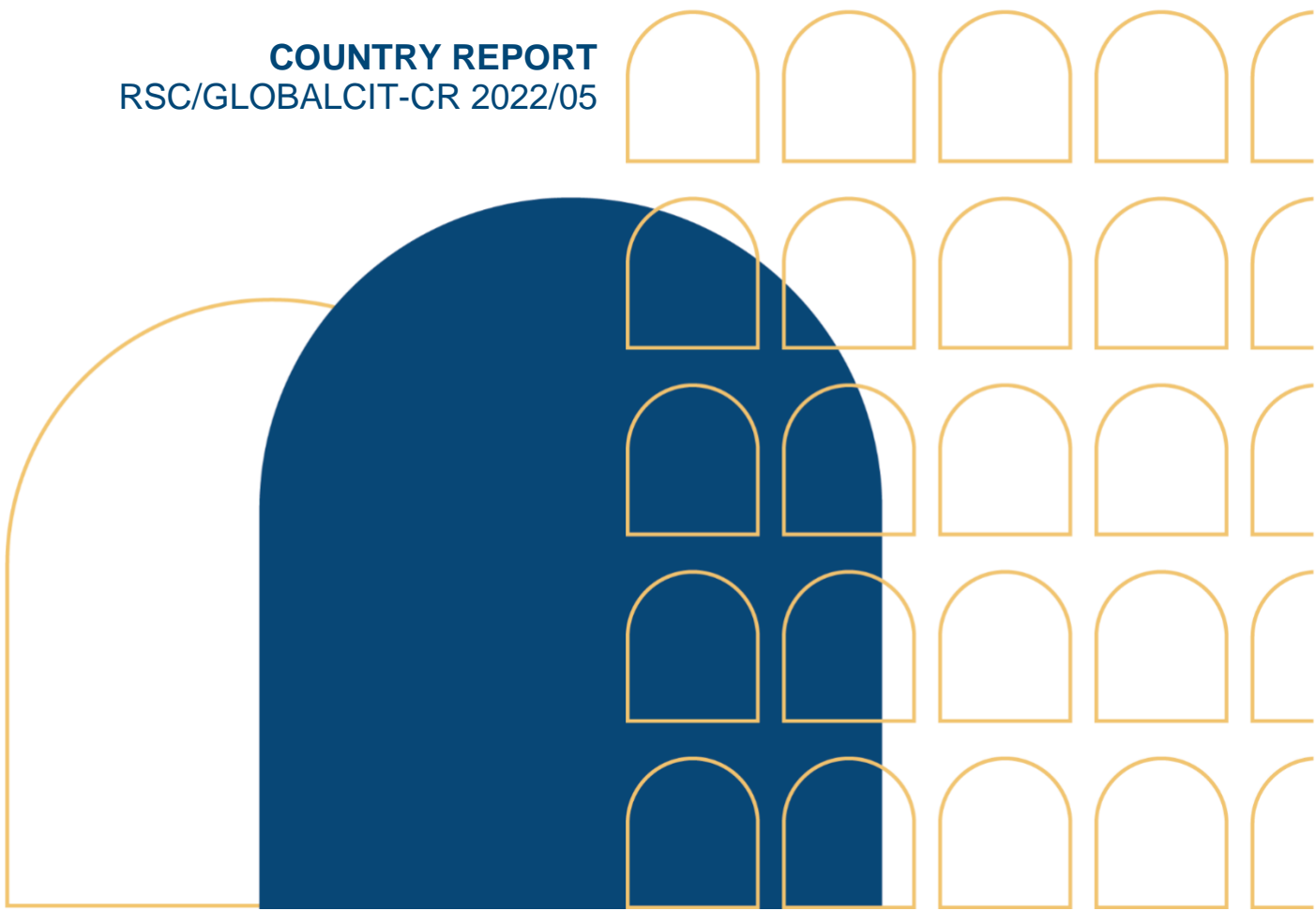


Report on Citizenship Law: Sudan

Mohamed Abdelsalam Babiker

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RSC/GLOBALCIT-CR 2022/05



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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with Edinburgh University Law School

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1. Introduction

This report analyses citizenship laws in Sudan in their historical context. The report sheds some light on the colonial legal frameworks and policies during the British-Egyptian condominium (1899–1956) but focuses primarily on the constitutional and legislative framework governing citizenship laws since independence. The report sets out the provisions of the 1957 Nationality Act and of the 1994 Sudanese Nationality Act, which replaced it and remains in force, as well as its subsequent amendments.

