

# CLIMIGRAFORM

Formation à l'enquête participative sur changement climatique et migrations au Soudan  
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## WORKING PAPER N° 2

***An Overview on the Legal Framework  
Governing Migration Laws in Sudan  
with Particular Reference to Citizenship and Refugees Laws***

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## **Introduction**

This general overview highlights migration laws in contemporary Sudan. It focuses primarily on the constitutional and legislative framework governing such laws since independence. It analyses successive Sudanese constitutions and laws including the 1957 Nationality Act and the 1994 Sudanese Nationality Act. This overview also looks at the interrelationship between migration laws, citizenship and gender. In particular the overview highlights the acquisition of Sudanese nationality by birth through the mother's as well as the father's lineage and the right to transfer nationality to one's spouse and children.

This paper also highlights amendments to migration legal framework law after the independence of South Sudan in July 2011 and the serious impact on citizenship rights of South Sudanese, many of them rendered stateless as thousands of Southern Sudanese lost their nationality and other entitlements associated with their citizenship rights. The overview also examines migration laws including refugees' laws regulating asylum and refugees' protection.

## 1. Historical background

Some migration laws in Sudan are predicated on colonial legal frameworks and policies.<sup>1</sup> The British–Egyptian condominium (1899–1956) introduced the English common law and there was no Sudanese nationality as such at the time. In 1948, the Definition of Sudanese Ordinance defined a Sudanese as “[e]very person of no nationality who is domiciled in Sudan and has been so domiciled since 31 December 1897, or else whose ancestors in the direct male line since that date have all been so domiciled or who is the wife or widow of such a person”. The Ordinance therefore combined an automatic grant of nationality based on domicile, irrespective of place of birth (*jus soli*), with a male biased descent (*jus sanguinis*) rule.

It was not until after the independence of Sudan in 1956 that the first nationality law was adopted.<sup>2</sup> The 1957 Act, which was amended many times, in 1963, 1970, 1972 and 1974, remained effective until 1994. Article 5 of the 1957 Act provided that a person born before the Act came into effect was Sudanese if born in Sudan or if his (or her) father was born in Sudan, and he or his direct male ancestors had been domiciled in Sudan since December 1897 (prior to the defeat of the Mahdist forces).<sup>3</sup> In 1959 an amendment gave the Minister of Interior discretion to grant nationality to a person who and whose fathers were not born in Sudan, if the other conditions relating to domicile of male ancestors were fulfilled. This amendment has relaxed the rules on granting nationality based only on birth. For example, a child born after the Act came into force was Sudanese if his or her father is Sudanese at the time of birth (whether by descent or by naturalization). However, children born before the naturalization of their father did not benefit from their father’s naturalization, although the Minister could exercise his discretion to grant nationality to the child at the same time as to the father in favour of the child (article 8).

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<sup>1</sup> Christopher Zambakari, ‘Post-referendum Sudan: the nation-building project and its challenges’ (2012) 9 *Rutgers JLPP* 505; Zambakari ‘Sudan and South Sudan: identity, citizenship, and democracy in plural societies’ (2015) 19 *Citizenship Studies* 69.

<sup>2</sup> For an outline of this history, see Bronwen Manby, *The Right to Nationality and Secession of South Sudan: A Commentary on the Impact of the New Laws* (Open Society Initiative for Eastern Africa 2012) 18. See also Nasredeem Abdulbari, ‘Citizenship rules in Sudan and post-secession problems’ (2011) 55 *JAL* 157.

<sup>3</sup> This date was later amended to 1 January 1924.

## 2. Constitutional Guarantees in Post-colonial State

Successive Sudanese constitutions have provided for the right to nationality and citizenship rights including the constitutions of 1956, 1964, 1973, 1985, 1998, the 2005 Interim National Constitution (INC) of Sudan and the Constitutional Declaration 2019. Citizenship rights are guaranteed under various bills of rights including prohibition of arbitrarily deprivation of nationality, equality before the law without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law.

