

**Post-Referendum Arrangement Negotiations
Committee**

PROGRESS REPORT FROM THE SUDAN PEOPLE'S
LIBERATION MOVEMENT (SPLM) WORKING GROUP ON
CITIZENSHIP

December 7, 2010

Working Group on Citizenship

1. Update on Meetings

Following the Joint Exposure session held in Juba on July 19-20, 2010, and the signing of the Juba Declaration of Principles (July 20, 2010) by both of the parties, official negotiations began:

The Joint Working Group on Citizenship (JWG-C) had its first meeting on August 9-10, 2010. At this meeting, the members of the JWG-C discussed an agenda of issues to be addressed during negotiations and initial positions on issues related to citizenship status of individuals in the event of a vote for secession.

During this first meeting the Sudan People's Liberation Movement (SPLM) presented a detailed agenda for the negotiations to the Government of Sudan (GoS)/National Congress Party (NCP) as well as a proposed *Prioritization and Sequencing Matrix* (second document) listing possible issues for discussion during the negotiations.

The following day the GoS/NCP provided an amended version of the SPLM agenda. On this second day, a debate ensued between the two delegations on whether to start with unity or secession. The SPLM's position was to start with unity given its priority in the CPA, and the GoS/NCP's position was to begin discussions with secession. This round concluded without agreement on whether to prioritize unity on the agenda or secession.

Upon their return to Juba, and in order to avoid any impasse in the next meeting and to further demonstrate their seriousness and good faith in the negotiations, the SPLM Working Group agreed that they would be willing to start the negotiations with secession in the next meeting. This was communicated to the GoS/NCP Co-Chair of the JWG-C ahead of the next meeting.

On August 18-19, 2010, the JWG-C met for the second round of negotiations. During this second meeting, the JWG-C came to an agreement on the agenda and it was initialed by the Co-Chairs of the JWG-C. The agenda committed the parties to formulate an agreement which addressed the following issues:

In event of secession:

- a) Determination of the status of individuals in the successor and predecessor states;
- b) Measures to avoiding statelessness;
- c) Measures to avoid forced evictions, arbitrary taking of property, regulating ownership property rights and guarantees of rights of ethnic and cultural communities;
- d) Measures for movement of persons, goods and services across inter-State boundaries;
- e) Measures for protection of traditional rights of populations traversing the South-North border;

- f) Protection of property rights;
- g) Facilitation of repatriation process;
- h) Status of Southerners and Northerners working in public service institutions in Northern and Southern Sudan, respectively;
- i) Responsibility for post service benefits of Southern Sudanese working in public service institutions in the North and Northerners working in public service institutions in the South; and
- j) Status of IDPs, students, prisoners and other vulnerable groups in the South and the North.

In event of unity:

- a) System of governance to guarantee equal rights and freedoms, and protection of all without discrimination;
- b) Upholding the Bill of Rights in the Interim National Constitution in the permanent constitution consistent with international law and practice;
- c) Ensure development of mechanisms for the protection of rights and freedoms of non-Muslims and ethnic and cultural communities in the north;
- d) Ensure development of mechanisms for the protection of rights and freedoms of Muslims and ethnic and cultural communities in the south;
- e) Representation of Southerners in the institutions of the national government;
- f) Framework for protection of traditional rights of populations who historically traverse the South-North border; and
- g) Transparent and inclusive constitutional review process which results in a permanent constitution based on equal rights, and protection of all without discrimination.

Additionally, during this second round, the SPLM delegation presented the GoS/NCP with a third document containing a set of twelve (12) guiding principles on citizenship and related issues to serve as the foundation for the work of the JWG-C (see Annex I). At the time of this update, the SPLM has yet to receive comments from the GoS/NCP on these citizenship guiding principles.

During the same August 18 meeting, the GoS/NCP presented the SPLM with a one and a half page document entitled "Concept Note on Citizenship in the Event of Secession." The SPLM responded on the following day with an eight-page Draft Citizenship Agreement which comprehensively addresses issues of nationality/citizenship options in the event of secession. The draft also included special provisions containing initial agreements related to vulnerable populations, such as minors, IDPs, prisoners, students, public servants and transboundary populations. The draft also recognized that there would be a need to subsequently conclude more detailed agreements on each of these issues at a later date.

