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Recent Developments**
Legal Module



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Abstract

This paper examines the various legal aspects of migration in Sudan and focuses on the regulatory framework in the last decade. It looks at legislations and regulations, which are organized around key elements of the migratory process, analyzing the national laws in several legal documents including the 2005 Interim National Constitution of the Republic of the Sudan (INC 2005), national laws, regulations and decrees. The paper falls into three main parts while focusing on three categories: refugees and asylum seekers; the legal framework governing foreign nationals or aliens; and, finally, legal issues governing nationality and citizenship. The paper concludes by arguing that the migratory situation in Sudan has changed in the past decade for various reasons including increased foreign investments (which have attracted international corporations and foreign laborers) as well as the relaxation of immigration rules, allowing particularly Arab and Muslims groups to enter Sudan that they see as a haven. Asylum seekers and refugees entering Sudan in large numbers have also proved to be problematic. The migratory situation in Sudan, this paper argues, has not been matched with adequate rules and regulations to cope with the new realities.

Résumé

Cette note analyse les divers aspects juridiques de la migration au Soudan, en s'appuyant sur le cadre juridique de la dernière décennie. Elle examine les législations et réglementations qui régissent les éléments clé du processus migratoire. Elle se base sur l'étude des règles nationales existantes, incluant la Constitution nationale provisoire de la République du Soudan de 2005, les lois, règlements et décrets nationaux. La note est divisée en trois parties selon trois thèmes : réfugiés et demandeurs d'asile ; cadre juridique régissant les étrangers ; nationalité et citoyenneté. La note conclut que la situation migratoire au Soudan a changé ces dix dernières années du fait de plusieurs facteurs, au nombre desquels le développement des investissements étrangers (attirant des entreprises et des travailleurs étrangers) ainsi que l'assouplissement de certaines règles d'immigration en particulier celles permettant aux Arabes et musulmans de trouver un refuge sûr. La question des demandeurs d'asile et des réfugiés entrant au Soudan est également problématique. La réglementation actuelle ne semble pas à même de répondre aux nouvelles réalités de la situation migratoire au Soudan.

Introduction

Sudan's political, economic, social and environmental conditions together with conditions in its nine neighboring countries, mean that Sudan has become a source, transit and destination country for regular and irregular migrants, as well as for refugees and asylum seekers. With more than 7,600 kms of land borders and 853 kms of coastline, Sudan lies in the middle of the East African route to the Mediterranean. It is one of the main routes used by migrants as they seek to escape poverty, conflict and environmental degradation at home. Furthermore, during the past decade Sudan has become more attractive for migration due to oil production, economic development and investment in other opportunity-creating sectors. As a result, many foreign nationals have entered the country including migrant workers,¹ investors and students.²

But Sudan is not only a receiver. It is also a generator of refugees. It should be noted here that the armed conflict in southern Sudan between the Sudan People's Liberation Movement/Army (SPLM/A) and the Government of the Sudan ended in 2005 and that this as well as the ongoing conflict in Darfur caused many Sudanese nationals to seek protection outside Sudan. Indeed, many Sudanese nationals sought asylum in neighboring countries including Uganda, Kenya and Egypt. Others sought asylum in western countries and the US. Also, many Sudanese citizens have migrated to Arab countries for economic purposes.

During the past decade Sudan has introduced a new constitutional framework and laws regulating nationality and citizenship both at the national level and for southern Sudan. This paper examines these legal provisions enshrined in various legal documents including the 2005 national constitution (INC 2005), as well as other laws and regulations. It focuses on three main categories: refugees and asylum seekers; foreign nationals or aliens and legal issues related to nationality and citizenship.

1. Refugees

Sudan has acceded to most important international instruments related to refugees namely the 1951 Geneva Convention, the Supplementary Protocol of 1967, and the OAU Convention governing specific aspects of the refugee problem in Africa. In order to implement these treaties at the national level, Sudan has enacted the 1974 Regulation of the Asylum Act. Article 7 of this Act obliges competent or concerned authorities to give due consideration to any treaty or convention regulating asylum to which Sudan is a party and states that such a treaty or convention shall be given priority in the application of the Act. Below is an analysis of the 1974 Asylum Act.