In 2005, an Interim National Constitution was adopted as part of the peace process. Article 7 (2) of the 2005 INC (Nationality and Citizenship) provide that “every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship”.<sup>4</sup> Article 7(1) also stipulates that “citizenship shall be the basis for equal rights and duties for all Sudanese” and in 7(3) that “the law shall regulate citizenship and naturalization; and no naturalized Sudanese shall be deprived of his/her acquired citizenship except in accordance with the law”.<sup>5</sup> Hence, Article 7(2) acknowledged the inalienable right of every person born to a Sudanese mother or father to obtain the Sudanese nationality.<sup>6</sup> Article 7(4) permitted dual citizenship for citizens from birth by providing that “A Sudanese national may acquire the nationality of another country as shall be regulated by law.”

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<sup>4</sup> Article 22 of the repealed Constitution of the Republic of Sudan 1998 had equally acknowledged the inalienable right of every person born to a Sudanese mother or father to obtain the Sudanese nationality. Although the 1998 Constitution is no longer in effect, it is, as per art 226(1) of the INC 2005, one of the sources of the INC. See Republic of the Sudan Gazette, Special supplement No (1) 1419 A.H - 1998 A.D. Ministry of Justice, Republic of the Sudan.

<sup>5</sup> Article 7 also stipulates a Sudanese national may acquire the nationality of another country as shall be regulated by law.

<sup>6</sup> Article 22 of the repealed Constitution of the Republic of Sudan 1998 had equally acknowledged the inalienable right of every person born to a Sudanese mother or father to obtain the Sudanese nationality. Although the 1998 Constitution is no longer in effect, it is, as per art 226(1) of the INC 2005, one of the sources of the INC. See Republic of the Sudan Gazette, Special supplement No (1) 1419 A.H - 1998 A.D. Ministry of Justice, Republic of the Sudan.

Article 22 of the INC also ensures certain principles that nationality and citizenship shall not be based on race, religion or tribe; dual citizenship is permitted; and nationality may only be renounced according to due process of law. The INC's Bill of Rights provides for the equal protection on the basis of non-discrimination. Article 31 stipulates that "[a]ll persons are equal before the law and are entitled without discrimination, as to race, colour, sex, language, religious creed, political opinion, or ethnic origin, to the equal protection of the law".

Nationality and citizenship are currently governed by the 2019 Constitutional Document though it is violated several times after the military coup which has taken place on 25 October ending the transitional period. The 2019 Constitutional Declaration, adopted after Sudan's 2018 peaceful revolution provides for the right to citizenship in its preamble stating that the state shall embrace "the principle of political pluralism and the establishment of a state of law that recognizes diversity, takes citizenship as a basis for rights and duties, and that elevates the values of justice, equality and human rights". The Bill of Rights of the 2019 Constitutional Declaration almost repeated verbatim the provisions of the previous 2005 Interim constitution, including enjoyment of rights "without discrimination on the basis of race, colour, gender, language, religion, political opinion, social status, or other reason" (Article 42). Article 44 (Citizenship and nationality) reads as follows:

1. Citizenship is the basis of equal rights and obligations for all Sudanese.
2. Anyone born to a Sudanese mother or father has an inalienable right to possess Sudanese nationality and citizenship.
3. The law shall organize citizenship and naturalization and no one acquired citizenship by naturalization shall be deprived of nationality except by law.
4. Any Sudanese person may acquire the nationality of another country, as regulated by law.

Article 7(2) of the Constitutional Declaration also gives the mandate to state agencies during the 'Transitional Period' to 'Repeal laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender.'

### 3. National Legal Framework

The 1994 Act remained in force but was amended in 2006 following the adoption of the Interim National Constitution, and again in 2011 following the secession of South Sudan. In 2006 major changes occurred in Sudan's nationality laws as a result of the signing of the Comprehensive Peace Agreement (CPA) and adoption of the INC 2005. The 1994 Nationality Act was finally amended to provide a right for the child of a Sudanese mother to acquire nationality, as the constitution had provided since 1998 but with some limitations.

The 1994 Sudanese Nationality Act (before being amended) granted a child Sudanese nationality:

- (a) if the child was born in Sudan;
- (b) if the child's father was born in Sudan;
- (c) if the child's direct male line had been in Sudan since January 1956,
- (d) or if the child's parents obtained Sudanese nationality by naturalization before the child's birth.