During the August 18-19 meetings, the SPLM observed that the NCP was not disposed to enter into substantive negotiations during the period of Ramadan. Thus, the next meeting was put off and was scheduled for Monday, September 20, 2010, in Juba, after the Ramadan holidays.

This third round of meetings scheduled for September 20 did not take place because most members of the GoS/NCP negotiation team were reported to be outside of the country. This was not communicated to the SPLM until the Sunday, September 19, one day prior to the scheduled meeting. At this time the GoS/NCP requested that the meeting be rescheduled for the first week in October.

Despite the GoS/NCP cancellation and delay, in order to ensure that progress could continue, the SPLM asked that in the meantime, the GoS/NCP respond in writing to the SPLM Draft Citizenship Agreement which was tabled at the August 18-19 meeting. Over a month later, on September 24, the GoS/NCP finally provided a response (just over one page), but only to one section of the original SPLM Draft Citizenship Agreement, which focused on individuals' citizenship status in the context of possible secession. The SPLM immediately prepared a detailed response, to be discussed directly with the GoS/NCP at the anticipated October meeting.

The SPLM, through its Co-Chair and its Secretariat, attempted several times to confirm the October meeting. The GoS/NCP never responded, and as a result the JWG-C has not met since August 18-19, 2010.

2. Points of Agreement, Disagreements and Challenges

During the two rounds of negotiations between the SPLM and GoS/NCP components of the JWG-C detailed above, several possible points of consensus, as well as disagreements on certain issues have begun to emerge.

The emerging points of consensus between the SPLM and GoS/NCP, even though not initialed, include the following.

- (1) **Priority Issues:** The agreed-upon agenda (referenced above) commits the parties to formulate an agreement on critical issues related to citizenship.
- (2) **Transitional Period:** Positions put forward by both the SPLM and GoS/NCP have included the concept of a transitional period after the conclusion of the CPA-Interim Period, the duration of which has not yet been agreed upon.
- (3) **Sovereign Discretion to Define Citizenship Criteria:** The Parties have agreed that, consistent with international law, each state has the sovereign right to determine its own citizenship criteria.
- (4) **Avoidance of statelessness:** The parties committed themselves not take any action which may result in statelessness; however, the GoS/NCP position is that any person who is eligible to vote in the Southern Sudan Referendum will automatically lose Sudanese citizenship, which could in fact result in statelessness.
- (5) **Avoidance of Arbitrary or Forced Evictions or Expulsions:** The SPLM and GoS/NCP have committed not to take any measures that would result in

arbitrary or forced evictions or expulsions of citizens of either state or deprivation of their moveable and immovable property.

The points of disagreement between the SPLM and GoS/NCP include the following.

(1) **Right of Option:** The SPLM disagrees with the GoS/NCP position that there would be no “right of option” for any Sudanese who is eligible to vote in the Southern Sudan Referendum.

(2) **Automatic Loss of Sudanese Citizenship:** The SPLM disagrees with the GoS/NCP position that the Government of Sudan will, in effect, *strip all individuals eligible to vote* in the Southern Sudan Referendum of their Sudanese citizenship.

(3) **Automatic Acquisition of Citizenship:** The GoS/NCP position is the following: “Citizens of the Predecessor State who are eligible to vote in the self-determination referendum of Southern Sudan shall automatically acquire the nationality of the Successor State.” The SPLM disagrees with this position because it defines in advance who should be the citizens of the successor state before it enacts its own nationality law. This also does not allow any eligible voter wishing to retain his/her Sudanese citizenship to do so, which could result in statelessness.