¹ The total number of migrant workers, investors and employees and workers is 46, 038. 69% are Asian (about 31,932), more than half of these are Chinese (17,219) mainly working in the oil sector, electricity and in the construction of roads and dams. Other migrant workers come from countries such as Pakistan, India and Bangladesh (mainly working in the sugar industry) the Philippines, Sri Lanka (mainly working in hospitals and as domestic servants). Syrians, Lebanese and Egyptians (mainly working in construction, hotels, and restaurants). Africans are mainly Ethiopians and Eritrean, Somalians and Nigerians (around 11,869). Others include Americans (655) and Canadians (778) and Europeans around (6, 6700) mainly from Turkey and UK. See Report of the Ministry of Interior, "Seminar of Foreign Existence in the Sudan: Risks and disadvantages", The General Directorate of Passports and Immigration, March 2005, pp. 5-9.

² The total numbers of students is 12,011. 21% of them come from the horn of African (Somali, Eritrea, Ethiopia, Djibouti and the Comoro Islands). Other students come from west, central and south Africa such as Chadians, Nigerians (about 2892). Other students come from Arab countries mainly Palestinians, Yemenis, Jordanians, Syrians, Saudis (about 2640). From Asia, most students come mainly from Thailand, Indonesia and Malaysia (about 1783). See Report of the Ministry of Interior, "Seminar of Foreign Existence in the Sudan: Risks and disadvantages", *op cit.* pp. 5-9.

The Regulation of the 1974 Asylum Act

Sudan has been one of the most active States in seeking and accepting legal solutions to the problems presented by an enormous influx of refugees to the country. The Regulation of the 1974 Asylum Act, is more detailed than most African refugee legislation and includes solutions to many refugee problems. The Act stands out as a careful piece of conceptual drafting, some aspects of which could well serve as a model for other countries.³ Hence, the international instruments and the Asylum Act together form a body of refugee legislation as advanced as any that can be found in Africa – a continent which has gone a long way to finding legal solutions to the enormous problems of refugees there. It is, therefore, worth presenting the most important rules on the rights and duties of refugees in Sudan, in particular those regulations stipulated in the Asylum Act.

The definition of a refugee in the Asylum Act draws on the 1951 Refugee Convention and the OAU.⁴ The Act defines a refugee as:

‘Any person, who, owing to danger or fear of prosecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, or fear of military operations, external aggression, occupation, or events seriously disturbing internal order, leave his country of nationality; and is unable or owing to such fear, unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of formal habitual residence as a result of such events, is unable or, owing to such events is unwilling to return to it.’

The term refugee also includes children who are outside their countries of nationality for the same reasons and are not accompanied by elders, be this because they are orphaned, or because their guardians have disappeared. Such a definition is further elucidated by the legal procedures for granting asylum and the determination of refugee status. As in many countries, the granting of asylum remains the sovereign right of the government of Sudan.

The above definition of who is ‘a refugee’ is different from the definition of a refugee in the 1951 Refugee Convention. Such a definition essentially reflects West European ideas and concepts. Under this convention, refugee status is defined on an individual basis which is impractical or impossible in most cases in Africa. African refugees are simply too numerous and developing countries encounter a great deal of difficulty in establishing the necessary proceedings. Taken into consideration the African circumstances dealing with the refugee crisis, the legal definition of the term ‘refugee’ in the OAU Convention (to which Sudan is a party) is drafted differently. The First part of the refugee definition as well as the 1974 Sudan Asylum Act are closely modeled on the 1951 Refugee Convention of 1951 in which the term refugee ‘*shall mean every person who, owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership on a particular social group or political opinion, is outside the country of nationality of his nationality and is unable or owing to such fear, is unwilling to avail himself of the prosecution of that country*’. However, the second part of the OAU Convention extends the basis for granting refugee status defining the term refugees as applying to ‘*every person who, owing to external aggression, occupation foreign domination or events seriously disturbing public order in either part or the whole of his country or origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*’. The Regulations of the Asylum Act 1974 incorporated then the definition of the OAU Refugee Convention in Article 2 outlined above. This incorporation of the question of ‘who is a

³ Nobel, P, “Refugee law in Sudan”, in *Documents from Khartoum Refugee Seminar*, September 11- 13 1982, pp. 29-47, Organized jointly by the Office of the High Commissioner for Refugees and Ford Foundation, (Khartoum University Press 1982).