Article 4 of the 1994 Nationality Act was amended in 2005 and to add a new sub-article 3 which provided that

'[a] person born of a Sudanese mother by birth is entitled to the Sudanese nationality by birth whenever he submits an application for it'.

Under the law as amended, any person born in Sudan or to a Sudanese mother or father is granted the right to Sudanese nationality, even if one of the parents is not Sudanese.<sup>7</sup> This revision in the law marked the first time that women were given the right to pass on their citizenship to their children, regardless of the citizenship of the father.<sup>8</sup>

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<sup>7</sup> United Nations, Committee on the rights of the Child, CRC/C/SDN/3-4, Consideration of reports submitted by States parties under article 44 of the Convention [on the Rights of the Child], third and fourth periodic reports of States parties due in 2007, page 22, Sudan, 27 June 2008 (available at [www2.ohchr.org/english/bodies/crc/docs/CRC.C.SDN.3-4\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.SDN.3-4_en.doc)); Sudanese Nationality Act, 2005 Amendments, Part II, Article 4(3).

<sup>8</sup> Nationality Act 1994 (amended 2005) § 4(1).

In 2011, after the independence of South Sudan, the National legislative Assembly introduced an amendment to the 1994 Sudanese Nationality Act that provided that Sudanese nationality would automatically lapse if a person acquired '*de facto* or *de jure*', the nationality of South Sudan (see further below, Citizenship rights post-secession/independence of South Sudan).

The 1957 Nationality Act continued until it was replaced by the 1994 Sudanese Nationality Act.<sup>9</sup> The latter Act remained in force, as amended in 2005 (following the adoption of the Interim National Constitution and again in 2011 following the secession of South Sudan). Article 4 of the 1994 Nationality Act stipulated the following conditions for recognition of nationality at birth:

**(1)** With regard to persons born before the coming into force of this Act, a person shall be a Sudanese by birth:

**(a)** If he has already acquired a certificate of Sudanese nationality by birth;

**(b)** (i) If he was born in Sudan or his father was born in Sudan, or (ii) If he is resident in Sudan at the time of coming into force of this Act and he and his ancestors in the male line were resident in Sudan since 1 January 1956;

**(c)** If neither the person nor his father was born in Sudan, he may, if he satisfies the requirements of para. (b)(ii), apply to the Minister to grant him Sudanese Nationality by birth.

**(2)** A person born after the coming into effect of this Act shall be a Sudanese by birth if at the time of his birth his father was a Sudanese citizen by birth;

**(3)** A person born to a parent who is Sudanese by naturalization shall be a Sudanese by birth if his or her parents acquired Sudanese nationality by naturalization before his birth.

#### 4. Naturalization of Migrants and Foreign Nationals

The 1994 Sudanese Nationality Act entitles migrants and foreign nationals to apply for Sudanese nationality through naturalization provided that they satisfy certain requirements.<sup>10</sup> The Minister of Interior was accorded discretionary powers to 'grant any foreign national Sudanese nationality through naturalization' if the applicant satisfied the following criteria:

- (a) had reached the age of maturity;
- (b) had legal capacity;
- (c) had been resident in Sudan for five years or more;
- (d) had been of good behaviour and had not previously been convicted of a criminal offence related to honour and morality.
- (e) applicants swear an oath of allegiance before being naturalized.

The Minister of interior was also given the power to grant naturalization certificates to the applicant's dependent minors if the certificate is granted to the guardian father.

In relation to acquisition based on marriage, the Minister of Interior was given the discretion by Article 8 of the Act to grant naturalization to a foreign woman if (a) she is married to a Sudanese national in accordance with Sudanese laws; and (b) if she was residing with her Sudanese husband for at least two years before submitting an application.<sup>11</sup> There is no provision in relation to the husband of a Sudanese woman.

The Act also gives the President of the Republic the discretion to grant any foreign person a Sudanese certificate of naturalization, upon the recommendation of the Minister of Interior.<sup>12</sup>

The Act identifies many grounds as a basis for the withdrawal of nationality. It gives the President wide discretion to withdraw nationality from any naturalized person.<sup>13</sup> Article 11 of the Act

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<sup>10</sup> Article 7 (Chapter 3) of the Nationality Act 1994.

