality Act and the New Sudan Nationality Act, is inherently hierarchical to the extent that it is based on descent and thus on ethnicity. Hierarchies breed stratification, and when they are codified by law, inequality and discrimination are accentuated. To the extent that nationality means belonging to a group with shared culture, traditions, history, language and other commonalities, and to the extent that the current order in Sudan is permeated by inequalities, nationality as a legal framework is indeed problematic.

This is particularly so with respect to access to state documents and services. While it is legally possible for any person to apply for and obtain identity documents (nationality certificate, passport, and personal identity card), persons belonging to certain regions or ethnic groups find it difficult to obtain such documents. The following section presents some empirical cases, based on interviews, that show how regional, ethnic, and clan affiliations are made relevant in applications for nationality certificates.

Discrimination in Access to Nationality Papers

Khalid Mohamed was born in Babanusa, western Sudan, in 1971. One year later his father died and the family moved to Omdurman, part of the Khartoum metropolitan area. Khalid did not know what

---

[3] Interview with an immigration officer, Passports and Immigration Office, Omdurman, August 2010. All interview material has been translated by the author.
[4] Laws of the New Sudan: Nationality Act, 2003 (Provisional), chapter 1, section 3.

nationality meant until he was sixteen and in his final year of high school. Acquiring a nationality certificate is a precondition for being allowed to sit for the high school completion exam. Khalid's father had a nationality certificate before he died, but his mother did not:

> My mother gave me my father's papers, which I presented to the officials. I was asked to bring a nationality certificate of another family member and a witness. I got my nationality certificate after I brought my father's and uncle's papers, and a witness. In the late 1980s, I lost my nationality certificate. When I went to apply for a new one, they asked for someone to sponsor me. The sponsor must have a valid identity card and job. Many people do not bother to get papers until they decide to travel abroad.[5]

Omer Mohamed Ishag was born in Sennar in 1963. He obtained his nationality papers in 1980. In applying for the certificate, he was asked to bring his father's or any family member's nationality certificate. Since his father had not had one, he brought his cousin's. Unlike Khalid, he was not asked to bring a witness. He lost his nationality certificate in 1991. In applying for a replacement, he was asked to bring the papers of a male paternal relative, so he used his uncle's.[6]

Osman Ahmed was born in Al-Duweim, White Nile state, in 1970. The family moved to Khartoum in 1972 when his father relocated to teach in a school in Omdurman. The family first lived in Aburoaf, then moved to Hai Al-Arab in Omdurman before finally settling in Khartoum North. Osman got his nationality certificate in 1984 after completing junior high school: "The school asked for it. When I filed my application, they asked for a witness, my birth certificate, and my father's nationality certificate. But I used my cousin's papers." While Osman believes that people go through hassles to get their papers, he thinks the authorities are justified in asking for documents: "Basically the main purpose of bringing a witness or a relative's certificate in my opinion is to make sure that you are a Sudanese and entitled. There are a lot of migrants from other African countries living in Sudan and applying for citizenship."[7]

Reflecting in the interview about how he had to support his application, Osman had this to say: "When I applied, I was asked about my ethnic group and the clan within the group I belong to. The questions were oral and the officer seemed to be filling out another form. If you say you are a Beni Amer [a Sudanese-Eritrean ethnic group], for example, they might ask you to bring more documents." Osman believes that the way questions and procedures related to nationality certificates are framed reflects the fact that Sudan "is still an ethnic society. We still have more loyalty to our ethnic groups, not to the country." Osman further believes that some people have easier access to nationality certificate than others, depending on the region where they were born and raised.

Younger people and those who applied for nationality certificates during the 1990s have had somewhat different experiences. For one thing, the Nationality Act was amended in 1994 to allow mothers to pass nationality to their children (prior to 1994, only fathers could do so). Atif was born in Al-Kamlin, Gezira state, in 1979. After the death of his father, he came to Khartoum in 1992 to join his brothers. In order to sit for his high school certificate, he applied for nationality in 1996:

> When I went to apply, they asked about the ethnic group of both my mother and father. They also asked about the clan. I told them that I do not know anything about clans and that what I know is that my mother is from Dongola [i.e., she is Danagla] and my father is Mahasi. The officer told me that "Al-Danagla are *khashum beyoot*" [the Danagla are an ethnic group, but there are many clans within the group].

