

## UNHCR discussion paper on nationality issues in Sudan and South Sudan

### UNHCR's mandate

1. The United Nations General Assembly has entrusted UNHCR with a global mandate to protect stateless persons, and to prevent and reduce statelessness<sup>1</sup>. This mandate includes the UNHCR's responsibility for providing legal advice on the two international Conventions addressing statelessness, namely the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
2. In Sudan and South Sudan, UNHCR has been advocating for the prevention of statelessness arising from the succession of South Sudan in July 2011. In particular, the international legal obligation to prevent statelessness means that no individual should lose their Sudanese citizenship unless it is confirmed that they have obtained the citizenship of another state. UNHCR also supports a right for individuals to retain their Sudanese nationality where they have an appropriate connection to the Republic of Sudan (including individuals with long residence in Sudan and those with one or more parent or ancestor who has Sudanese nationality).
3. UNHCR is also concerned about the rights of South Sudanese in the Republic of Sudan and Sudanese in South Sudan who were displaced from their places of origin due to conflict to be able to remain in their current place of residence or to return voluntarily to their places of origin if they so wish.

### International Law and Prevention of statelessness in state succession

4. Under international law, everyone has the right to a nationality<sup>2</sup> and no-one should be arbitrarily deprived of their nationality<sup>3</sup>. States therefore have an obligation to ensure that no individual is left stateless (without the nationality of any state) as a result of state succession<sup>4</sup> and that nationality laws do not discriminate on the basis of sex<sup>5</sup>, race, colour or national or ethnic origin.<sup>6</sup>
5. In situations of state succession, questions arise as to who should acquire the nationality of the new (successor) state and who should lose the nationality of the old (predecessor) state and how nationality will be retained or newly acquired. If an individual loses the nationality of the predecessor state without acquiring the nationality of the new state, they would be stateless.
6. International best practice promotes the following standards for regulating nationality in situations of state succession.
  - o **No individual should be left stateless as a result of state succession.**

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<sup>1</sup> A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995 endorsing Executive Committee Conclusion No. 78 (XLVI) 1995.

<sup>2</sup> Universal Declaration of Human Rights, Article 15(1); International Covenant on Civil and Political Rights (ICCPR), (Sudan signed in 1986), Article 24(3); African Charter on the Rights and Welfare of the Child, Article 6(c). (Sudan signed in 2008).

<sup>3</sup> UDHR, Article 15; UN General Assembly Resolution 50/152 of 1996 (A/RES/50/152), para 16.

<sup>4</sup> Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination Against Non Citizens: 10/01/2004. Human Rights Council, Human rights and arbitrary deprivation of nationality resolution adopted 14.04.2010, A/HRC/RES/13/2.

<sup>5</sup> Article 26 ICCPR equal protection of the law and non-discrimination on grounds of sex.

<sup>6</sup> Convention on Elimination of all forms of Racial Discrimination (Sudan signed in 1977) Art. 5(d)(iii).

- **Those habitually resident on the territory of the successor state should acquire the nationality of the successor state**<sup>7</sup>
- **Dual nationality can be granted if both states agree**<sup>8</sup>
- **Those with a link to both the new and old state can be given choice of citizenship**<sup>9</sup>  
International standards promote a right for individuals to choose citizenship where they have an appropriate link to both the successor and the predecessor states. This particularly applies to individuals of mixed Sudanese, South Sudanese ancestry since Article 7 of the Interim Constitution gives any individual born to a Sudanese mother or father an inalienable right to acquire Sudanese nationality.
- **The old state may withdraw nationality from those who acquire citizenship of the new state.**<sup>10</sup>  
However, states should also put in place legal or administrative procedures to allow individuals to confirm their citizenship status where this is in dispute. The procedures should be based on exchange of information between the two Governments and respect for legal due process including written confirmation of decisions to withdraw nationality and access to administrative and judicial review.
- **The status of habitual residents should not be affected**<sup>11</sup>  
In this context, it is very positive to note the recent commitment from Sudan and South Sudan to respect the Four Freedoms of residence, free movement, economic activity and property rights for nationals of the other state on their territory. This will help to prevent involuntary large scale population movements on either side of the border.
- **States should not discriminate against individuals from any particular nationality in relation to access to dual nationality and naturalisation procedures.**<sup>12</sup>

