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# Gender and Migration in Sudan

*Mohamed Abdelsalam Babiker*

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**CARIM Analytic and Synthetic Notes 2011/27**

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**Gender and Migration Series**  
*Legal Module*



**CARIM**  
**Consortium for Applied Research on International Migration**

**Analytic and Synthetic Notes – Gender and Migration Series**  
**Legal Module**

**CARIM-AS 2011/27**

**Gender and Migration in Sudan**

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This publication is part of a series of papers on Gender and Migration written in the framework of the CARIM project and presented at a meeting organised in Florence: “Gender and migration in Southern and Eastern Mediterranean and Sub-Sahara African countries” (18-19 October 2010).

These papers will be discussed in two meetings between Policy Makers and Experts on the same topic in winter 2011. The results of these discussions will also be published.

The entire set of papers on Gender and Migration are available at <http://www.carim.org/ql/GenderAndMigration>

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## **CARIM**

The Consortium for Applied Research on International Migration (CARIM) was created at the European University Institute (EUI, Florence), in February 2004 and co-financed by the European Commission, DG AidCo, currently under the Thematic programme for the cooperation with third countries in the areas of migration and asylum.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and forecast migration in Southern & Eastern Mediterranean and Sub-Saharan Countries (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 17 countries observed by CARIM: Algeria, Chad, Egypt, Israel, Jordan, Lebanon, Libya, Mali, Mauritania, Morocco, Niger, Palestine, Senegal, Sudan, Syria, Tunisia, and Turkey.

All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

CARIM carries out the following activities:

- Mediterranean and Sub-Saharan migration database;
- Research and publications;
- Meetings of academics and between experts and policy makers;
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The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: [www.carim.org](http://www.carim.org)

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## **Abstract**

This paper focuses on legal issues related to gender and migration in Sudan and highlights rules which specifically focus on women, and also rules and practices whose implementation mainly concerns women. In this context, the paper examines migration rules in Sudan as a host, origin and transit country of female migrants by looking at key issues such as family reunification, personal laws or personal status, asylum rights and refugee protection, protection of vulnerable persons or groups, and discriminatory rules affecting both Sudanese and foreign nationals. The paper argues that in Sudan there are no rules, institutions or mechanisms to support women before or during the migration procedure irrespective of whether they are Sudanese women, refugees or foreign nationals.

## **Résumé**

Cet article traite des questions juridiques relatives au rapport entre genre et migration au Soudan et met en lumière les règles concernant spécifiquement les femmes, ainsi que les règles et pratiques dont l'application concerne surtout les femmes. Dans ce contexte, l'article examine les règles de la migration au Soudan en tant que pays de réception, de départ et de transit de femmes migrantes, en s'attardant sur des questions clé que sont le regroupement familial, le statut personnel, le droit d'asile et la protection des réfugiés, la protection des personnes ou groupes vulnérables, et les règles discriminatoires affectant aussi bien les Soudanaises que les étrangères. L'article montre que le Soudan ne dispose pas de règles, d'institutions ou de mécanismes susceptibles de soutenir les femmes avant ou pendant le processus migratoire, qu'elles soient soudanaises, réfugiées ou étrangères.