---
[5] Interview with Khalid Mohamed, Omdurman, November 2010.
[6] Interview with Omer Mohamed, Khartoum, November 2010
[7] Interview with Osman Ahmed, Khartoum, November 2010.

For Atif, it did not make sense to ask these questions, since such information is not recorded in the nationality certificate anyway. He was not asked to bring a witness, but only the nationality certificate of a father or uncle (maternal or paternal).

As such cases show, people who were born outside Khartoum or the Nile Valley generally face more difficulties in getting official documents, particularly nationality certificates. A personal experience will also serve to illustrate the point. In 2005, my younger brother wanted to obtain a nationality certificate and I enquired about what was needed for the application. I was told that my nationality certificate plus the birth certificate of the applicant would be enough. At this point our ethnic identity was not known to the officer. When that identity was revealed, we were asked to bring a second nationality certificate, that of another brother. I asked why mine was not enough and was told, "Your group is a cross-border group and therefore we need more documentation."

In November 2010 the dailies in Khartoum reported a case that illustrates how the system discriminates against certain segments of society. A Sudanese young woman, a housemaid in Khartoum, was arrested by the police in Omdurman while on her way to transfer money to her family. The police suspected that she was a foreigner living illegally in the country. The young woman, who is of West African descent, presented to the authorities all the necessary documents to show that she is Sudanese. (In Sudan there is a big community of West African origin, scattered across the country and generally known as Fellata.) But the police doubted the authenticity of the documents. The woman had to travel to where her family lives and get an affidavit from local authorities confirming her identity. To her dismay, the police were still not convinced, and the case was referred to court.[8]

Ironically, the family for whom the woman worked as a housemaid was of Asian origin, but they were never suspected by the police or asked to show that their members were residing legally in the country. The housemaid case suggests that discrimination is also based on class and colour. Poor and lower-class people, especially those with darker skins, are more susceptible to random police checks. One can thus talk about some form of institutionalized racism in Sudan, where state agents, not ordinary people, indulge in racist acts.

Labels that are inscribed by the society reflect some level of underlying racism in Sudan. For example, people from west Sudan are commonly known as Gharraba, a term that covers all those who originate from Darfur and Kordofan. People from the Nile Valley who migrate to other regions of the country are known as Jellaba, while southerners and those from eastern Sudan are known as Ganubiyyin and Badawait, respectively (Harir 1994). All these group labels are considered pejorative to a greater or lesser extent. Shimalyyin is a term that is used to describe the people of northern Sudan, including Khartoum. This term, because of its association with the ruling elite, has no negative cultural connotations, and northerners are comfortable with being labelled Shimalyyin.

The negative attitudes reflected in these labels influence law enforcement agencies and contribute to inequality in access to social services provided by the state. For example, the case of the housemaid shows that being Fellata is disenfranchising (the Fellata are seen as a subgroup of the Gharraba). As a result of widespread stratification and discrimination, nationality and citizenship issues in Sudan are sensitive. In Sudan, when you ask someone about an official document, the person immediately fears that there must be a problem. For this reason, it was sometimes difficult to establish rapport while doing interviews for this study. When questioned about official documents, people feel insecure and threatened. This can be considered an indicator of the extent to which identity issues in Sudan are problematic and also of how little trust people have in the authorities issuing the documents.

The interviews done for this research also suggest that education is sometimes a relevant factor in how people access social services and official documents and in how they view the process. Atif is educated at university level, and during the interview he expressed awareness of the unspoken

---

[8] A. Al-Affendi, "On the Jellaba, Fellata, and from the East and West: The Ironies of Citizenship and Belonging in Sudan," *Al-Tayyar* newspaper, no. 462, November 30, 2010.

attitudes of officials. He was conscious of what is just and unjust, and he questioned the system. Osman, also university educated, likewise criticized the process of getting official documents and the discrimination against those whose parents do not have the necessary documentation.