<sup>11</sup> However, the President of the Republic may exempt the applicant from this condition if the applicant woman has been residing with her Sudanese husband for two years before submitting an application. See Mohamed Abdelsalam Babiker, *Legal Framework of Migration in Sudan*, CARIM, 2010,

<sup>12</sup> Article 9 of the Nationality Act 1994.

empowers the President of the Republic to withdraw Sudanese Nationality from any naturalized individual if it is proved that he or she:

- (a)** obtained the naturalization certificate through fraud or false information;
- (b)** is party to any war against Sudan or has traded with an enemy State or any person belonging to the enemy State or has had dealings benefiting the enemy State;
- (c)** has been convicted of espionage on behalf of a foreign State;
- (d)** has been convicted in Sudan for a crime related to non-loyalty or inciting hatred against Sudan; or
- (e)** has been convicted of serious misconduct within five years of being naturalized.

## **5. Amendments of Migration Laws after the Independence of South Sudan**

The 1994 Sudanese Nationality Act stipulates certain conditions that shall be met for the purpose of granting Sudanese nationality by birth or decent including:

- (a)** born in Sudan as a Sudanese national;
- (b)** descendants on the father's side must have been residents in Sudan since 1st January 1956;
- (c)** parents obtained Sudanese nationality by naturalization before a person being born. This legal regime governing nationality was changed with respect to Sudanese nationals of southern Sudan origins after the secession or independence of South Sudan. This new political reality has triggered massive changes and adoption of new nationality laws, decrees and new administrative procedures and as a result, many individuals were rendered stateless.

After the independence of South Sudan the National legislative Assembly introduced immediate amendments to the 1994 Sudanese Nationality on 9 July 2011. The amendments added a new

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<sup>13</sup> However, this is not the case with regard to those who are Sudanese by birth as the President cannot withdraw nationality unless the person submitted a declaration in which he or she voluntarily requested to withdraw their nationality. See Article 10 of the nationality Act 1994.

Article 10 (2), which provided that “Sudanese nationality shall automatically lapse if a person acquired by *de facto* or *de jure*, the nationality of South Sudan”.

In addition, a new Article 10(3) stated that “...without prejudice to Section 15, Sudanese nationality shall be revoked where the Sudanese nationality of his responsible father is revoked in accordance to section 10(2) of this Act”.

The new article 10(2) would mean that southerners would *de facto* lose their existing Sudanese nationality after independence. In practice, the protection against statelessness in Article 10(3) did not apply, since the Sudanese authorities applied the law in case it was the understanding that a person’s father had acquired South Sudanese nationality, whether or not they had taken any steps to gain recognition of such a presumed right.

The amendment violated the constitutional rights guaranteed in Article 7 of the INC 2005 in force at the time that every person born to a Sudanese mother or father should have the inalienable right to nationality. The Article discriminates against southern Sudanese and stands as an obstacle against any future co-existence between the two parts of Sudan(s) to live in harmony.<sup>14</sup> While existing laws grant dual nationality for all other nationalities, Article 10 singled out southern Sudan as the only nationality that will not be able to acquire dual Sudanese nationality. Furthermore, the Act does not provide for a 'transitional procedure' between the loss of Sudanese nationality and acquisition of South Sudan nationality so as to ensure that no person will be rendered stateless in the process and hence being denied the nationality of both north and South Sudan.<sup>15</sup> It is unfortunate, this amendment resulted in rendering thousands of South Sudanese stateless and have arbitrarily lost their entitlement to nationality and citizenship rights.<sup>16</sup>

In reality in post secession period, many vulnerable groups have actually lost nationality and were regarded as foreigners. They were rendered stateless including southerners in the North, northerners in the south, women, internally displaced persons (IDPs), border communities and pastoralists. Women, for example, and as outlined above, were discriminated against due to existing

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<sup>14</sup> See Babiker, Mohamed Abdelsalam, Nationality Laws, Citizenship Rights and Statelessness in Post secession Sudan(s), Issue No, Vol. 1 July-Dec. 2011, Discourse, Journal of Peace Research Institute, University of Khartoum

<sup>15</sup> *Ibidem*.