⁴ Karadawi, Ahmed, “The Definition of a Refugee: Changing Concepts”, in *Documents from Khartoum Refugee Seminar*, September 11- 13 1982, pp. 29-47, organized jointly by the Office of the High Commissioner for Refugees and the Ford Foundation, (Khartoum University Press 1982).

refugee' as part of the Asylum Act elegantly merged the two parts of the definition and made it clear that in Sudan there is only one category of refugees, all enjoying the same full rights and obligations.⁵

The definition of a refugee under the OAU Refugee Convention and the Regulation of the 1974 Asylum Act does not only speak of the subjective fear of the individual, but also of objective criteria: unbearable and dangerous conditions which set entire populations on the move. The phrase '*events seriously disturbing public order*' is designed to adequately cover a variety of man-made conditions which do not permit nationals to reside safely in their country of origin. This is certainly the legal basis for admitting refugee masses through group determination of their status. In Sudan, this is the basis for determining refugee status and admitting refugees on the basis of the collectivity of circumstances in their own countries and not on an individual basis as in the Refugee Convention of 1951. Hence, this definition can be seen as a point of departure having effectively settled the question 'who is a refugee' in Sudan and other parts of Africa.

The principle of *non-refoulement* is laid down in Article 33 (1) of the Geneva Convention 1951 stating that a refugee shall not be forcibly returned to the frontiers of a territory, where he or she will risk harsh persecution threatening life and freedom. The OAU Convention repeats the principle in a more flexible form protecting the refugee from measures which would compel him or her to return or to remain in a territory where not only life and liberty but also physical integrity would be threatened. Under Article 6 (3) of the Regulation of the 1974 Asylum Act the principle of *non-refoulement* – though not expressly stated – calls on the Minister to facilitate contact with other countries willing to accept an applicant if he/she is rejected by Sudan. Other Articles refer to the official recognition and subsequent rights and duties of a refugee. However, the Regulation of the Asylum Act does not provide for the integration of refugees into Sudanese society after being granted refugee status. Article 11 of the Act provides that the refugee shall return back to his home country when reasons for their stay in Sudan cease to exist. Thus, his or her presence in the country is regarded as temporary.

In terms of procedural regulations, Articles 1, 2 and 3 contain detailed descriptions of the application for asylum, though no such ready-made standards and guidelines are available for eligibility or determination of refugee status, particularly in the case of large groups of asylum seekers. Most individual refugees normally enter Sudan as part of a large group of refugees who will be allowed to stay in the country unless the government decides otherwise. However, the Sudanese method of dealing with asylum seekers needs further examination.

Practice has shown that the criteria for granting asylum are much broader and less complicated than the individual screening mentioned by the 1974 Asylum Act.⁶ The Sudanese tradition of offering asylum is indicative of a tendency towards the granting of territorial asylum, through which status is granted *en masse*. That is partly because of the dominance of mass influxes, which makes it practically impossible to screen each case individually.⁷ Thus, the conditions have not allowed the establishment of procedures in Sudan whereby each asylum seeker can be registered. The definition of a refugee in the 1951 Refugee Convention reflects essentially Western European ideas and conditions. This definition, which strongly, presupposes the determination of refugee status on an individual basis, is impractical if not impossible in most cases in African refugee influxes. African refugees are simply too numerous and developing countries encounter a great deal of difficulty in establishing the necessary proceedings.

The granting of refugee status is governed by the 1976 Regulation of the Asylum Act and the asylum cases are managed by the Commission of Refugees (COR) at the Ministry of Interior. From 1965 up to 1974 the granting of asylum was decided by the Council of Ministers. This was the case with Zaireans in 1964-1968; and Eritreans in 1967. Since 1974, and in order to give effect to the

⁵ Nobel, P, *opcit*, p. 64.

⁶ Karadawi, A. *op cit*, P. 41

⁷ *Ibid*.