On the other hand, Khalid and Omer are less educated, and while they feel disadvantaged by the system, they do not appear resentful. During their interviews, they did not remark on social-ethnic stratification or unequal treatment of different groups. They may have been afraid that criticizing the authorities as biased could lead to questions about their own ethnic identity as opposed to their national identity. As migrants to the national capital, Khalid and Omer emphasize their Sudanese identity and downplay their ethnic affiliation. They are trying to adopt a neutral identity that will help them fit into their new social context. They work and interact with northerners in the heart of Omdurman, and they are required, or think they are required, to live up to the standards deemed appropriate in this context. Many migrants idolize their original homelands or communities, preserving nostalgic memories even if they were forced to leave by conflict or lack of opportunities. However, fondly recalling one's homeland does not necessarily mean that one wants to go back. To the extent that Khalid and Omer have succeeded in Omdurman, they embrace a sense of belonging to this new place and try their best to avoid having their identity contested.

Whether they directly criticized the authorities or not, all the interviewees questioned the principle of making ethnicity the basis for granting nationality. One can say that ordinary people are more advanced in their thinking than state functionaries when it comes to nationality and citizenship issues.

Laws and constitutions provide the legal basis for equality, but in practice there is discrimination against the less privileged in Sudan, whether defined on a regional, racial/ethnic, or individual basis. This inequality has been one of the main drivers of civil wars and political instability in the country. There is a need to review the manner in which laws are enforced, and there is a need for more accountability on the side of law enforcement agents. These issues will remain problematic after the referendum, whatever the outcome, but they will become even more urgent in the likely event that the country splits in two.

Citizenship Issues in the Post-referendum Period: Positions of the Major Parties

The Comprehensive Peace Agreement signed in 2005 put an end to the war, but it opened a Pandora's box, creating the possibility of an independent country in the south. This outcome now appears almost certain. In the event of secession, the question of citizenship, which is already contested, will become a thorny issue for both the south and the north.

The CPA provided for a six-year interim period before the vote. Despite this long lead time, the two major parties – the National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLM) – seem to have been taken by surprise by the fact that the referendum is indeed happening and will likely result in the secession of southern Sudan. The two parties still hold different positions on a number of important issues, although their positions have not always been clearly and consistently defined.

In July 2010 the NCP and SPLM started a discussion on post-referendum arrangements. Four committees were formed to look at key areas: international, regional, and bilateral agreements; economic issues (debt, assets, oil, and currency); security arrangements; and citizenship. None of these committees was able to find common ground, although the economic committee seemed to make more progress than the others. By the time voting began on January 9, 2011, many crucial issues remained unresolved. In particular, border issues, which are central to citizenship, are yet to be settled. Wealth sharing, debt responsibility, and currency have not been dealt with. The list is actually very long. All post-referendum questions must be settled before the interim period ends on July 9, 2011.

The central issue of citizenship, and the rights of southerners in the north and northerners in the south, is far from resolved. What will happen to southerners living in the north, assuming the referendum results in secession? Will they automatically gain the citizenship of the new state in the south? It is now clear that the NCP will consider southerners in the north as foreigners if the current referendum results in a vote for secession. Moreover, there is potential for a violent backlash against them, as southerners in general may be blamed for dividing the country. This could lead to reprisal attacks on northerners living in the south. On the other hand, it is conceivable that the mutual dependence and understanding that has developed over time between southerners and northerners in the north will prevent attacks against southerners. And what about northerners living in the south – what rights will they be afforded? It is too soon to say for certain in either case, but we can get an idea of the possibilities by examining the public statements of the NCP and the SPLM.

In October 2010, at a roundtable discussion, NCP and SPLM leaders set out their positions on the status of southerners in the north and northerners in the south. The NCP was represented by Badria Suliman, a former presidential legal advisor and currently a member of Parliament, while the SPLM was represented by Luka Biong, minister of cabinet affairs in the Government of National Unity.