This paper focuses on legal issues related to gender and migration in Sudan and highlights rules and practices which specifically focus on women. In this context, the paper examines migration rules in Sudan as a host, origin and transit country for female migrants by looking at key issues such as family reunification, personal laws, asylum rights and refugee protection, protection of vulnerable persons or groups and discriminatory rules affecting both Sudanese and foreign nationals. The paper argues that in Sudan there are no adequate rules, institutions or mechanisms to support women before or during the migration procedure irrespective of whether they are Sudanese women, refugee women or foreign nationals. Also, Sudan, as a host country does not provide adequate or detailed regulations to facilitate family reunification which apply to spouses and unmarried women, dependents, minor children and polygamous marriage. Regarding the personal status of emigrant women, personal laws such as the 1991 Personal Matters Act (which governs many aspects of women's private life including conditions of marriage, divorce, guardianship and parental authority) the paper argues that this Act is, in part, an obstacle to women's emigration. On issues of citizenship and nationality rules the paper argues that Sudanese nationality and immigration laws need reform to achieve compliance with basic norms of gender equality, particularly with regard to acquisition and retention of Sudanese nationality, as well as the rights to transfer nationality to one's spouse and children although it must be said that there has been encouraging progress since the enactment of the 2005 Interim National Constitution of the Republic of the Sudan, which establishes the right of Sudanese citizenship by birth through the mother's as well as the father's lineage. Regarding asylum rights and refugee protection the paper argues that recognition of women as a 'social group' in the European context apparently does not have a special impact in the determination of refugee status for women in Sudan. Refugee laws do not provide either substantive or procedural guarantees against expulsion. As far as discriminatory laws against Sudanese women are concerned, the paper argues that Sudanese laws discriminate against women as there are many legal hindrances preventing women from exiting the country as they need to obtain specific authorization from guardians as required by the immigration authorities. The paper concludes by addressing discriminatory rules applied to female foreign nationals including naturalization and the rights of children.

## 1. Family Reunification

The purpose of this section is to analyze the legal framework regulating family reunification in Sudan in the light of international and regional human-rights laws and standards. Family reunification refers to the situation where family members join another member of the family who is already living and working in another country in a regular situation.<sup>1</sup> Since the 1980s, family reunification has become a major cause for legal immigration in a considerable number of countries, and particularly in Europe. The significance of this phenomenon has progressively led countries where migrants are employed to recognize—in certain circumstances – the legal possibility of family reunification for members of those families that are left behind.<sup>2</sup> With the exception of the Gulf countries, most migrant-receiving countries have now some basic provisions for family reunification in their legislation.<sup>3</sup> As far as international human-rights standards are concerned (i.e. right to a private and family life) it is pertinent to note here that the right to family reunification has been recognized as a fundamental human right. In Sudan, the Bill of Rights of the 2005 Interim Constitution of the Republic of Sudan recognizes this right in article 37. This Article provides that 'the privacy of all persons shall be inviolable; no person shall be subjected to interference with his/her private life, family, home or correspondence, save in accordance with the law'. Sudan also ratified some international human-rights treaties including the 1966 International Covenant on Civil and Political Rights (ICCPR), the international Convention on

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<sup>1</sup> OHCHR Migration Paper, *Family Unification*, November 2005.

<sup>2</sup> Id at p. 1.

<sup>3</sup> Id.

the Elimination of Racial Discrimination (CERD) and the 1989 Convention on the Rights of the Child (CRC). All these conventions were regarded as an integral part of the constitution. Thus, family reunification provisions enshrined in the aforementioned conventions can be invoked by individuals at national courts in order to protect their private and family life including family reunification. For example, Article 23 of the ICCPR provides that ‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the State’. Family reunification as an important principle under article 23 of the Covenant is also recognized by the Human Rights Committee’s concluding observations.<sup>4</sup> Similarly, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families deals with the issue of family reunification. This Convention states in Article 44 (1) that ‘States parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state, shall take measures to ensure the protection of the unity of the families of migrant workers’. Paragraph 2 further obliges State parties to take all measures ‘to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children’. Also, the 1989 Convention on the Rights of the Child, which was ratified by Sudan in 1990, addresses the issue of family reunification in Article 9 regarding applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification which shall be dealt with by States parties in a positive, humane and expeditious manner.<sup>5</sup>