Since 1998, the Sudanese constitution has guaranteed equal rights to men and women to transmit citizenship to their children. These citizenship rights were also contained in the 2005 Interim National Constitution and the 2019 Constitutional Document adopted to govern a transitional period following the peaceful revolution in Sudan ending thirty years of dictatorship and authoritarianism and establishing a civilian-led government. On 25 October 2021, the 2019 constitutional framework was partially suspended, after the head of the army instigated a coup, ending the transitional period before it was completed.

The report dedicates a section to citizenship and gender. It argues Sudan has made encouraging progress since the enactment of the 1998 Constitution of the Republic of Sudan. However, Sudan still needs further reform of its citizenship laws in order to harmonize them with the constitution and the requirements of gender equality provided for under the international human rights regime. In particular, reforms are needed in relation to the acquisition and retention of Sudanese nationality and the right to transfer nationality to one's spouse and children. Close analysis of Sudanese citizenship laws shows that Sudanese nationality rules discriminate between men and women in terms of substance, as well as their practical application.

Part of this report also focuses on citizenship and statelessness in the context of the secession of South Sudan, when thousands of Southern Sudanese lost their citizenship and other concomitant rights associated with citizenship. In this respect, the report examines Sudan's citizenship laws and constitutions adopted following the secession, in order to assess the extent to which national legislation envisage or provide guarantees against individuals being rendered stateless.

2. Historical background

2.1 The British-Egyptian Condominium

Some citizenship laws in Sudan are predicated on colonial legal frameworks and policies.¹ The British-Egyptian condominium over Sudan (1899–1956) introduced the English common law to the territory. Although there was no Sudanese nationality as such at the time, the condominium authorities found it necessary to establish a legal definition of the status of Sudanese. 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, provided that in any case of illegitimacy the female shall be substituted for the corresponding male ancestor'. The ordinance extended the definition to a woman who was the wife or widow of such a person. Those born after the coming into force of the ordinance were deemed Sudanese if they were 'the legitimate child of a male or the illegitimate child of a female Sudanese'. The Ordinance therefore combined an automatic grant of status based on domicile, irrespective of place of birth (*jus soli*), with a male-biased descent (*jus sanguinis*) rule. In addition, the Minister of the Interior could grant the status of Sudanese based on ten years' residence in Sudan, and other conditions.²

2.2 The Nationality Act of 1957

It was not until after the independence of Sudan in 1956 that the first nationality law was adopted.³ The 1957 Act, which was amended many times, in 1963, 1970, 1972 and 1974, remained effective until 1994. Section 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; this date was later amended to 1 January 1924). A person born after the Act came into effect was Sudanese if his father was Sudanese. The 1957 Act thus maintained the basic principles of the Definition of Sudanese Ordinance. In addition, Section 6 provided that a person found as a deserted infant would be deemed to be Sudanese by descent.

Courts applied this law on occasion to deny recognition of nationality. In the case of *Sudan Government v. Mahgoub Abdalla Ali* (1962),⁴ the court held that a person is not a Sudanese national if (a) neither he nor his ancestors in the direct male line have been domiciled in Sudan from 31 December 1897 until the coming into force of the Nationality Act 1957, and (b) he has not acquired Sudanese nationality by naturalization. The judge in the case affirmed that nationality was not passed through the female line.

In 1959, an amendment gave the Minister of the Interior discretion to grant nationality to a person who was not (and whose father was not) born in Sudan, if the other conditions relating to domicile of male ancestors were fulfilled. This amendment relaxed the rules on granting

¹ 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.

² Definition of Sudanese Ordinance, 15 July 1948, sections 3 and 4.

³ 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 Nasredeen Abdulbari, 'Citizenship rules in Sudan and post-secession problems' (2011) 55 *JAL* 157.