The NCP position

When the talks on post-referendum issues started in July 2010, the NCP's position on the status of southerners in the north was ambiguous. But as the referendum date drew near, the NCP sought to clarify its position. In October 2010, Kamal Obeid, the information minister, stated that southerners would lose citizenship in the event of secession. That statement was widely criticised by opposition leaders and civil society in Sudan, but the NCP did not comment on it at the time. On January 12, 2011, three days after the start of the referendum, the Ministry of Interior announced that it is drafting amendments to the Nationality Act to be submitted to the cabinet for approval. The director of the civil registry was quoted as saying that the amendments are necessary since southerners will be treated as foreigners when the transitional period ends on July 9, 2011.[9]

As a signatory to the CPA, the NCP acknowledges that southerners have the right to determine their future, choosing either to stay in a united Sudan or to opt for independence. The South Sudan Referendum Law was prepared by the National Commission for Constitutional Review. At the October 2010 roundtable, NCP representative Badria Suliman expressed her party's disappointment that the law was merely procedural rather than substantive:

> Had the referendum law been substantive, we would not have asked today about the rights of the southerners in the north. We in the National Congress Party believe that such questions should have been answered in the referendum law. There are certain things that were unclear in the law and must be debated by the NCP and SPLM before the end of the interim period. The referendum law was passed by the Parliament with the approval of about seventeen political parties. But the law turned out to be almost exclusively procedural, talking about how the commission is formed, its structures and functions, who will be eligible to vote, and how voting will be observed.[10]

The NCP leaders argue that international law does not provide binding rules in situations of secession:

> International law does not provide details with which we can say that Sudan is legally obliged to respect a certain clause. There was the UN treaty on statelessness of 1961. Article 8 of this treaty says that member states must not deprive any person of

[9] *Al-Rai Al-Am* newspaper, January 12, 2011.
[10] Badria Suliman, MP and former presidential legal advisor, quoted in *Al-Rai Al-Am* newspaper, October 25, 2010. Author's translation.

citizenship. But Sudan is not party to this treaty and therefore we could make use of it but it is not binding on us.[11]

The NCP does acknowledge that nobody should be a stateless person, and that nobody should be deprived of citizenship or of the right to change their citizenship:

> Every country has the right to enact its nationality law and specify conditions under which it grants nationality. This means that if secession takes place, Sudan will have its own nationality law. The Interim Constitution allows dual citizenship, but there must be provisions in the nationality law that address the conditions under which dual citizenship is allowed, and there must be a time limit for a person to choose between the citizenship of Sudan and of the new state. There must also be a nationality law in the new state, to avoid statelessness . . . Sudan has the right to withdraw citizenship from citizens belonging to the new state, but can only do so after they obtain the citizenship of the new state.[12]

According to NCP leaders, in the event of secession, southerners in the north will be given a time limit to organize their return to the south; if they choose to stay in the north, they will be treated as foreigners. The question of dual citizenship is already off the table. The NCP's view is that the state has full sovereignty and the right to decide who is a citizen and who is not, and that no state should dictate to another state who its citizens are. It is not clear what will happen to southerners who own immovable property in the north. The real estate and property law states that foreigners are not allowed to own real estate without the approval of the cabinet. The implication is that southerners who own real estate in the north will have to sell their property or apply to the cabinet if they wish to keep such property. Interestingly, the NCP has declared that southerners who are NCP party members will be granted citizenship if and when the south secedes.[13]

It should be noted that the NCP continued calling for unity until the last minute: "The NCP advocates for unity despite the fact that SPLM leaders have already decided that secession is their goal. The NCP expects that there will be secession. We want it to be smooth, not hostile. The NCP does not want to go back to war. This is a strategic issue for us."[14] An encouraging sign is that during the pre-referendum period, many NCP leaders, including the president, came out to state that southerners in the north will be treated with dignity and that all southerners in the north will be protected.[15]

The SPLM position

The SPLM's position on citizenship is the opposite of the NCP's. The party holds the view that secession should not affect people's lives. It argues that citizenship is a sensitive issue that should be dealt with not in legalistic terms but within the framework of Sudanese values. The objective should be to guarantee life and basic rights to citizens: "The responsibility of the partners [NCP and SPLM] is to sustain peace and stability. It is clear that we [NCP and SPLM] did not expeditiously tackle the question of secession. Sudan should learn from the experiences of India, Pakistan, Indonesia, Ethiopia, and Eritrea so that ordinary citizens will not be negatively affected."[16]

For the SPLM, post-referendum challenges are Sudanese problems that need Sudanese solutions. The party has invoked the UN Convention on the Reduction of Statelessness of 1961, claiming that although Sudan is not party to that treaty, it should be respected. For the SPLM, the status of

---

[11] Ibid.