In Sudan, although the 2010 Child Act states clearly that the 1989 Convention on the Rights of the Child is an integral part of the Convention, the Act does not expressly address the issue of family reunification. The 1974 Regulation of the Asylum Act, as the main legal document governing refugees and asylum seekers, is also silent with regard to family reunification. This may be justified by the fact that admittance of refugees in Sudan is regarded under the Act as temporary. Although Sudan adopted a generous open-door policy towards admitting refugees *en masse*, refugee families are not directly granted other concomitant rights including the family reunification of women and children. Under the Act although the term ‘refugee’ 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 children were not accorded any protection or any instructions on how they can be unified with their parents. This may come down to the fact that in Sudan refugee–status determination and the admittance of refugees is decided on the basis of the collectivity of circumstances in their own countries and not on an individual basis as in the 1951 Refugee Convention. Also, the African reality or context of refugee influx makes it practically impossible to screen each case individually and establish procedures whereby refugees can be reunified with their families. The dilemma is that the definition of a refugee in the 1951 Refugee Convention and other rights and duties emanating from the convention including family unification reflects essentially Western European ideas and conditions which strongly, presuppose the determination of refugee status on an individual basis, which is impractical if not impossible in most cases in African refugee influxes. As a result of this contextual reality existing institutions involved in the determination of refugee status in Sudan are not adequately mandated to address family reunification problems, but are mainly concerned with handling refugee influxes rather than with dealing with subsequent rights and duties of a refugee including family reunification.

Another important issue which stands against family reunification is that the 1974 Regulation of the Asylum Act does not provide for 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

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<sup>4</sup> OHCHR, Family Reunification, p. 5.

<sup>5</sup> However, Article 10 does not expressly guarantee a ‘right’ to family reunification, and its careful wording reflects immigration control concerns raised by some countries during the negotiation process of the Convention. Similarly, the Convention on the Elimination of Racial Discrimination (CERD) does not directly deal with family reunification. See OHCHR, *Family Reunification*, p. 3

reasons for their stay in Sudan end. Thus, his or her presence in the country is regarded as temporary. This apparently justifies why family reunification provisions are not included in the Act. Also, the 1974 Sudanese Passport and Immigration Act does not appear to recognize foreign national rights to family reunification as there are no provisions which guarantee when family members (i.e. the spouse, minor children, and immigrants' ascendants) are welcomed in Sudan and under which conditions.

Sudanese women who migrate to other countries face certain difficulties with regard to family unification which are different in nature from those problems facing refugees and other foreign nationals. This area normally involves personal status laws, namely the application of the 1991 Personal Matters Act which is gender blind and different from those of the host countries as different rules apply with regard to children and women. For example, in the case of polygamous marriage, children of more than one marriage may face difficult choices about which children or wives to be unified with. The same applies to the selection of wives. Close analysis of family laws suggests that they do not regulate or pay attention to family reunification from migration perspectives, but from the Islamic perspective which is patriarchal. This may justify why the process of family reunification is not facilitated by any Sudanese institutions, but rather is left to the regulations of the host countries where Sudanese migrants seek unification with their families particularly in Europe and the US through embassies which normally facilitate this process unilaterally with the concerned family.

Furthermore, national authorities may cause yet more difficulties, particularly in cases which involve custody over children, guardianship, marriage disputes or divorce. Other difficulties normally face Sudanese women in host counties when these migrate through family reunification procedures including the difficulty of accessing work, language barriers, integration in the culture of the host society, long-term visa that need to be obtained in Sudan before entering the host country, selection of which children are allowed to come, dependence on husbands and isolation due to lack of extended families, which normally provide a system of support for women in the country of origin. Thus, no system is in place, nor is there any cooperation between institutions to achieve reunification. Rather, this process may be complicated by existing personal status laws an issue which will be detailed below.