⁴ *Sudan Government v. Mahgoub Abdalla Ali*, AC-CR-REV-284-1962 (Sudan Journal Law Reports (SGLR,1962)).

nationality based only on birth. For example, a child born after the Act came into force was Sudanese if his or her father was 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 their discretion to grant nationality to the child at the same time as the father.⁵

Some cases litigated under the 1957 Act remain relevant today for cases of children deprived of nationality after secession or independence of South Sudan. In the case of *Bsada Saeed* (1967), a 6-year-old boy entered Sudan with his father in 1943.⁶ The father remained until 1957, when he acquired Sudanese nationality by naturalization (after independence), and continued to reside in Sudan. The son was under the impression that his father's acquisition of nationality gave him the same status. When he realized his mistake, he applied for a grant of nationality. An order of deportation had been made regarding the son. However, the court quashed the order of deportation, stating that this was a case in which the Minister of the Interior would not refuse to exercise his discretion in favour of the applicant.

Regarding marriage and citizenship, a foreign woman married to a Sudanese man could also apply for naturalization based on two years' residence in Sudan with her husband and renunciation of her previous nationality.⁷ In the case of *Sudan Government v. Fatma Saeed Mohamed* (1956),⁸ a non-Sudanese woman entered Sudan illegally but later married a Sudanese man. It was held that she became Sudanese and could not be expelled from Sudan. This case was heard before the first Nationality Act of 1957 was adopted, but the same principle could be found in the applicable law, which was the Sudanese Ordinance 1948.

2.3 The Nationality Act of 1994

2.3.1 The 1994 Nationality Act, as adopted

The 1957 Nationality Act was replaced by the 1994 Sudanese Nationality Act. This Act was originally a provisional decree issued by the President in 1993.⁹ The principal changes made by the 1994 Act compared to the 1957 Act included allowing dual nationality for the first time. Other amendments included the removal of a provision on adopted children and changing of the applicable date of arrival of an ancestor in Sudan for citizenship by birth to 1956 instead of 1924.

2.3.2 Attribution of nationality at birth

Section 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;

⁵ Article 8.

⁶ See *Sudan Government v. Bsada Saeed*, AC-CR-REV-56-1967, Sudan Journal Law Reports (SGLR,1967).

⁷ Article 9.

⁸ *Sudan Government v. Fatma Saeed Mohamed*, AC-CR-REV-180-1956 (Sudan Journal Law Reports (SGLR,1956).

⁹ Provisional Decree No 18 of 18 August 1993, amended and approved by Transitional National Assembly, Resolution No 59 of 3 May 1994, and signed into law by the President on 17 May 1994.

(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.

The 1994 Sudanese Nationality Act (before being amended) thus 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; or

(d) if the child's parents obtained Sudanese nationality by naturalization before the child's birth.

The 1994 Act initially continued to restrict transmission of nationality by descent to the male line. The only exception was for abandoned or deserted children or minors of unknown parents, who were presumed to be Sudanese by birth until the contrary was proved.¹⁰ A mother's nationality was only considered when a child's father was unknown. The Act did not include a provision providing for the acquisition of Sudanese nationality by a child born in the territory who could not acquire the nationality of one of his or her parents, thereby creating the risk that such a child would be rendered stateless.¹¹

Section 4 of the Nationality Act also distinguished between those born before and after it came into effect in 1994. Citizenship is attributed to those born before the coming into force of the Act if the person was born in Sudan to a father also born in Sudan, or based on paternal descent traced to the date of independence in 1956. For those born after 1994, the law continues to discriminate based on the sex of the parent, attributing automatic citizenship at birth only to the child of a Sudanese father. It is also specified that the child of naturalised parents born after their naturalisation is Sudanese by birth.

2.3.3 Acquisition based on marriage or naturalization

The 1994 Sudanese Nationality Act entitled foreign nationals to apply for Sudanese citizenship through naturalization provided that they satisfied certain requirements.¹² The Minister of the Interior was accorded discretionary powers to 'grant any foreign national Sudanese nationality through naturalization' if the applicant:

(a) had reached the age of maturity;

¹⁰ Article 5.