Regulation of Asylum Act 1976 and to the Geneva Convention 1951, Sudan has created national bodies for the management of refugee problems such as the Office of the Commission of Refugees and the National Council for the Welfare of Refugees. The Ministry of Interior also created a small Office within the Ministry to deal with Asylum applications while coordinating with UNHCR and States Governors to handle refugee influxes into the country. However, UNHCR does not play any role in refugee status determination or in questions of refugee rights that is left to the Sudanese government alone. Thus, the Asylum Act gives the Minister of Interior the power to decide on asylum applications and also allows the delegation of powers. Pending refugee status determination, the Act gives asylum seekers a temporary right of asylum which is automatically prolonged in the absence of a decision on his or her case. Under the Act, there is an obligation for the authorities to determine the case within a month. If that month expires, there is a month's extension during which a refugee is issued a stay permit for 3 months (renewable). The question, however, remains: how can an asylum seeker appeal negative decisions? The Act is silent on this matter.

The Commission of Refugees (COR) was also regarded as the main national executive and administrative body for refugee determination.⁸ COR has regional offices all over Sudan and is tasked with the following functions: (a) determining the legal status of asylum seekers in accordance with the 1951 Refugee Convention, and the 1976 Regulation of the Asylum Act; (b) registration and issuance of identification documents to refugees; (c) providing relief to refugees as well as accommodating them in camps and guaranteeing the provision of health and social care; (d) approving agreements concerning the voluntary return of refugees; and (e) facilitating international support in coordination with UNHCR and other UN agencies.

The Asylum Act restricts the life and activities of refugees and asylum seekers in various ways. For example, Sudan submitted a reservation in relation to Article 26 of the 1951 Geneva Convention with regard to freedom of movement of refugees within the country by confining them to selected areas. Section 10 (2) of the Act forbids refugees in Sudan from taking part in or exercising any political activity or from leaving the place of residence specified for them. This is not in harmony with the International Covenant on Civil and Political Rights to which Sudan is a party. The Act also allows the detention of a refugee 'if it is found necessary'. Unfortunately, the Asylum Act does not explain which authority is competent to detain refugees and on which grounds. Nor does it set out the legal remedies or safeguards available for refugees subjected to detention. Section 9 of the Act prohibits refugees from owning land or immovable property in Sudan. Furthermore, Article 14 (2) makes a refugee dependent on a work-permit from the Department of Labor before he can enter wage-earning activities. No doubt, these restrictions create legal difficulties in connection with refugee economic integration and questions of self-reliance.

In terms of policies, Sudan has adopted a generous open-door policy towards anyone seeking refuge despite the influx of refugees from neighboring countries including Congo (in its crisis in the mid-1960s), Ethiopia, Uganda (violence and chaos in 1981, 1982), Zaire and Chad with a predictable strain on the health care resources.⁹ However, Sudan's policy has led to massive influx of refugees, and on 30 January 1988, the Prime Minister issued a decree establishing a Technical National Committee to look into and review the Sudan's open-door policy towards refugees. A new policy was adopted, namely: (a) the admittance of refugees into the country must not negatively affect the security of the country and Sudanese society; (b) there must be non-interference in the internal affairs of the

⁸ The Refugee Commission is affiliated to the Ministry of Interior, but in 1980 it became part of the Ministry of the Council of Ministers. In 1989 the Commission became part of the Ministry of Refugees, Relief and Rehabilitation. In 1990 the Commission was integrated again into the Ministry of Interior.

⁹ Nobel, P., *op cit*, p.56.

countries from which the refugees originated; and (c) the international community is, in large part, is the main donor while Sudan is responsible for distribution but will not bear any additional burdens.¹⁰

2. Legal Framework for Aliens or Foreign Nationals

Admission of foreign nationals in Sudan is regulated by the 1994 Passports and Immigration Act.¹¹ The Act repealed the 1960 Passports and Immigration Act and came into force on 17th of May 1994. Below is an analysis of the legal aspects related to the entry, stay and exit of foreign nationals, access to employment and other regulations related to foreign nationals in Sudan.

1994 Passports and Immigration Act

Entry, Stay and Exit of Foreign Nationals

The Act defines a ‘foreign national’ as any person who is not Sudanese. It regulates entry visas and exemptions for non-Sudanese citizens. Article 10 provides that foreign nationals cannot enter Sudan without a valid entry visa specifying the duration of stay in the country. However, the President of the Republic may exempt nationals of any State from obtaining entry visas. The Government may also conclude bilateral agreements related to visas exemptions. For example, Sudan and Egypt signed an agreement in Cairo on 4th April 2004 in which citizens of both countries were granted the right to freedom of movement, residence, work and ownership in the other country. Article 2 of the Agreement (freedom of movement and residence) provides that entry, movement and stay in both countries only requires a valid passport or any other travel documents agreed by both governments. Article 3 (1) (right to work and ownership) provides that citizens of both countries have the right to work provided that they observe international and Arab agreements signed by each country. Article 3 (2) provides that citizens of both countries enjoy ownership rights—land use and estate ownership including the right to dispose properties – and the right to set up companies and partnerships.