## **2. Personal Status**

Sudan is one of the countries applying Islamic laws in particular with regard to personal matters. The 1991 Personal Matters Act (for the purpose of family reunification) does not provide any rules or procedures. A male migrant in the case of polygamous marriage is allowed to welcome abroad only one or more of his wives and related children. Normally in many Muslim countries, including Sudan, women were left behind when their husbands emigrated. Interestingly, the whole judicial system in Sudan is gender blind and most cases that come to Sudanese courts are not really concerned with wives approaching the courts for family reunification, but are divorce cases where husband have abandoned the family home due to desertion and migration outside Sudan. Under the 1991 Personal Matters Act 1991 divorce can be justified on the basis of 'an absentee husband'. This type of divorce is normally justified and granted when a woman argues that she will be exposed to '*fitna*' and may commit adultery with her husband being absent. Getting a divorce would hence give any deserted women the opportunity to remarry and start a new family life.

### ***1991 Personal Matters Act***

The 1991 Personal Matters Act governs many aspects of women private life including conditions of marriage, divorce, guardianship or parental authority. This Act largely hinders or stands as an obstacle against women's emigration. Take, for example, child custody. Under the Act, following divorce, a mother has the right of custody over boy children until the age of seven and girl children until the age of nine. If a child's mother is of a different religion than the child's father, the mother will lose custody when the child turns five; the mother can lose custody even earlier than that if it is feared that the child



will take a religion other than his or her father's. Also, a non-Muslim mother will, almost without exception, lose custody of her child after the age of five if there is slightest possibility that she will 'use her guardianship against Islam'. It is pertinent to note here that under Islamic law and jurisprudence developed in Sudan a distinction is always made between custody and guardianship. The latter gives the father authority over every aspect of the child upbringing. Even if the mother has custody of children, for whatever reasons, this would not preclude the father's parental responsibility or guardianship which includes the child maintenance, place of residency, education, etc...

Other laws such as the 1994 Nationality Act (as amended 2005) defines the 'responsible parent' in relation to a child, as the father of that child; unless the father is dead, or where the child was born out of wedlock and resides with the mother, the mother will be regarded as the mother of that child and hence enjoy parental responsibility.<sup>6</sup> Hence, the father's responsibility or guardianships over children prohibits women from having any parental authority over children in particular when women intend to migrate without the father's consent. For women that plan to leave Sudan it is almost impossible to gain or maintain custody of a child without the father's consent. Sudanese immigration authorities always require that a father give permission before his children leave Sudan.

### 3. Citizenship & Nationality Rules

Women's equal rights with men to obtain, maintain, and change their nationality and to pass on their nationality to their children are enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which Sudan is a State Party. Sudan has made encouraging progress since the enactment of the 2005 Interim Constitution of the Republic of the Sudan, which establishes the right of Sudanese citizenship by birth through the mother's as well as the father's lineage. However, Sudan still needs further reform of its nationality and citizenship laws in order to achieve compliance with basic norms of gender equality. Specifically, Sudan should further amend its laws so that the acquisition and retention of Sudanese nationality, as well as the rights to transfer nationality to one's spouse and children, are afforded to women on an equal basis with men. This issue will be detailed below, particularly in southern Sudan.

Close examination of Sudanese immigration and nationality laws indicates that Sudanese nationality rules differ between men and women and that women have been discriminated against when they emigrate. Historically, nationality laws in Sudan have been discriminatory against women. The first nationality Act of 1957 grants the nationality of the father.<sup>7</sup> A mother's nationality was only considered when a child's father was unknown. Furthermore, a husband could pass his nationality to his wife, but a wife could not pass her nationality to her husband.<sup>8</sup> However, since 2005 major changes in nationality laws in Sudan have occurred. Article 7 (2) of the 2005 INC (Nationality and Citizenship)) 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 laws, nationality can only be passed from father to child.

In another notable step towards gender equality in nationality, the 1994 Sudanese Nationality Act (as amended 2005) provided some positive amendments. Although these Amendments sought to bring the Act into compliance with the guarantees with regard to citizenship enshrined in the INC 2005,

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<sup>6</sup> Article 3 (interpretation).

<sup>7</sup> The 1957 Sudanese Nationality Act was repealed by the 1994 Nationality Act (as amended in 2005), adopted on 17 May 1994.