<sup>16</sup> Munzoul A. M. Assal, Citizenship, statelessness and human rights protection in Sudan’s constitutions and post South Sudan secession challenges, *supra*.

national laws related to acquisition or retention of nationality. IDPs were also affected by secession, in particular Southerners who were living in the North, who fled the South Sudan civil war in 2013 after secession whose legal status has been changed, i.e., from IDPs to refugees. Accordingly, former IDPs were subjected to national immigration laws which provide little legal protection to refugees in terms of due process of law in case they intend to reside legally in north Sudan.<sup>17</sup> Similarly, pastoralists and border ethnic communities, approximately 5 million, who make up to 11% of the total population of Sudan and live at the north-south border were also affected.<sup>18</sup> Such groups are mobile and some of them spend many months in Southern Sudan and have history of passing easily across internal State boundaries.

It clear that post referendum arrangements on nationality and citizenship laws in Sudan did not put in place legal measures to prevent loss of citizenship. Unfortunately, the 2011 amended Nationality Act not only defeats any possibility for dual citizenship but it is a blatant violation of constitutional rights. Some call for consideration of dual citizenship as an option for Southerners and Northerners currently living in the North/South.<sup>19</sup> Under this option northerners and southerners living in the “other” State might be permitted to acquire a new citizenship in the new southern State without losing citizenship in current Sudan. In this context, review or reform of Sudanese nationality laws at the national level and at the level of Southern Sudan need to be conducted, particularly after the peaceful revolution in 2018 which removed 30 years dictatorship responsible for such abusive laws. However, after the military coup of 25 October 2021 positive changes in the legal framework due to the absence of a parliament to pass good laws in a democratic society.

The model of *Single citizenship* was proposed in case there are new proposals to amend the law. This would mean that residents of the South Sudan would *automatically* become citizens of the new Southern State unless they chose otherwise, and that Northerners and Southerners living in the “other” state would have the right to choose, under some conditions, of which State to become a

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<sup>17</sup> For an extensive analysis of the legal framework governing refugees and migrants’ rights see Babiker, Mohamed Abdelsalam, *The Legal Framework of Migration in Sudan*, CARIM AS 2010/78, Robert Schuman Centre for Advanced Studies, SAN Dominico di Fiesole (FI): European University Institute, 2010. See UNHCR, UNMIS, *Symposium on Citizenship Issues in Sudan: Summary of Proceedings and Related Documents*, Khartoum, 6-7 November 2010, p.23.

<sup>18</sup> *Idem*.

<sup>19</sup> See Babiker, Mohamed Abdelsalam, *Nationality Laws, Citizenship Rights and Statelessness in Post secession Sudan(s)*, *Supra*, note 36.

citizen.<sup>20</sup> However, the difficulty with this option is that by the introduction of the new unconstitutional amendment of Article 10 (2) of the 2011 Sudan Nationality Act all those accepting or choosing citizenship in the new southern Sudan State would (as the Article states) would '*de facto*' lose their current Sudanese nationality. This situation could have been mitigated through careful legislations if both law-makers and policy makers have opted for a humanitarian position through which Southerners would be allowed to maintain their 'inherent' right to nationality of the mother Sudan as provided for in the current constitution and all international human rights treaties ratified by the Sudan. This author believes that this racist position denies any future possibility for the two parts of Sudan(s) to co-exist peacefully and in harmony.

Even if we assume that the Sudan government opted for denying southern Sudanese dual citizenship, it is imperative at this particular time that legislations shall endeavour to provide guarantees that nobody will be rendered stateless. This could have been done through introducing a new provision that 'nobody would *de facto* lose his Sudanese nationality unless it is confirmed by legislations that losing the Sudanese nationality is pending on the granting of nationality of Southern Sudan or both'. Furthermore, any 'decisions to withdraw nationality should be subject to review by a competent judicial or independent body' so that nobody will arbitrarily deny rights. Also, there must be collaborative procedures for confirming nationality and exchanging of information and documents so that nobody will be rendered stateless.<sup>21</sup> The law must make it imperative that procedures for acquiring nationality and for obtaining citizenship documentation should be accessible to all populations, with special provisions made for vulnerable groups and those who are likely to face particular difficulties. Procedures for obtaining identity documentation should allow for acceptance of alternative forms of proof, including witnesses evidence and age assessment certificates (as is currently under Sudanese law).<sup>22</sup>

One of the last resort options is to grant *qualified* Southerners and Northerners *long-term (or permanent) residence* without citizenship. This entails that individual would be permitted to reside as 'citizens of other nations' but without being citizens. This could be regarded as a practical option; in the particular context of Abyei area as it would allow pastoralist communities to enjoy permanent

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<sup>20</sup> See Babiker, Citizenship Rights and Statelessness in Post secession Sudan, *supra* note 36.