Article 11 of the Passports and Immigration Act 1994 refers to certain situations in which foreign nationals may not be granted entry to the Country. This includes (a) foreign nationals escaping their countries and seeking refuge in Sudan after committing crimes outside and being subject to the 1957 Extradition Act; (b) foreign nationals who are not welcome in Sudan having previously been subject to deportation from Sudan; (c) those who are blacklisted by the Ministry of Interior; (d) foreign nationals who do not have the means to sustain themselves while staying in Sudan; (e) foreign nationals with contagious diseases or those who are mentally ill – unless these are admitted to the country expressly for the purpose of medical treatment; (g) foreign nationals who do not have health certificates; and (h) foreign nationals who may violate national laws. It seems that this Article gives wide discretion to the Minister of Interior to admit foreign nationals. Article 11, for example, gives the Minister the power to refuse entry to any foreign national if he so decided and ‘without providing any reasons’ or justifications for such a refusal.

Regarding exit visas for foreign nationals, the Passports and Immigration Act provides in Article 12 (3) that exit visas will not be granted to foreign nationals who have private or temporary residence, but who are accused of committing a crime or have financial debt owing to an individual. Regarding the stay of foreign nationals in Sudan, the Act requires that no foreign national is allowed to stay unless he or she has a valid permit.

¹⁰ See The Development of Sudan General Policy Towards Refugees, Report of the National Committee on the Conditions of Refugees in Sudan, Chapter III, the Refugee Commission (1988).

¹¹ Temporary Presidential Degree No 17 issued on 18/08/ 1993 and approved by Decision No. 47 of the National Assembly Session No. 59.

The Act also regulates the deportation of foreign nationals in Chapter V. The Minister of Interior has the power to deport any foreign national from Sudan: (a) if he decides that the foreign national is not welcome in the country; (b) if the foreign national has contravened the legal provisions under which he or she was granted residency; and (c) a court of law recommended deportation from the country. It is worth noting here that Article 21 of the Act does not allow judicial review as the decision of the Minister of Interior is final and not subject to any appeal. This power may be subject to abuse and denies aliens access to the judiciary.

Deportation and Criminal Sanctions

Article 22 of the 1994 Passports and Immigration Act sets out the required legal procedures for the deportation of aliens. It gives the Minister of Interior or the Court or the competent Prosecutor the power to issue an arrest warrant for foreign nationals who to be deported and allows them to put the relevant foreign nationals in custody pending deportation and completion of legal proceedings. No special camps or custody centres are provided for foreign nationals awaiting deportation. However, the Act gives discretion to the Minister to confine foreign nationals to a known address rather than being remanded in custody or detention provided that the deportee reports to the nearest Police Station pending deportation. The Act further authorizes the Minister of Interior to use funds belonging to the deportee to cover the deportee's daily living expenses including the expenses of any dependents. The Act also created 'the Foreigners Committee' mandated to provide appropriate advice to the Minister on a range of issues related to foreign nationals. This Committee is headed by the Police Commissioner and includes representatives from the Ministries of Justice, Foreign Affairs, the Directorate of Passports and Immigration and representatives from the National Security apparatus and the Ministry of Interior.

Chapter VII of the Passports and Immigration Act imposes punishments for certain illegal acts including the provision of false information for the purpose of obtaining passports or entry or exit visas and residency permits (punishable for a period not exceeding two-years imprisonment or a fine or both). The Act also criminalizes individuals who enter or 'sneak' into Sudan illegally. These individuals can be punished with imprisonment of between one and two years in addition to deportation from the country. The Act further punishes any person who abets or aids the illegal entry of a foreign national to Sudan with up to six months confinement or a fine or both. It is worth noting here that during the past decade unprecedented numbers of foreign nationals have entered Sudan, particularly for political and religious reasons, above all from countries such as Saudi Arabia, Syria, Palestine, Yemen, Algeria, Tunisia, Egypt and Libya.¹² Their entry was facilitated by the fact that Sudan has abolished entry visas for Muslims and Arabs and was regarded as a safe haven for many given the current Islamic regime which took power in a military coup in 1989. Nevertheless, some foreign nationals who violated immigration rules were deported following ministerial or court decisions, while others were deported because they had HIV or Aids.¹³