<sup>8</sup> CMI Brief, *Competing Perceptions of Women's Civil Rights in Sudan*, Volume 6, No. 4, page 2, July 2007 (available at [www.cmi.no/sudan/doc/?id=971](http://www.cmi.no/sudan/doc/?id=971)).

some provisions in the amended Act still discriminate on the basis of gender.<sup>9</sup> Regarding Nationality by Birth, for example, 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 and; (c) if the child's direct male line had been in Sudan since January 1956, or (d) if the child's parents obtained Sudanese nationality by naturalization before the child's birth. The 2005 amendment added an article specifically allowing children of Sudanese mothers to obtain citizenship, if they submit an application.<sup>10</sup> 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>11</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 their spouse. Although this amendment is a progressive step, as it tries to bring Sudanese nationality law into harmony with the provisions of the Bill of Rights of the INC 2005 providing for nationality by birth by virtue of either a Sudanese mother or father, it remains gender discriminatory, in terms of procedure. A man's citizenship is passed to his children automatically, whereas a mother's citizenship can only be passed to her children after an application process.<sup>12</sup> Moreover, the Act provides that only the mother's child is 'eligible' for citizenship, leaving ambiguity about whether such citizenship must be granted upon 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)), 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 citizenship through mothers but not fathers.

Article 7 (4) of the INC 2005 recognizes dual nationality as Sudanese nationals may now be able to 'acquire the nationality of another country as shall be regulated by law'. However, if southern Sudan voted for secession in January 2011 women might lose their original nationality as the new Sudan Nationality Act 2003 does not recognize dual nationality. No doubt this Act will have negative consequences on southern Sudanese women if the south secedes after the forthcoming referendum.

#### 4. Asylum Rights & Refugee Protection

According to UNHCR guidelines women as a 'social group' are recognized and hence can apply for asylum when invoking national regulation in her country of origin likely to persecute women on a whole (excision, forced marriage, etc).<sup>13</sup> The recognition of women as a 'social group' apparently does not have a special impact in the determination of women refugee status in Sudan. Unlike European asylum regulations which were based on the individual determination of asylum applications, Sudan's 1974 Regulation of the Asylum Act, as well as its generous open-door policy towards asylum seekers admit refugee masses through group determination of their status, rather than on individual basis as in the 1951 Refugee Convention. UNHCR in Sudan as an agency does not play any role in refugee status determination that is left to the Sudanese government alone. It is pertinent to note here that the 1974

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<sup>9</sup> Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, 8 (2010), available at <http://www.cmi.no/sudan/doc/?id=1284>.

<sup>10</sup> Nationality Act 1994 (amended 2005) § 4(1).

<sup>11</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>12</sup> Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, 8 (2010), available at <http://www.cmi.no/sudan/doc/?id=1284>.

<sup>13</sup> 1 UNHCR, Policy on refugee women, UNHCR, Guidelines on the protection of refugee women, 1991, UNHCR.

Regulation of the Asylum Act gives the Minister of Interior the power to decide on asylum applications including any restriction on the freedom of movement when applying for asylum.<sup>14</sup>

On the other hand, one can argue that the recognition of refugee women as ‘a social group’ in the European context have encouraged Sudanese women in Europe to submit asylum applications by invoking Sudanese laws which, for example, do not criminalize FGM.<sup>15</sup> This is justified on the basis that national laws do not provide positive protection. Historically, laws preventing FGM in Sudan shows a disappointing retreat from protection for women. Under, the 1974 Criminal Act, FGM was legally prevented, especially the most extreme form, the pharaonic version. The 1983 Criminal Act, however, excluded that prohibition while the current 1991 Criminal Act contains no reference to the criminalization of FGM. Similarly, the new Child Act 2010 (which repealed the 2004 Child Act) does not refer to FGM. Although Article 5(2)(k) of this Act ensures ‘the protection of a male, or female child, against all forms of violence, injury, inhuman treatment, or bodily, ethical or sexual abuse, or neglect or exploitation’ the Act does not ban FGM and punishments for violators is lacking.