### **The Sudan Nationality Act 1994 and 2011 Amendments**

7. The Sudan Nationality Act 1994 recognises as a Sudanese national by birth, any individual born to a Sudanese father. Any individual born to a Sudanese mother can acquire Sudanese nationality following an application process. Any individual also acquires Sudanese nationality by birth where he or his paternal ancestors have been residing in Sudan since 1 January 1956.<sup>13</sup>
8. Under Article 7 of the Sudan Nationality Act (as amended in 2011), an individual may be granted Sudanese nationality by naturalisation where he meets certain conditions including establishing 10 years of continuous and lawful residence in Sudan. Under Article 6 a woman married to a Sudanese man may acquire Sudanese nationality by naturalisation after residing in Sudan for two years with her husband.
9. According to the 2011 amendment to the Sudan Nationality Act, all individuals who have acquired South Sudanese nationality, in law or in fact, automatically lose their Sudanese nationality.<sup>14</sup> A child under 18 will lose his Sudanese nationality where his “responsible parent” has lost Sudanese nationality (normally the father unless the mother has legal custody of the child).<sup>15</sup>

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<sup>7</sup> Draft Articles on the Nationality of Natural Persons Art.; Article 5.

<sup>8</sup> Ibid Art.

<sup>9</sup> Ibid Art. 11.

<sup>10</sup> Ibid Art. 10

<sup>11</sup> Ibid Art. 14.

<sup>12</sup> Convention on the Elimination of Racial Discrimination, Article 1(3).

<sup>13</sup> Sudan Nationality Act 1994 (as amended in 2005), Article 4.

<sup>14</sup> Article 10(2) Sudan Nationality Act (as amended in 2011).

<sup>15</sup> Article 10(3) Sudan Nationality Act (as amended in 2011).

### **South Sudan Nationality Act 2011**

10. The South Sudan Nationality Act entered into force in July 2011 and adopts very broad criteria for acquiring South Sudanese nationality. Under Article 8 of the South Sudan Nationality Act, the following individuals *automatically* acquire South Sudanese nationality where they were born before the act entered into force.
  - Individuals for whom any of their parents, grandparents or great grandparents were born in South Sudan,
  - Individuals who belong to one of the indigenous ethnic communities of South Sudan,
  - Individuals who were continuously resident in South Sudan since 1956, or
  - whose ancestors were so resident.
11. An individual born after the act entered into force acquires South Sudanese nationality if any one of their parents, either the mother or the father, is a South Sudanese national.

### **Practical and Legal Consequences of Sudan Nationality Act ( 2011 amendment)**

12. Under the nationality law of Sudan, as amended, any individual who meets one of the requirements of Article 8 of the South Sudan Nationality Act has lost their Sudanese nationality. Therefore, loss of Sudanese nationality potentially applies to a very wide section of the Sudanese population (including those with one grandparent or great grandparent born in South Sudan). The nationality status of other groups is uncertain (including individuals with mixed Sudanese-South Sudanese parentage and ancestry).
13. No implementing regulations have been issued under the 2011 amendment to the Sudan Nationality Act or the Civil Registration Act 2011. These regulations should instruct civil servants on how to determine whether or not to withdraw Sudanese nationality. The regulations should incorporate adequate procedural safeguards to ensure that no individual will lose their Sudanese nationality unless they have acquired the nationality of another state.
14. In the absence of implementing regulations, decisions to refuse Sudanese nationality documents may be made on a case by case basis, with a higher risk of decision being taken on the basis of tribal/ ethnic origin (even though individuals from indigenous South Sudanese communities only represent one of the four categories of individual who are considered as South Sudanese nationals under the South Sudan Nationality Act.)
15. In the absence of regulations, it is also unclear how the law applies to certain groups including individuals of mixed Sudanese-South Sudanese parentage, individuals of mixed ancestry and those with long residence in Sudan. Further clarity is also needed on the status of unaccompanied children and individuals of unknown parentage as well as individuals from tribes living at and across the border between Sudan and South Sudan.
16. Additionally, confirmation is required that South Sudanese nationals can take the benefit of these naturalisation procedures on the same basis as nationals of other states.