The criminalization of foreign nationals who enter Sudan is also regulated by the 1956 Extradition Act. This Act gives jurisdiction to Sudan to extradite foreign nationals who flee their countries and seek sanctuary in Sudan. However, the Act creates exceptions with regard to the extradition of foreign nationals to their countries or to other foreign countries '*if the crime requiring extradition is a political crime*' or the accused person proved in front of a court of law that extradition is political. In terms of procedures, the extradition of any foreign national to any foreign State requires that the accused be extradited through diplomatic representation in Sudan (Article 7).

¹² See Report of the Ministry of Interior, "Seminar of Foreign Existence in the Sudan", *opcit.*, pp. 30-31.

¹³ *Ibid.*

Access to Employment

Access to employment for foreign nationals is governed by the 2000 Regulation of Employment of Non-Sudanese Act.¹⁴ This Act governs all types of employment including industrial work, trade or agricultural activities or any type of work including domestic work or professional work. However, non-Sudanese citizens are not given permission to work in the civil service or to be public servants. The Act provides that non-Sudanese citizens will not be able to work without permission from the Minister of the Labor Force. Article 6 of the Act states that foreign nationals will not be granted work permits unless Sudanese nationals are not able to perform certain jobs or professions. The Act also exempts certain categories of persons from getting work permits such as diplomats, non-Sudanese nationals in diplomatic missions or international organizations, individuals exempted according to international agreements to which Sudan is a party, non-Sudanese businessmen and professionals. Interestingly, Chapter II of the Act provides preferential treatment for Arab and African nationals over other nationalities as far as work permits and employment is concerned. However, any foreign national must take certain steps to get work and residency permits in order to work.¹⁵ Without following these steps there are no possibilities of working or residing legally in Sudan.

However, foreign nationals may be able to stay in Sudan if married to Sudanese nationals. Reports indicate that many marriages have taken place between Sudanese women and foreign nationals mainly from Arab countries. Some of these marriages were regarded by the authorities as bogus marriages or 'marriages of convenience' concluded for the purpose of staying legally in the country to get Sudanese nationality.¹⁶ Normally, immigration authorities find themselves in a difficult situation when foreign nationals violated immigration rules or national security because they have already established family ties and have children in the country. This situation creates legal and social complications as deportation disrupt the right to family life of the deportee as well as of any children. It is pertinent to note here that immigration rules are silent with regard to family reunification in cases of deportation or disruption of the right to family life. However, Article 37 of the INC 2005 provides that 'no person shall be subjected to interference with his/her private and family life'.

Other Specific Regulations

Some Sudanese laws forbid any dealings with individuals or companies belonging to certain States. For example, the Boycotting of Israel Act of 1958 prohibits any Sudanese national from dealing or entering into any contract with corporations or individuals who are resident in Israel or with individuals of Israeli nationality or those individuals or companies who work on behalf of the State of Israel. Also, exchange of trade and goods between Sudan and the State of Israel is prohibited.

3. Nationality and Citizenship

Nationality and citizenship in Sudan is regulated by the Interim National Constitution of the Republic of Sudan which came into force in July 2005 after the signing of the Comprehensive Peace Agreement (CPA) between the Government of Sudan and the SPLM/A. Both the CPA and the 2005 INC created a new legal framework. Under the 2005 INC, the southern Sudanese can exercise the right to self-determination and will be able to vote for separation or unity in January 2011. This new legal framework will create and affect nationality laws both in the northern and southern parts of Sudan. Accordingly, it is pertinent to examine nationality laws as provided for in the 2005 INC.

¹⁴ Subsequently the Regulations of Employment of non-Sudanese nationals was issued in 2001.

¹⁵ This includes getting letters of employment, HIV health check, payment of fees, valid passport, applying for entry visa and residence permit after approval of the Labor Force Office and Ministry of Foreign Affairs.

¹⁶ See Report of the Ministry of Interior, "Seminar of Foreign Existence in the Sudan", *opcit.*, pp. 31-32.