[12] Ibid.

[13] Mandour Al-Mahdi, NCP deputy leader for Khartoum state, *Al-Rai Al-Am* newspaper, December 10, 2010.

[14] Mandour Al-Mahdi, NCP deputy leader for Khartoum state, *Al-Rai Al-Am* newspaper, October 26, 2010. Author's translation.

[15] President Omer Al-Bashir, speech in Juba, south Sudan, January 4, 2011.

[16] Luka Biong, cabinet minister, *Al-Rai Al-Am* newspaper, October 26, 2010. Author's translation.

southerners in the north in the post-referendum period should be looked at within a human rights framework:

> There should not be discrimination, and people should be given enough time to choose. Citizenship cannot be revoked easily. Southerners who want to go to the south should be given enough time to organize their return. Those who do not want to go to the south should get the chance to have citizenship [in the north]. There are southern Muslims who are NCP members; will the NCP ask them to leave? They should have citizenship rights. Northerners in the south should be treated equally. If they choose citizenship of the north, we will grant them the four freedoms: residence, ownership rights, work rights, and travel rights. If they choose south Sudan citizenship, they will get it.[17]

The SPLM's position on citizenship appears more advanced than the NCP's. While the NCP has come out against dual citizenship, the SPLM favours allowing this option. Moreover, the SPLM calls for giving people in the north and south the right to choose citizenship in either of the two successor states, unlike NCP, which has not emphasised individual choice in staking out its position. But the SPLM's position with regard to citizenship also appears reactive, that is, it is contingent on how the NCP deals with southerners in the north.[18]

SPLM leaders accuse the NCP of deliberately taking an ambiguous stand on the issue of citizenship: "The NCP is exploiting the question of citizenship to make unity attractive and secession expensive. By contrast, we believe that making secession expensive will, in fact, make it attractive. Some of the NCP leaders' statements have alienated even some pro-union southerners."[19] According to the SPLM, if southerners in the north are not allowed to work, northerners in the south will face the same fate. They argue that if the north can have the four freedoms agreement with Egypt, why not with an independent South Sudan? The standpoint of the SPLM is that people should be given the freedom and enough time to choose: "Loss of citizenship as a result of secession is a crime. Muslim and Christian leaders should spread the message of peace. Secession should be an opportunity to create good relationships between the north and the south."[20]

Special issues in the border area

The debate between the parties on the issue of citizenship focuses primarily on southerners in the north, and less so on northerners in the south. While the SPLM talks about border groups that straddle the line between north and south, and while the NCP calls for considering links forged by southerners in the north as a result of displacement, pastoralists who move in the border areas seem to be forgotten in the debate. Any agreement on citizenship must take into account the traditional lifestyles of pastoralists and border communities and the need to maintain access to livelihoods on both sides of the border.[21] This means that local communities must be allowed to organize their lives in line with their needs and aspirations. Borders or boundary posts mean very little to pastoralists, and imposing a strictly defined border regulation will most likely lead to conflict. The contentious case of the Abyei enclave is already complicated by the attempt to impose such regulation, as provided by the International Court of Arbitration in The Hague in 2009 (Assal 2009b).

Whatever arrangements the NCP and the SPLM may decide upon will not automatically address the array of problems facing border communities. The negotiations on citizenship arrangements need to allow space for local-level agreements that could address the concerns of local communities. It is particularly important to have clarity about the citizenship status of border populations. As stated

---

[17] Ibid.

[18] On January 11, 2011, the SPLM announced that it will grant southern citizenship to its fighters from northern Sudan. Prior to this, the NCP announced that it will grant northern citizenship to southerners who are party members.