Although women can be protected as a ‘social group’ in the European context, some scholars have argued that analyses of case law from the UK, New Zealand, and Canada relating to claims for recognition of refugee status presented by divorced Muslim women, revolving around the issue of child custody after divorce under conservative Islamic law, confirm that women were deprived from any meaningful relationship with their children. In order to adequately evaluate this type of claim, decision makers should take into account all aspects of a woman’s experiences including the consequences of the decision on their children.<sup>16</sup>

Regarding refugee protection we find that Sudanese immigration and nationality laws do not provide specific protection for immigrant women as vulnerable persons as far as legal regulations and immigration policies are concerned. Apparently there is no general principle of law not to expel pregnant migrant women and women are sanctioned as men when infringing immigration rules. The law does not treat them differently when placed in retention/custody camps. Migrant women are not protected from expulsion and the close analysis of the 1994 Passport and Immigration Act does indicate that they are immune from expulsion if they violate immigration rules.

## 5. Protection of IDPs and other Vulnerable Persons

Some Sudanese criminal laws provide specific protection for women when linked to maternity and criminal prosecutions in the case of the death penalty. A pregnant or lactating women sentenced to death can only be executed after two years from the birth of the child. This special protection is provided for under the Criminal Act 1991. Sudan has adopted some policies in order to protect IDPs. The National Policy for Internally Displaced Persons (IDPs)-2009 accords in Article 8 special protection to IDPS including women.<sup>17</sup> The Policy states:

Internally displaced Persons (IDPs) are Sudanese citizens entitled without discrimination to all the rights, privileges and obligations enshrined in the constitution for every individual, but their humanitarian conditions necessitate extending special assistance to them to help counter these difficult conditions so that they can adapt and adjust to live in dignity, safety and integrity

<sup>14</sup> 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 the freedom of movement of refugees within the country by confining them to selected areas.

<sup>15</sup> It is estimated that 89% of women living in Northern Sudan have undergone some form of female genital mutilation. See Land Info, *Report: Female Genital Mutilation in Sudan and Somalia* 6 (Dec. 2008).

<sup>16</sup> Krivenko, Ekaterina, *Muslim Women's Claims to Refugee Status Within the Context of Child Custody Upon Divorce Under Islamic Law*, International Journal of Refugee Law January 21, 2010

<sup>17</sup> The National Policy for Internally Displaced Persons (IDPs)-2009, Ministry of Humanitarian Affairs, Republic of the Sudan.

whenever they want to live freely inside the Sudan without violating the rights and obligations of other citizens.

The IDPs Policy further states that IDPs shall be guaranteed the right to live in dignity, peace and freedom on all phases of displacement. They enjoy the right to freedom of movement and the right to choose the place of settlement. IDPs have the right to move freely inside the camps and to leave them without restriction. Article 8 provides that ‘aid should be provided to the most vulnerable IDPs *with special consideration to women and children* and should be presented without discrimination or division considering host communities’. The Policy further provides that ‘rights of IDPs includes, freedom of movement, belonging to a family, access to food, water and sanitation, shelter, health, education, access to documentation, right of possession of property, civil rights, economic and employment opportunities, access to justices and all the rights of citizenship stipulated in the 2005 Interim Constitution’.

## 6. Discrimination against Nationals

### *Freedom of Movement and Travelling outside Sudan*

The INC 2005 guarantees freedom of movement for every citizen and promises that everyone ‘has the right to liberty of movement and freedom to choose his/her residence’.<sup>18</sup> International human-rights treaties such as the ICCPR, CEDAW and the Convention on the Elimination of All Forms of Discrimination against Women (CERD) all require that States Parties provide men and women the same rights with regard to freedom of movement.<sup>19</sup> The Women’s Rights Protocol requires that States Parties reform discriminatory laws and practices to promote and protect the rights of women.<sup>20</sup>

However, Sudanese immigration laws discriminate against women as there are many legal hindrances preventing women from exiting the country. Women are not free to travel abroad as they need to obtain authorization from guardians and the immigration authorities. The 1991 Muslim Personal Matters Act outlined earlier severely restricts women’s freedom of movement 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, which has been attested to by the immigration authorities. In addition to the requirement for permission, women 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.