<sup>21</sup> See UNHCR, UNMIS, *Symposium on Citizenship Issues in Sudan: Summary of Proceedings and Related Documents*, Khartoum, 6-7 November 2010.

<sup>22</sup> *Id.* at p. 13.

residency in both the north and the south so that their grazing rights and freedom of movement will not be obstructed.

Post referendum arrangements on nationality and citizenship rights have not considered dual citizenship as an ideal option for Southerners and Northerners currently living in the North/South Sudan. Also, individuals should be allowed to maintain or acquire the nationality of Sudan or Southern Sudan depending on which one they have a stronger connection with and other inclusive criteria. If they are equally connected with both North and South, they should be allowed to have the nationality of both of them. Above all, if a person does not take any action to opt for the nationality of the new State in the South or that of Sudan if they live in the South, the law should attribute to them the nationality of the State where they are habitually resident, i.e., Southerners who are habitual residents of the North should retain their current Sudanese nationality and, by the same token, Northerners who are habitual residents of the South should be granted the nationality of the South. Also, any agreement on citizenship should uphold property rights, the principle of family unity, the right to registration and acquisition of nationality at birth, freedom of movement, and the right of aliens to be protected from arbitrary expulsion.<sup>23</sup>

## 6. Migration, Citizenship and Identity Issues

Nationality and Citizenship laws in Sudan are not predicated on race, ethnicity, tribal affiliation. However, Sudanese citizenship laws are predominantly descent-based (*jus sanguinis*). This approach constitutes an important contributing factor for many postcolonial conflicts in Africa which revolve around the question of citizenship: who belongs and who does not belong. African countries did not reform colonial systems and Sudan is a good example of the failure of the African State to reform the colonial citizenship system and build an inclusive and equitable society.<sup>24</sup> Also scholars have argued

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<sup>23</sup> See UNHCR, UNMIS, *Symposium on Citizenship Issues in Sudan: Summary of Proceedings and Related Documents*, Khartoum, 6-7 November 2010, p. 13.

<sup>24</sup> Assal, Munzul, *Citizenship, Statelessness and Human Rights Protection in Sudan's Constitutions in post south Sudan Secession Challenges*, in Oette and Babiker, *Constitution-Making and Human rights in the Sudans*, Routledge 2019, Routledge

that the colonial system of indirect rule resulted in politicizing race and ethnicity in Sudan.<sup>25</sup> Tribes were given homelands, and tribal leaders were vested with the authority of tax collection and even judicial powers over their subjects.<sup>26</sup>

In applying for nationality, a tribal subject had to secure the support or testimony of a tribal leader. The fact that other objective evidence was not sufficient to prove nationality fostered dependency and personalized nationality as an expression of loyalty to tribal leaders, with the colonial State lurking in their shadows. An essential part of the identification process in the absence of proper documentation, tribal leaders were used in the process of proving the acquisition of nationality. This was largely due to the fact that they were community leaders and were able to recognize their own fellows as members of their own community.

Dealing with citizenship and nationality is not purely a legal issue but mixed with identity and ethnic identification. Anthropologists, have criticised this descent-based basing citizenship (nationality) on descent (*jus sanguinis*) which allows ethnicity to become an instrument of abuse by various parties for political purposes.<sup>27</sup> In Sudan's post-colonial state, social stratification is entrenched where some groups consider themselves superior to others. Categories like *Gharraba* (people from western Sudan), *Janubiyyn* (people from southern Sudan), *Shimaliyyn* (people from northern Sudan) and *Zurga* (blacks) are terms widely used in Sudan that have derogatory connotations.<sup>28</sup> Accordingly, some persons face difficulty in obtaining papers due to their ethnic background, while for others ethnic background is not an issue.<sup>29</sup> Due to armed conflicts and displacement, individuals and communities are displaced from their original areas to other places where it takes them a long time to establish their lives. This is particularly the case in multi-ethnic States like Sudan and in countries with protracted conflicts that lead to population displacement.<sup>30</sup> Where people are forced to leave

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<sup>25</sup> Zambakari 2015, pp. 73–4.