[19] Luka Biong, cabinet minister, *Al-Rai Al-Am* newspaper, October 26, 2010.

[20] Ibid.

[21] For more on border areas and related problems, see Saeed (2011).

earlier, the nationality framework in Sudan (both south and north) is ethnically based. Defining citizenship in ethnic terms could be particularly damaging for groups along the north-south border, some of which straddle both sides of the border. For example, the Baggara are considered northerners, but they spend more than half of each year in the south.

International Standards and Post-referendum Citizenship Challenges

All indications are that a process of state succession in Sudan is imminent. Sudan as it exists today will become a predecessor state; North Sudan and South Sudan (if they choose to use those names) will become successor states. There are many international treaties and conventions that address the consequences of such situations, particularly in relation to citizenship. The 1961 Convention on the Reduction of Statelessness, in particular, deals with situations of state succession in articles 1, 4, and 8. Article 8 reads: "a contracting state shall not deprive a person of its nationality if such deprivation would render him stateless."

Sudan is not a signatory to the 1961 convention, and as noted earlier, the NCP's position is that this convention is not binding. Nonetheless, from the perspective of the International Law Commission (ILC), Sudan is bound to respect the convention (Reuss 2010). The 1999 ILC articles on Nationality of Natural Persons in relation to the Succession of States stress the following guiding principles: (1) right to a nationality; (2) prevention of statelessness; (3) no discrimination, no arbitrariness; (4) primary relevance of habitual residence; (5) secondary relevance of place of birth, special legal bonds, etc.; and (6) the individual's right to choose a nationality (but not dual nationality). Article 24 deals with the attribution of the nationality of the successor state in cases of secession/separation. The article stipulates that a successor state shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to (a) persons having their habitual residence in its territory; (b) persons with an appropriate legal connection to what is now the successor state; and (c) expatriates born in/formerly residing in what is now the successor state.[22]

On the question of withdrawal of nationality, paragraph 1 of article 25 of the 1999 ILC articles reads: "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." The article continues: "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."[23] Article 26 states that successor states shall grant a right of option to all persons who are qualified to have the nationality of both the predecessor and successor states or of two or more successor states.

However, articles 9 and 10 give successor states the right to set conditions when granting their nationality to persons. Article 9 reads: "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."[24]

---

[22] 1999 ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/3_4_1999.pdf.
[23] Ibid.
[24] Ibid.

Both the NCP's and SPLM's positions seem to comply with the 1999 ILC articles on the Nationality of Natural Persons in relation to the Succession of States. The NCP rules out dual citizenship, but declares that it will give southerners in the north time to settle their status or organize their return. However, the NCP is silent when it comes to the fact that some southerners are married to northerners and vice versa. The current Nationality Act gives both fathers and mothers the right to pass citizenship to their children, which means that children of mixed marriages should have the right to choose to either stay in the north or move to the south. But as mentioned earlier, the Nationality Act is under review and therefore things may change. The SPLM's position, while consistent with the ILC, is clear when it comes to granting citizenship to northerners in the south: if northerners in the south choose to have citizenship in the south, they will have it. But the SPLM seems inclined to react to what the NCP does. Now that the NCP has decided not to automatically grant southerners the citizenship of the north, the SPLM may follow suit and deny southern citizenship to northerners.

Conclusions

Sudan is not a nation-state. With its current boundaries, the country is a colonial creation, and like many African countries it has suffered from disintegrative forces in the post-colonial period. Unlike most, it is now undergoing dismemberment. The country is made up of precolonial quasi-states with roots in the different kingdoms that ruled over specific territories and peoples. It is an amalgam of different ethnic groups, some of which are cross-border communities. State-building efforts in the post-colonial period failed to harmonize these different identities into an overarching national identity. The focus on an ethnic basis for citizenship led to the disenfranchisement of less privileged groups, fuelled civil wars, and posed an obstacle to nation building. The south is now deciding its future separately, and other parts of the country may also seek self-determination in the future.