The 1994 Passports and Immigration Act regulates the movement of Sudanese nationals as it deals with issuance of passports, identity cards, travel documents, and all forms of entry/exit permissions. Article 12 of the Act requires that any Sudanese national (whether male or female) who intends to leave the country must apply for an exit visa. 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>21</sup> In order for women to travel for official missions or courses of study, Article 28(1) (a) required the written approval of the husband for a married woman and the approval of a guardian if the woman was unmarried. Article 28(1) (d) of the Rules and Regulations restricts women from travelling on their own, even to seek medical treatment. The Article required the 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

<sup>18</sup> Comprehensive Peace Agreement, 2005, Art. 1.6.2.14.

<sup>19</sup> Article 15 CERD, 18 Dec. 1979, U.N. Doc. A/34/36, *entered into force* 3 Sept. 1981.

<sup>20</sup> 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.

<sup>21</sup> The male guardian must be a husband, father, brother, or even the woman’s son.

purposes, approval of her guardian was required. 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.

Also, immigration laws in Sudan pose limitations on long-term female emigration as women cannot leave the country with their children unless their guardians give them permission. As indicated elsewhere in this paper parental responsibility is always with the father unless otherwise determined by a competent court of law. This may be one of the factors or incentives to urge female return after migration. Also, in Sudan women are legally denied access to some jobs and cannot enrol in certain post graduate courses. However, female students enjoy the same opportunities to study abroad as male students.

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.

## **7. Discrimination against Foreign Nationals**

Citizenship and naturalization is regulated by the INC 2005 which provides in Article 7 (3) that no naturalized Sudanese citizen shall be deprived of his or her citizenship, unless the law so requires. Similarly, a Sudanese citizen has the right to acquire the nationality of another country if he or she so chooses.<sup>22</sup> Article 7 of the 1994 Sudanese Nationality Act (as amended 2005) regulates the rights of 'every foreigner legally resident in the country for more than five years' to apply for Sudanese citizenship and hence become naturalized. The Minister of Interior may grant a certificate of naturalization to an alien who has met the following conditions: (a) he or she is of full age and capacity; (b) he or she has been domiciled in Sudan for five years or longer; (c) he or she is of good character and has not been convicted of a criminal offence related to honour and morality; (d) he or she has sworn an oath of alliance according to the lawfully accepted wording.<sup>23</sup> However, the naturalization of alien women is an important issue that deserves to be addressed in detail below as a special legal regime regulates this area.

### **7.1 Naturalization of Alien Women**

The 1994 Sudanese Nationality Act (as amended in 2005) provides for a special regime for the naturalization of wife of a Sudanese man, a process which can take fewer than five years. The Minister of Interior has the authority to grant an alien woman a certification of naturalization if she meets the following conditions: (a) she is married to a Sudanese national in accordance with the laws, and (b) she has lived with her husband in Sudan continually for not less than two years. However, the law does not recognize the right of women to pass their nationality on to their husbands. This aspect of the law is gender biased, because men who marry foreign nationals can pass their Sudanese citizenship on to their spouses, while women cannot. It is pertinent to note here that the 1957 Sudanese Nationality Act provided for special regime for the naturalization of alien women. Article 9 provides that the Minister may grant a certificate of naturalization as a Sudanese citizen to an alien woman who makes an application in the prescribed form and satisfies the Minister that (a) she is the wife of a Sudanese citizen in accordance with the provisions of Sudanese law; and (b) that she has resided with her Sudanese husband in the Sudan for a continuous period of not less than two years from the date of application; and (c) that she has validly and effectively renounced her foreign nationality in accordance with the laws of the country of which she was a national and has divested herself of such

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<sup>22</sup> Interim National Constitution, 2005, Art. 7(4).