¹¹ Babiker, *Gender and migration in Sudan*; Euro-Mediterranean Consortium in Applied Research in Migration (CARIM) Gender and Migration Series; European University Institute (EUI) and Robert Schuman Center for Advanced Studies (RSCAS), Florence, Italy), 2011. Available at https://cadmus.eui.eu/bitstream/handle/1814/16200/CARIM_ASN_2011_27.pdf?sequence=1&isAllowed=y. See also *Legal framework of Migration in Sudan*, Mediterranean and Sub-Saharan Migration, European University Institute (EUI) and Robert Schuman Center for Advanced Studies (RSCAS), Florence, Italy), 2010. Available at https://cadmus.eui.eu/bitstream/handle/1814/15582/CARIM_ASN_2010_78.pdf?sequence=1&isAllowed=y.

¹² Article 7 (Chapter 3) of the Nationality Act 1994.

- (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) will swear an oath of allegiance before being naturalized.

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

In relation to acquisition based on marriage, the Minister of the Interior was given discretion by Section 8 of the Act to grant naturalization to a foreign woman if (a) she was married to a Sudanese citizen in accordance with Sudanese laws; and (b) if she had resided with her Sudanese husband for at least two years before submitting an application.¹³ 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.¹⁴

2.3.4 Loss and deprivation of nationality

The original version of Section 10 of the 1994 Nationality Act provided that nationality could be revoked for any Sudanese national¹⁵ by birth only if he or she made a declaration to renounce nationality (subject to permission by or from the President of the Republic, as this may be refused during wartime) or if he or she joined the service of a foreign country or continued in such service contravening any express provision of any law prohibiting such an act.

The Act identified many grounds as a basis for the withdrawal of nationality from a naturalized person, giving the president wide discretion.¹⁶ Section 11 of the Act empowered the president to withdraw Sudanese nationality from any naturalized individual if it was proved that he or she:

- (a) obtained the naturalization certificate through fraud or provided false information or concealment of any material facts;
- (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 for the interest of a foreign State;
- (d) expressed through acts or words outside of Sudan his or her disloyalty to or hatred of Sudan;
- (e) has been convicted in Sudan of a crime related to non-loyalty or inciting hatred against Sudan;
- (f) has been convicted (in any country) of a crime with a term of imprisonment of not less than one year for serious misconduct, within five years of being naturalized; or
- (g) made a written application or a declaration for withdrawal of his or her Sudanese Nationality.

¹³ 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, supra, note 11.

¹⁴ Article 9 of the Nationality Act 1994.

¹⁵ There is a requirement that the person who made a declaration must have capacity and attained the age of majority. The law however is silent about the process of renunciation of nationality for children.

¹⁶ 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.

2.4 The 1998 Constitution

Article 22 of a new constitution adopted in 1998¹⁷ provided for nationality for the first time, stating that:

Everyone born of a Sudanese mother or father has the inalienable right to Sudanese nationality, its duties, and obligations. Everyone who has lived in Sudan during their youth or who has been resident in Sudan for several years has the right to Sudanese nationality in accordance with law.

2.5 Amendments to the 1994 Nationality Act following the adoption of the 2005 Interim National Constitution

The 1994 Act remained in force but was amended in 2006 following the signing of the Comprehensive Peace Agreement (CPA) and adoption of the 2005 Interim National Constitution (INC) as part of the peace process that led to the referendum on independence and eventual secession of South Sudan. Article 7(2) of the 2005 INC (Nationality and Citizenship) re-stated the provision of the 1998 constitution that 'every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship'.¹⁸ Article 7(1) also stipulated 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'.¹⁹ 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'. The INC's Bill of Rights provides for the equal protection of citizenship rights on the basis of non-discrimination. Article 31 stipulated 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'.

As a result of the introduction 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, though complete equality was not achieved. Section 4 was amended to add a new sub-section 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 therefore granted the right to Sudanese nationality, even if one of the parents is not Sudanese.²⁰ This revision in the law marked the first time that women were given the right to

¹⁷ The detailed history of Sudan's constitutional development is set out in Kristine Mo, 'Contested Constitutions: Constitutional development in Sudan 1953-2005', Chr. Michelsen Institute, 2014, <https://www.cmi.no/publications/file/5265-contested-constitutions-constitutional-development.pdf>.