¹⁶ *Ibid.*

Article 7 of the 2005 INC (Nationality and Citizenship) provides that ‘Citizenship shall be the basis for equal rights and duties for all Sudanese’. Article 7 (2) recognizes that ‘every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship’. This provision is very progressive as women will now be able to pass on nationality to their children. Under previous nationality laws, nationality can only be passed from father to child. Article 7 (4) further recognizes dual nationality as Sudanese nationals may now be able to ‘acquire the nationality of another country as shall be regulated by law’.

Having briefly outlined the national Constitutional framework with regard to nationality, in the following section other nationality laws will be examined, in particular the 1994 Sudanese Nationality Act and the 2003 New Sudan Nationality Act. The 2003 Act regulates nationality laws and procedure rules for southern Sudanese citizens during the armed conflict in Southern Sudan. It is worth mentioning here that nationality laws and citizenship will undergo massive changes in the coming year if the Southern Sudanese should vote for separation.

The 1994 Sudanese Nationality Act (amendments 2005)

The 1994 Sudanese Nationality Act (with amendments in 2005) repealed the 1957 Sudanese Nationality Act. The Act stipulates certain conditions that shall be met for the purpose of granting Sudanese nationality by birth or decent. These conditions are: (a) any person born in Sudan or whose father was born in Sudan will automatically be considered a Sudanese national; (b) he or she or their descendents on the father’s side must have been residents in Sudan since 1st January 1956; (c) if born in Sudan after this law came into force the person will automatically be regarded as Sudanese by birth; or (d) if his parents obtained Sudanese nationality by naturalization before being born. The Act further grants Sudanese Nationality by birth or decent to minors who were neglected by their parents.

One of the most important amendments to the 1994 Sudanese Nationality Act (with amendments 2005) was that any person born in Sudan to a Sudanese mother is entitled to Sudanese nationality. This provision was added to Article 4 (3). This amendment was hailed as progressive step as women will now be able to grant Sudanese nationality to their children.

However, nationality laws impose certain restrictions on Sudanese citizens. For example, the 1994 Passports and Immigration Act imposes certain restrictions on the freedom of movement of Sudanese nationals when they intend to leave Sudan. Article 12 requires any Sudanese national intending to leave the country to apply for an exit visa. Also, an exit visa will not be granted to any Sudanese national accused of a crime or convicted of the crime of smuggling more than once or to any national if there is ‘reasonable suspicion’ that a Sudanese national is involved in ‘*hostile acts against Sudan*’ or, indeed, to those Sudanese nationals 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.

The 2003 New Sudan Nationality Act of Southern Sudan

The 2003 New Sudan Nationality Act was adopted by the SPLM/A during the armed conflict in Southern Sudan when the SPLM/A was fighting the Sudanese government. It repealed the 1994 New Sudan Nationality Act.¹⁷ The Act defines *New Sudan* as meaning ‘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’.¹⁸ Although this Act has been superseded by the adoption of the Comprehensive Peace Agreement and the INC 2005 and the 2005 Constitution of Southern Sudan, it is worth examining some of its provisions.

¹⁷ Section 2, New Sudan Nationality Act 2003

¹⁸ Section 3, New Sudan Nationality Act, 2003

Chapter II of the Act addresses the acquisition of nationality by decent. Section 5 provides that ‘a person born before the commencement of this Act shall be a New Sudan national by decent if (a) he or his parents, his grand and great grand parents were born in New Sudan and; (b) he belongs to one of the tribes of New Sudan; (c) he at the coming into force of this Act is domiciled in New Sudan and has been so domiciled since April 1994 and his ancestors in the direct male line lived before that date or have all been domiciled or; (d) he has acquired and maintained the status of a New Sudan nationality by an uninterrupted domicile’. The Act further provides that ‘a person born after the commencement of this Act, shall be a New Sudan national by decent if his father was a New Sudan national by naturalization at the time of his birth.’ This means that a woman cannot transmit her nationality to her children under this law. However Article 7 (2) of the 2005 INC recognizes that ‘every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship’.