### **Recommendations for preventing statelessness**

#### Procedures for withdrawal of nationality

17. UNHCR strongly encourages the Government of Sudan to introduce regulations and procedures for withdrawal of Sudanese nationality. This includes providing clear instructions on the evidence that should be adduced by the Government of Sudan in order to demonstrate that an individual has acquired South Sudanese nationality and is no longer a Sudanese national.

#### Clarifying nationality status for certain groups

18. Individuals with one Sudanese parent and one South Sudanese parent (including those of mixed ancestry) have a constitutional right to Sudanese nationality under Article 7 of the Interim National Constitution. Their status as Sudanese nationals should be confirmed.
19. Individuals with long residence in Sudan since 1 January 1956 qualify for nationality under Article 4(1)(b) of the Sudan Nationality Act 1994. Their status as Sudanese nationals should be confirmed.
20. Procedures for determining the nationality of unaccompanied children and individuals of unknown parentage should include a provision that allows children to acquire the nationality of their primary caregiver where the identity of the parents cannot be established.
21. Individuals living close to border regions including the Foroghe, Kara, Yulu, Kresh and Binga are at particular risk of statelessness due to the risk that they could be perceived by both Sudan and South Sudan as being nationals of the other state. Both Governments are encouraged to make efforts to jointly identify and establish the nationality status of these groups with the aim of ensuring that no individual is left without a nationality.
22. Laws and regulations on dual nationality should apply to individuals who qualify for Sudanese and South Sudanese nationality on an equal footing with all other nationalities. For example, take the case of an individual whose parents are both Sudanese nationals but whose father was born in Renk. He is entitled to the nationality of both Sudan and South Sudan. The same would apply to an individual born to a Sudanese mother and South Sudanese father. Under the constitution, Sudanese nationals are entitled to enjoy dual nationality in accordance with the law.<sup>16</sup>
23. As indicated above, Article 1(3) of the Convention on the Elimination of Racial Discrimination requires that individuals from all nationalities should be treated equally in relation to legal provisions relating to nationality (including dual nationality).
24. On the same basis, South Sudanese nationals who have lost their Sudanese nationality should be entitled to acquire Sudanese nationality by naturalisation based on residency accrued prior to the secession of South Sudan, in line with nationals of other states.

#### Gender Equality

25. UNHCR would strongly encourage the Republic of Sudan to amend the nationality law, in line with the constitution and international obligations on gender equality, so as to ensure that Sudanese mothers can automatically pass on their nationality to their children and foreign men married to Sudanese women benefit from the accelerated procedure for acquiring nationality by naturalisation on the same basis as foreign women married to Sudanese men.

#### **Support**

UNHCR has provided advice and expertise to both Governments on developing laws, regulations and procedures concerning nationality, birth registration and civil registration. UNHCR has contributed to raising awareness of new nationality laws and improving access to legal advice for communities affected by new nationality laws.

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<sup>16</sup> As indicated above, Article 1(3) of the Convention on the Elimination of Racial Discrimination requires that individuals from all nationalities should be treated equally in relation to legal provisions relating to nationality (including dual nationality).

To the Government of Sudan, UNHCR is offering support to expand the operation of the national civil registration programme, including to areas with displaced persons and remote border locations where people often lack documentation. We are also willing to provide technical advice and training support to make sure that this system is secure, reliable and robust. Too many people in Sudan remain without nationality documentation. With the secession of South Sudan, access to these vital identity documents and proof of affiliation to one or other state, becomes an even more urgent need to avoid situations of potential statelessness.

For South Sudanese nationals living in Sudan, UNHCR has offered support to the Government of South Sudan to set up a documentation procedure in cooperation with the South Sudan Ministry of Interior and the South Sudanese Embassy in Khartoum. There are real challenges for documenting people who may have spent decades away from their place of origin. Others were born here in Sudan. UNHCR is providing training support to increase the capacity of South Sudan's nationality officers to address complex cases.

## **Conclusion**

26. The denial of a nationality implies not only the denial of safety and dignity on an individual level; it also fosters conflict and unrest on the collective level. By acknowledging the economic and social rights of stateless persons, the concerned individuals are able to make a positive contribution to the social and economic development of the country.
27. Risk of statelessness for large sections of the population undermines a stable and secure environment in Sudan. By decreasing the risk of statelessness, the incentives for population movements, including involuntary displacement, would be reduced. The resulting internal stability enhances the conditions for sustainable peace, security and development in Sudan.