<sup>23</sup> Article 7 (1) (a) (b) (c) (d) of the 1994 Sudanese Nationality Act.

nationality. No doubt the last condition is very discouraging to women as it requires them to renounce their original nationality. Fortunately, under the current 1994 Sudanese Nationality Act (as amended 2005) this provision was repealed and Article 8 of the new Act does not demand that women are required to renounce their original nationality.

## 7.2 Loss of Nationality

Another significant gap in the 1994 Sudanese Nationality Act (as amended 2005) is that it does not expressly protect a woman's right to either maintain or change her Sudanese nationality if she marries a national of a different country, or if her husband makes the choice to change his nationality. These are rights which should be secured, under the ICCPR which guarantee that 'no sex-based discrimination occurs in respect of the acquisition or loss of nationality by reason of marriage'.<sup>24</sup> However, the 2003 New Sudan Nationality Act of Southern Sudan governs in Section 14 conditions of loss of nationality and identifies certain grounds by which the Commissioner of Interior may order that a person shall cease to be a New Sudan national.<sup>25</sup> Loss of nationality may be justified on the following grounds: (a) if a citizen acquires 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. No doubt, southern Sudanese law will create serious difficulties for women if applied in post-referendum Sudan as women will lose nationality and citizenship rights.

## 7.3 Children

Pursuant to the 1994 Sudanese Nationality Act (as amended in 2005) naturalized men and women in Sudan have an equal right to pass their Sudanese nationality on to their children provided that they were naturalized before the child was born.<sup>26</sup> However, men and women do not have equal rights as parents to pass their nationality on to children born before they were naturalized. Under Article 7 (4) of the Act the Ministry of the Interior is allowed to include his underage children on a man's naturalization certificate, allowing them to acquire Sudanese nationality. It provides that the Minister may, upon application, include in a certificate of naturalization the names of any minor children of whom the grantee is the responsible parent; such minors shall, as from the date of such inclusion, have the status of a Sudanese by naturalization. No similar provision exists for a naturalized Sudanese mother, however. This offends the principle of equal 'capacity to transmit to children the parent's nationality', enshrined in the ICCPR, as well as general principles of gender equity in CEDAW and the Women's Rights Protocol. However, one needs to mention that Article 15 of the 1994 Sudanese Nationality Act provides important guarantees to children or minors against the effect of loss or deprivation of nationality. The Article provides that 'When the responsible parent of a minor ceases to be a Sudanese under section 10, the minor shall cease to be a Sudanese only if he is, or thereupon becomes under the law of any country, other than the Sudan, a national of that country'. The purpose of this Article in my view is to protect minors from statelessness.

<sup>24</sup> Article 23 of the ICCPR, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), entered into force 23 Mar. 1976.

<sup>25</sup> However, any person aggrieved by the decision of the Commissioner may challenge that decision in the Court of Appeal. See Article 14 (2).

<sup>26</sup> Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, 40 (2010), available at <http://www.cmi.no/sudan/doc/?id=1284>.

## **Conclusion**

This paper will conclude by arguing that Sudanese immigration laws do not include rules related to family reunification and that there is no system in place to protect Sudanese immigrant women, refugee women or, indeed, foreign female nationals. Also, Personal Matters laws which governs many aspects of Sudanese women private life including conditions of marriage, divorce, guardianship or parental authority stands, in large part, as an obstacle to female immigration. Citizenship and nationality rules, the paper must finish by noting, though progressively amended since the enactment of the 2005 Interim National Constitution of the Republic of the Sudan, still need further reform in order to achieve compliance with basic norms of gender equality and human rights.