<sup>26</sup> Asad, Talal, *The Kababish Arabs: Power, Authority and Consent in a Nomadic Tribe* (Hurst & Co 1970).

<sup>27</sup> Assal, Munzul, Citizenship, Statelessness and Human Rights Protection in Sudan's Constitutions, supra note 15.

<sup>28</sup> *Ibidem*.

<sup>29</sup> Munzoul AM Assal, *Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote* (Sudan Report Series No 1 Chr Michelsen Institute 2011).

<sup>30</sup> See report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, *Addendum: Mission to Sudan*, UN doc A/HRC/23/44/Add.2 (25 June 2013).

their traditional or habitual areas as a result of war or forced displacement, they often find it difficult to prove their citizenship.

## 7. Gender, Citizenship and Migration Laws

Although the amendment to the 1994 Nationality Law following the adoption of the Interim National Constitution of 2005 was a progressive step, as it harmonises Sudanese nationality laws with the provisions of the constitution, it remains gender discriminatory, in terms of procedure; a man's nationality is passed to his children automatically, whereas a mother's nationality can only be passed to her children after an application process.<sup>31</sup> In other words, the amendment allows children of Sudanese mothers to obtain nationality, if they submit an application. Given the clear constitutional provision that every person born to a Sudanese mother or father shall have the right to Sudanese nationality and citizenship (Article 7 (2) of the INC), there is no legal rationale for Sudan to enact a law that is not fully gender equitable, or to impose an application process for transfer of nationality or citizenship through mothers but not fathers.

Furthermore, other laws impose certain restrictions on Sudanese citizens, particularly women. For example, the 1994 Passports and Immigration Act restricts freedom of movement of Sudanese nationals intending to leave Sudan and requires them to apply for an exit visa.<sup>32</sup> Despite various Sudanese Bills of Rights have guaranteed every citizen 'the right to liberty of movement and freedom to choose his/her residence' <sup>33</sup> as well as Sudan International human-rights treaties requiring that States Parties to provide men and women the same rights with regard to freedom of

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<sup>31</sup> Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, 8 (2010), available at <http://www.cmi.no/sudan/doc/?id=1284>.

<sup>32</sup> Article 12, 1994 Passports and Immigration Act. Freedom of movement is also restricted and an exit visa will not be granted to any Sudanese accused or convicted of the crime of smuggling if there is 'reasonable suspicion' that a Sudanese national is involved in '*hostile acts against Sudan*' or, to those Sudanese who do not have means to cover their stay abroad or to a child (i.e., younger than 18) leaving the country without the consent of his or her guardian.

<sup>33</sup> Comprehensive Peace Agreement, 2005, Art. 1.6.2.14.

movement.<sup>34</sup> Sudanese immigration laws discriminate against women as full citizens. It is to be noted here that there are many legal obstacles which prevent women from exiting the country and not free to travel abroad as they need to obtain authorization from guardians and the immigration authorities.<sup>35</sup> However, recent progressive changes have taken after the removal of the previous dictatorship after the Sudan's peaceful revolution of 2018. Now women can leave the country freely without the need to obtain authorization from guardians and the immigration authorities.

Under the 1991 Muslim Personal Matters Act women's freedom of movement is restricted when they wish to leave Sudan. Women, who have come of age, are not allowed to leave the country without the permission of husband or guardian, are not allowed to travel alone unless it is for medical treatment, academic conferences or business, and they must provide documentation to validate her claims for an exception.<sup>36</sup> Furthermore, the 1995 Passport and Immigration Rules and Regulations forbade women, except for female members of Parliament and other high-ranking members of government, from travelling outside Sudan without a male guardian's consent.<sup>37</sup> In order for women to travel for official missions or courses of study, Article 28(1) (a) of the Rules and Regulations requires written approval of the husband for a married woman and the approval of a guardian if the woman was unmarried. Article 28(1) (d) restricts women from travelling on their own, even to seek medical treatment. Again, the Article requires written approval of the husband in the case of a married woman travelling for medical purposes; in the case of an unmarried woman travelling for medical purposes, approval of her guardian is required. Fortunately, the 1995 Passport and Immigration Rules and Regulations were cancelled by the Ministry of Interior in 2005. Since that time, women no longer require permission from a male guardian to travel within or outside of Sudan and are free to travel, as long as they are able to satisfy the same requirements as men to obtain an exit visa.