With regard to loss of nationality, section 14 of the Act identifies certain grounds by which the Commissioner of Interior may order that a person shall cease to be a New Sudan national.¹⁹ Loss of nationality may be justified on the following grounds: (a) if a citizen acquired the nationality of a foreign country by any voluntary or formal act other than marriage; b) if the citizen made a declaration renouncing his New Sudan Nationality, provided however that, the Commissioner may refuse to accept such a declaration if it was made during the continuance of any war in which New Sudan is engaged; (c) if after the commencement of this Act, a citizen took or made an oath, affirmation or other declaration of allegiance to a foreign country; or (d) if the citizen entered or continued in the service of a foreign country in contravention of the expressed provision of any law.

Naturalization of Foreign Nationals

The 1994 Sudanese Nationality Act regulates the rights of foreign nationals to apply for Sudanese citizenship and hence be naturalized or to obtain a certificate of naturalization.²⁰ In this respect, the Minister of Interior was given discretion to ‘grant any foreign national Sudanese nationality through naturalization’ if the applicant satisfied all of 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 behavior and had not previously been convicted of a criminal offence related to honor and morality. The Act also requires applicants to swear an oath of allegiance before being naturalized. The Minister was also given the power to grant naturalization certificates to the applicant’s dependent minors if the certificate is granted to the guardian father.

Regarding the naturalization of foreign women married to Sudanese nationals, the Act gives the Minister of Interior the right to grant a Sudanese certificate of naturalization to applicants provided that the foreign woman in question satisfies the following conditions: (a) the woman must be married to a Sudanese citizen according to Sudanese laws; and (b) she must have been residing with her Sudanese husband for at least two years before submitting an application.²¹ The Act also gives the President of the Republic the discretion to grant any foreign women a Sudanese certificate of naturalization, upon the recommendation of the Minister of Interior.²²

However, the Act identifies many grounds as a basis for the withdrawal of nationality. Article 11 of the Act 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

¹⁹ However, any person aggrieved by the decision of the Commissioner may challenge that decision in the Court of Appeal. See Article 14 (2).

²⁰ Article 7 (Chapter 3) of the Nationality Act 1994.

²¹ 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.

²² Article 9 of the Nationality Act 1994.

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. It seems that the Act gives the President wide discretion to withdraw nationality from any naturalized person.²³

With regard to acquiring nationality through naturalization in southern Sudan, Chapter III of the 2003 New Sudan Nationality Act provides detailed regulations. Section 9 states that the Commissioner may grant a Certificate of Naturalization as a national of the New Sudan to an alien who makes an application in the prescribed form and satisfies the following conditions: (a) is of full capacity; (b) has been domiciled in New Sudan for a period of ten years immediately preceding the date of the application; (c) has an adequate knowledge of the New Sudan national languages or if he or she has no such adequate knowledge, has resided continuously in New Sudan for more than twenty years; (d) is of good conduct and character; (e) intends if naturalized, to continue to reside permanently in New Sudan; and (f) if he or she is a national of a foreign country under the law of that country that they have validly and effectively, in accordance with the law of that country, renounced and divested themselves of its nationality. The New Sudan Act then does not recognize dual nationality.

Conclusion:

This paper has examined the various legal aspects of migration in Sudan and the regulatory framework in the past decade and before. It has mainly been based on analyzing national Sudanese laws enshrined in various legal documents or texts which regulates migration by looking at three categories: refugees and asylum seekers; the legal framework governing foreign nationals or aliens; and issues of nationality and citizenship. Clearly, while Sudan has adopted many laws to regulate migration in through and from Sudan, these rules are not adequate and lack implementation mechanisms. Few immigration cases have been adjudicated by the judiciary and immigration issues are largely controlled by the executive. Most importantly, the migratory situation in Sudan has been changing with the expansion and encouragement of foreign investment in the past decade. Investment in the oil sector, agricultural sector, health services, transport, construction and other parts of the economy has attracted international corporations as well as foreign laborers. Also, Sudan has relaxed its migration rules allowing Arab and Muslims groups to enter Sudan that has become a safe haven. These developments in the migratory situation in Sudan have not been matched with adequate rules and regulations capable of coping with the new reality.

²³ 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.

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Key Sudanese Statutes/Legislations on Migration:

- The Regulation of the Asylum Act 1974
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- The Sudanese Nationality Act 1994 (amendments 20005)
- Boycotting of Israel Act of 1958
- Regulation of Employment of Non-Sudanese Act, 2000.
- The Passports and Immigration Act, 1994
- The Encouragement of Investment Act, 1999