3. Priority Issues and Matters Requiring Political Guidance

The following are the issues on which the Joint Lead Negotiation Panel (JLNP) is requested to assist the Joint Working Group on Citizenship:

a) Commitment to Agree to and Adhere to Negotiation Schedule – A clear directive from the JLNP that all Joint Working Groups shall agree to and adhere to a negotiation schedule, alternation of venues (i.e. Khartoum and Juba), avoid unnecessary cancellations of agreed upon meeting dates.

b) Commitment to reach an Agreement Prior to the Referendum – A clear commitment from the JLNP to conclude, *prior* to the referendum, a citizenship agreement which is consistent with state practice and international law, protects the rights and interests of all Sudanese, and can assure people that their lives will not be unduly disrupted by a vote for secession.

c) Transitional Period – Guidance from the JLNP on a length of the transitional period beginning from the end of the CPA-Interim Period.

d) Right of Option – An agreement within the JLNP that the citizenship agreement will include a “right of option.”

e) No Automatic Withdrawals – A commitment on the part of the Government of Sudan that it will not take any action that could cause statelessness, including a commitment to not withdraw citizenship from any Sudanese unless and until he or she freely applies for and acquires the citizenship of the successor state.

f) Vulnerable Groups, Transboundary Populations, Humanitarian Contingency Planning & Pensions – A commitment by the JLNP that they will charge their members of the JWG-C to provide comprehensive positions on issues related to the status of vulnerable groups (i.e. students, prisoners, IDPs, minors, and the like), status and rights of transboundary populations, humanitarian contingency planning, and pensions, post-service benefits and other related issues.

4. Assistance Required from Others

a) ***AUHIP*** – AUHIP close oversight of the negotiations in order to encourage the parties to negotiate in good faith and with the aim of reaching agreements.

b) ***Third-Party Technical Assistance*** – The SPLM members of the JWG-C shall request third-party technical assistance as it deems necessary during the course of the negotiations and will communicate such through the Joint Technical Secretariat.

5. Proposed Accelerated Time Table

The SPLM members of the JWG-C stand ready to finalize a agreement on citizenship prior to the referendum and call upon their counterparts to commit to the same.

Respectfully submitted by:
John Luk Jok
Co-Chair for the Joint Working Group on Citizenship

Annex I

Guiding Principles for the Joint Working Group on Citizenship

Submitted to the NCP on August 18, 2010, in Khartoum

Cognizant of the Guiding Principles signed by the SPLM/A and GoS/NCP in Juba on July 20, 2010, the Joint Working Group on Citizenship hereby agrees to the following Guiding Principles:

1. A mutual understanding of the importance of friendly and peaceful relations between the people of Southern and Northern Sudan.
2. A shared desire to strengthen the historic social ties which bind the Sudanese people together and to promote constructive and good neighbourly co-operation in all fields, including culture, security, education, and economic development.
3. A shared interest in promoting greater understanding and tolerance among the Sudanese people and their diverse cultures, religious beliefs, political opinions and affiliations.
4. A shared desire by the Parties to negotiate a final agreement on the issue of citizenship based on the principles of non-discrimination and democracy, respect for human rights and fundamental freedoms, international law and best practices.
5. A recommitment to uphold the Bill of Rights and fundamental freedoms enshrined in the Comprehensive Peace Agreement and the Interim National Constitution irrespective of the outcome of the referendum.
6. A mutual commitment to avoid any negative effect that a change of sovereignty may have upon an individual's nationality and citizenship status, including legal residence and access to education and any other social benefits and services.
7. A mutual commitment to avoid discrimination, statelessness, forced evictions, arbitrary appropriation of property, loss of human rights and fundamental freedoms, and deprivation of livelihoods as a result of decisions taken on citizenship by the Parties.
8. A shared commitment that any population movements resulting from a change of sovereignty shall be voluntary and conducted with dignity and safety by the two Parties and with the assistance, support and cooperation of the international community.
9. A common interest in protecting and preserving the livelihoods of all Sudanese people, including those in civil service at all levels of government in Sudan and

those that have provided loyal services to the various legitimate security organs, regular forces or Joint Integrated Units.

10. A commitment to reach an agreement to guarantee and regulate the movement of people, goods and services, and to respect, facilitate and regulate traditional rights of trans-boundary populations to move through the South-North border for purposes of grazing, watering and other seasonal needs, regardless of the outcome of the referendum.
11. A shared commitment to cooperate and work together, with the international community, to develop and implement humanitarian contingency plans for any possible movement of people across the South-North border.
12. A shared commitment to reach an agreement in good faith on a framework for mutual protection of individuals and communities living on each side of the South-North border.

The Parties agree that any agreement shall be initialed by to Co-Chairs of the Joint Citizenship Working Group. Such agreements shall not be re-opened for discussion by the Group.