Long before the right of self-determination for southern Sudanese came to be a reality, the question of citizenship in Sudan was problematic. Citizenship by birth is defined on ethnic grounds because the Nationality Act of 1957, amended in 1974, is based on descent. Problems surrounding nationality and citizenship have not been addressed. Recent amendments to the Nationality Act in 1994 and 2005 give more rights to nationals and foreigners when they apply for citizenship. But these amendments are not sufficient to remove historically entrenched problems related to the hierarchical ordering of Sudanese society based on ethnicity, religion, and regional origin. As revealed in interviews for this study, belonging to a certain ethnic group or being born in a certain region influences a person's access to social services and official documents. This inequality is rooted in the history of inequality between the centre and other regions in Sudan, which were not well integrated in the national order.

The protest in southern Sudan led to a civil war that has been described as Africa's longest war. The Comprehensive Peace Agreement signed in 2005 ended the war and provided southern Sudanese with the right to vote in a referendum to determine their future at the end of a six-year interim period. It was envisaged in the CPA that the parties to the agreement would address critical issues and implement the agreement in ways that would make unity attractive. But by the end of the interim period, it was clear that implementation was far below the desired threshold that would have convinced southerners to vote for unity.

Looking ahead, a vexing issue for the NCP and SPLM, indeed for all Sudanese, is the question of citizenship. What will happen to southerners in the north and northerners in the south, and to border communities on both sides of the line, remains an open question. The NCP and SPLM have expressed different opinions, although both have pledged to respect the rights of southerners and northerners and to abide by international standards applicable in cases of state succession. The SPLM has called for freedom of movement, residence, work, ownership, and even citizenship. While pledging to protect southerners in the north, the NCP opts for giving southerners in the north a time limit to organize their situation, since they will be foreigners after July 9, 2011. The NCP has, however, announced that it will grant northern citizenship to southerners who are members of the party.

Based on the referendum results and the expected amendments to the Nationality Act, southerners will be nationals of the new state in southern Sudan, while northerners will be nationals of the north. This of course depends on how "southerners" and "northerners" are defined, and such definitions are ambiguous, if they exist at all. Assigning people to either successor state against their will is a recipe for conflict. Sudanese from north and south have a long history of coexistence and shared interests, despite the prevalence of inequalities, and there are many mixed marriages, especially along the north-south border. Denying the right of choice and the possibility of dual citizenship and insisting on descent-based nationality frameworks will likely result in more discrimination and disenfranchisement in the successor states than was the case in the predecessor state.

To minimise conflict and make life easier for people in both the north and the south, the following recommendations are offered:

1. All citizenship issues need to be addressed urgently and resolved before the end of the transitional period on July 9, 2011.

2. In both the south and north, there is a need to shift the focus from descent-based nationality to legally defined citizenship. A first step is to change the terminology: instead of *jinsiyya*, the word *muwatana* should be used. Legal reforms are also needed. Placing the emphasis on citizenship, with a defined set of legal rights applied equally to all citizens, will reduce the importance of hierarchies based on ethnicity or regional origin.

3. While the NCP and SPLM appear to have already decided on the citizenship status of southerners in the north and northerners in the south, given the shared interests and links between the north and south, dual citizenship should be allowed.

4. Legal reforms should be put in place to require more accountability on the part of officials entrusted with handling issuance of official documents.

References

Abdulbari, Nasredeen. 2010. "Citizenship Rules in Sudan and Post-Secession Problems." Unpublished paper.

Ahmed, Abdel Ghaffar M. 1979. "'Tribal' Elites: A Base for Social Stratification in the Sudan." In *Toward a Marxist Anthropology: Problems and Perspectives*, edited by Stanley Diamond, 321–35. The Hague: Mouton.

Assal, Munzoul. 2009a. "The Question of Identity in Sudan: New Dimensions for an Old Problem." *Maghreb Review* 34 (2–3): 181–94.

Assal, Munzoul. 2009b. "The Relationship between Nomadic and Sedentary Peoples in the Context of State Policies and Internationalization." *Nomadic Peoples* 13 (1): 154–70.