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<sup>34</sup> See for example, Article 15 CERD, 18 Dec. 1979, U.N. Doc. A/34/36, *entered into force* 3 Sept. 1981 and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art. 8(f), *entered into force* 25 Nov. 2005 which requires States Parties reform discriminatory laws and practices to promote and protect the rights of women.

<sup>35</sup> Babiker, gender and Migration, *supra*, note 25.

<sup>36</sup> *Ibidem*.

<sup>37</sup> The male guardian must be a husband, father, brother, or even the woman's son under the 1994 Passports and Immigration Act. The Act requires in general terms that any Sudanese national (whether male or female) who intends to leave the country must apply for an exit visa.

However, some discriminatory laws denying enjoyment of full citizenship. Immigration laws, for example, oblige women not to leave the country or migrate with their children for long-term unless their guardians give them permission. Parental responsibility is always with the father unless otherwise determined by a competent court of law.<sup>38</sup> Thus, national laws which restrict a woman's freedom of movement and freedom to travel are in direct contravention of international human rights treaties and standards. In order to comply with these standards, Sudan should abolish all laws which restrict a woman's ability to leave her home or to travel, accompanied or unaccompanied.<sup>39</sup> Furthermore, they also contradict the existing constitutional framework which governs the transitional period after the 2018 December Revolution. Its article 59 on Freedom of travel and residence provides:

1. Every citizen has the right to freedom of travel and free choice of place of residence, except for reasons required by public health or safety, as regulated by law.
2. Every citizen shall have the right to leave the country, as regulated by law, and they shall also have the right to return.

## 8. Migration Laws and Refugees

Sudan has been one of the most active States in accepting an enormous influx of refugees.<sup>40</sup> Sudan has also traditionally a tendency towards the granting of asylum, through which status is granted *en masse* as with mass influxes, it is practically impossible to screen each case individually.<sup>41</sup> The purpose of the next section is to examine how Sudan deals with asylum seekers or refugee

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<sup>38</sup> Babiker, Gender and Migration, *supra*, note 25.

<sup>39</sup> *Ibidem*.

<sup>40</sup> Babiker, Mohamed Abdelsalam, *Legal Framework of Migration in Sudan*, European University Institute, (2010, pp.6-10.

<sup>41</sup> *Idem*.

protection in terms of their rights and duties under its asylum and refugee laws. This section also examines some case law from the African Commission on Human and Peoples' Rights related to the expulsion and repatriation of refugees from Sudan to their countries.

## 9. Expulsion of Refugees

The 1951 Refugee Convention, as the first international instrument to place legal restrictions on a State party's power to expel foreign nationals, lays down, in Article 33, the prohibition of '*refoulement*' according to which no State party 'shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'. Furthermore, Article 32 provides that an expulsion can take place only in pursuance of a decision reached in accordance with due process of law, and that the refugee has the right to submit evidence to clear him or herself, to appeal to and be represented before a competent authority. Such procedural safeguards, however, are not available where there are compelling reasons of national security.

While Article 33 of the 1951 Refugee Convention applies only to refugees, Article 3 of the Convention Against Torture has expanded the scope of protection against expulsion since it explicitly prohibits State parties to 'expel, return (*'refouler'*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'. Article 7 of the ICCPR was for the first time interpreted as including a prohibition of expulsion if there is a risk of torture. The Human Rights Committee General Comment on Article 7 states that 'States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or '*refoulement*'. International human-rights standards generally prohibit collective expulsions and put in place some procedural safeguards against arbitrary expulsions: if each alien is entitled to an individual decision on his or her expulsion, mass or collective expulsions should be prohibited. Moreover, mass expulsions would prevent the proper identification of people entitled to special protection such as asylum seekers, people who might be subject to torture if expelled.