¹⁸ 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.

¹⁹ Article 7 also stipulates a Sudanese national may acquire the nationality of another country as shall be regulated by law.

²⁰ 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

pass on their citizenship to their children, regardless of the citizenship of the father.²¹ However, an application is required, rather than automatic attribution, as in the case of those whose fathers are Sudanese.

2.6 Amendments to the 1994 Nationality Act in 2011 following the independence of South Sudan

After the independence of South Sudan in 2011, the national Legislative Assembly introduced immediate amendments to the 1994 Sudanese Nationality on 9 July 2011. The amendments added a new Section 10(2), which provided that:

Sudanese nationality shall automatically lapse if a person acquired, *de facto* or *de jure*, the nationality of South Sudan.

In addition, a new Section 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.

Section 15 (included within the Act since 1994) provides for limited protection against statelessness, stating that a minor child does not lose nationality if the father's nationality is revoked, unless the child 'is or was the national of any country other than Sudan according to the laws of that country'. A new Section 16 added in 2011 also provided that the President could reinstate nationality to any person whose Sudanese nationality was revoked or withdrawn.

The period of residence for naturalisation was also extended from five to ten years, with a specification that the residence must be 'continuous and lawful'; and two additional conditions were provided, that the person be of sound mind and have a lawful way of earning a living (section 7(1)).

2.7 Amendments to the 1994 Nationality Act in 2018

In 2018, the Nationality Act 1994 was amended again to exempt a person from automatic revocation, as provided under the 2011 amendments for those acquiring South Sudanese nationality, 'if it is proved that his ancestors domiciled in Sudan in or before the first of January 1924'. The purpose of the amendments was to reduce the impact of the 2011 amendments on many Sudanese of South Sudan origins who were rendered stateless or at risk of being stateless. The amendment act reads as follows:

2. The Sudanese Nationality Act 1994 shall be amended as follows:

A) In article 3, the following term and its interpretation should be added:

"Domicile" means permanent residence of a person in the place where he resides and he come back to it as his permanent residence place, it does not include a place where he resides temporarily.

www2.ohchr.org/english/bodies/crc/docs/CRC.C.SDN.3-4_en.doc; Sudanese Nationality Act, 2005 Amendments, Part II, Article 4(3).

²¹ Nationality Act 1994 (amended 2005) § 4(1).

- B) In article 4(4) to add the phrase: “domiciled in Sudan” after the phrase “Sudanese by naturalization”.
- C) In article 10, section 2 shall be repealed and replaced by the following new section:
(2) (a) without prejudice to article 4 section 3, Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan.
(2) (b) the Minister may exempt any person from the application of section 2 (a) if it's proved that his ancestors domiciled in Sudan in or before the first of January 1924.
- D) In article 16, the phrase “or the person from whom it was withdrawn” shall be removed.²²

These amendments were proposed and adopted before the December 2018 revolution, under the government of President Omar al Bashir. In part, they were the result of a case brought before the African Committee of Experts on the Rights and Welfare of the Child, in which the Committee found that the provisions of the 1994 Nationality Act – and in particular the amendments of 2011 – violated the child’s right to a nationality.²³ The Committee found that Sudan was in violation of its obligations under Article 3 of the Charter on non-discrimination and Article 6(3) and 6(4) on the right to nationality and prevention of statelessness – as well as consequential violations of the African Children’s Charter.

The Committee recommended Sudan take a variety of necessary measures. These included granting nationality to the complainant on the grounds that she had a Sudanese mother and would otherwise be stateless. In this regard, the Committee recommended that Sudan confer its nationality to children in its territory who are stateless without undertaking a prolonged procedure to prove their link with other states. The Committee also recommended that Sudan revise its Nationality Act with a view to ensuring that children born to Sudanese mothers automatically obtain Sudanese nationality, like children born to Sudanese fathers. Children born to South Sudanese parents should not be discriminated against in obtaining Sudanese nationality where the child demonstrates a clear link with the respondent state.