Bauböck, Rainer. 2006. "Citizenship and Migration: Concepts and Controversies." In *Migration and Citizenship: Legal Status, Rights and Political Participation*, edited by Rainer Bauböck, 15–32. Amsterdam: Amsterdam University Press.

Bayart, Jean-François. 1993. *The State in Africa: The Politics of the Belly*. New York: Longman.

Deng, Francis. 1995. *War of Vision: Conflict of Identities in the Sudan*. Washington, DC: Brookings Institution.

Falola, Toyin. 2004. *Nationalism and African Intellectuals*. Rochester, NY: University of Rochester Press.

Fukuyama, Francis. 2004. *State-Building: Governance and World Order in the 21st Century*. Ithaca, NY: Cornell University Press.

Gellner, Ernest. 2006. *Nations and Nationalism*. Oxford, UK: Blackwell.

Guibernau, Montserrat. 2003. "Nations without States: Political Communities in the Global Age." *Michigan Journal of International Law* 25 (4): 1251–76.

Harir, Sharif. 1994. "Recycling the Past in the Sudan: An Overview of Political Decay." In *Short-cut to Decay: The Case of the Sudan*, edited by Sharif Harir and Terje Tvedt, 10–68. Uppsala, Sweden: Nordic Africa Institute.

Hobsbawm, E. J. 1990. *Nations and Nationalism since 1780: Programme, Myth, Reality*. New York: Cambridge University Press.

Kraler, Albert. 2006. "The Legal Status of Immigrants and Their Access to Nationality." In *Migration and Citizenship: Legal Status, Rights and Political Participation*, edited by Rainer Bauböck, 33–66. Amsterdam: Amsterdam University Press.

Malkki, Liisa. 1992. "National Geographic: The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees." *Cultural Anthropology* 7 (1): 24–44.

Malkki, Liisa. 1995. *Purity and Exile: Violence, Memory and National Cosmology among Hutu Refugees in Tanzania*. Chicago: University of Chicago Press.

Mamdani, Mahmood. 1996. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton, NJ: Princeton University Press.

Middleton, John, and David Tait, eds. 1958. *Tribes without Rulers: Studies in African Segmentary Systems*. London: Routledge and Kegan Paul.

O'Fahey, R. S., and J. L. Spaulding. 1974. *Kingdoms of the Sudan*. London: Methuen.

Ohmae, Kenichi. 1993. *The End of the Nation State: The Rise of Regional Economies*. New York: Free Press.

Reuss, Matthias. 2010. "International Legal Framework and the Standards of Citizenship in the Context of State Succession." Paper presented at UNHCR-UNMIS seminar on citizenship issues, Khartoum, November.

Saeed, Abdalbasit. 2011. *Challenges Facing Sudan after Referendum Day 2011: Persistent and Emerging Conflict in the North-South Borderline States*. Bergen, Norway: Chr. Michelsen Institute.

Shafir, Gershon. 1998. "Introduction: The Evolving Tradition of Citizenship." In *The Citizenship Debates: A Reader*, edited by Gershon Shafir, 1–30. Minneapolis: University of Minnesota Press.

Smith, Anthony. 1991. *National Identity*. Reno: University of Nevada Press.

Smith, Robin. 2001. "Citizenship: Political." *International Encyclopedia of the Social and Behavioral Sciences*, 1857–60. Oxford, UK: Elsevier Science.

Umbadda, Sidig. 1988. *Indicators of Inequality in the Countryside*. Discussion Paper 80. Khartoum: Development Studies and Research Centre, University of Khartoum.

The research programme *Peacebuilding in Sudan: Micro-Macro Issues* is a cooperative venture between Chr. Michelsen Institute (CMI), the Institute of Peace Studies at the University of Khartoum and Al Ahfad University for Women. Staff and students from other institutions also take part.

Research addresses main challenges to peacebuilding in Sudan, with a particular focus on (a) the political economy of the transition, including institutional and governance issues, and (b) the role of third party engagement and issues related to the management and coordination of aid. The programme is multidisciplinary and combines macro level studies with research in selected localities and states. It covers basic and policy-oriented research as well as competence building.

CMI
CHR.
MICHELSEN
INSTITUTE

cmi.no