The Committee also stated that Sudan should ensure that its nationality law does not leave children born in the territory stateless and that they are provided with Sudanese nationality without the mere assumption that they have acquired South Sudanese nationality. The Committee also requested that Sudan adopt a law in line with acceptable international standards to regulate the manner in which Sudanese nationality is revoked by limiting the discretion given to the authorities and to ensure that there are procedural safeguards in determining, conferring and revoking Sudanese nationality. The Committee’s decision also reminded Sudan to ensure that children are not deprived of their basic rights in the Charter, such as the right to education, health, birth registration, justice, and other basic necessities until their nationality is determined or even when they are found to be stateless or at the risk of being stateless.

²² Sudan Nationality Act (Amendment) 2018. adopted by the National Assembly Meeting No. 13, 4th Session, dated 6 November 2018, approved by the Council of States on 29 November 2018 and the President of the Republic, Omer Al Bashir on 16 December 2018. See Official Gazette, Ministry of Justice, issue no 1884-5, vol 9. (Arabic). Also available at <https://citizenshiprightsafrika.org/sudanese-nationality-amendment-act-2018/>.

²³ African Centre of Justice and Peace Studies (ACJPS) and People’s Legal Aid Centre (PLACE) v. Republic of Sudan, African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Comm. 005/Com/001/2015; Decision No. 002/2018; adopted at the 31st Ordinary Session of the ACERWC, May 2018; published 29 November 2018.

3. The current legal framework

Citizenship is currently governed by the 2019 Constitutional Document and by the Nationality Act 1994, as amended in 2005, 2011 and 2018. A primarily descent-based regime is established. Dual citizenship is permitted, the revocation provisions provide some protection for those of southern origin living in Sudan, and nationality may be renounced according to the provisions of the law.

3.1 The Constitutional Document of 2019

In December 2018, a peaceful revolution removed President Omar al Bashir after thirty years in power. In September 2019, a civilian-led government was established under a Constitutional Document that repealed and replaced the 2005 INC. The 2019 Constitutional Document is partially suspended following the military coup of 25 October 2021 and no longer governs the political transition in Sudan. However, the citizenship provisions remain in force.

The Document 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'. Article 7(2) of the Constitutional Document also gives the mandate to state agencies during the 'Transitional Period' to '[r]epeal laws and provisions that restrict freedoms or that discriminate between citizens on the basis of gender'. However, the gender discrimination in the nationality law has not yet been addressed in the existing legal framework.

The Bill of Rights of the 2019 Constitutional Document repeated almost verbatim the provisions of the previous 2005 Interim Constitution, including the 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) repeats the content of the 2005 INC 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 who has 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.

3.2 Attribution of nationality at birth

The current version of the Nationality Act of 1994, as amended in 2005, provides that:

- 4.(1) In respect of persons born before the coming into force of this Act, a person shall be Sudanese by birth if he satisfies the following conditions:
 - (a) if he has already acquired Sudanese nationality by birth;
 - (b) (i) if he was born in Sudan or his father was born in Sudan;
 - (ii) if he is residing in Sudan at the coming into force of this Act and he and his ancestors from the father's side were residing in Sudan since 1/1/1956.

(c) if neither the person nor his father were 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 force of this Act shall be Sudanese by birth if his father is Sudanese by birth at the time of his birth.

(3) A person born to a Sudanese mother by birth shall be entitled to Sudanese Nationality by birth whenever he applies for it.

(4) A person born to a parent who is a Sudanese national by naturalization shall be Sudanese by birth if his parents acquired Sudanese nationality by naturalization before his birth.

In addition, Section 5 of the Act provides that: 'A person shall be Sudanese by birth until the contrary is proved, if found as a deserted minor of unknown parents'.

3.3 Acquisition of nationality by naturalization

Section 7 of the Act, as amended in 2011, provides that naturalization may be granted to a foreigner, who:

- (a) has attained the age of majority;
- (b) is of complete capacity;
- (c) has resided lawfully and continuously in Sudan for 10 years or more;
- (d) is of good morals and was not previously convicted of a crime against honour or honesty;
- (e) is of sound mind;
- (f) has a lawful way of earning a living.

The provisions on marriage remain the same as in 1994: nationality may be granted to a women married to a Sudanese man and resident in Sudan for two years, but not to the husband of a Sudanese woman (Section 8).

3.4 Loss and deprivation of nationality

Section 10 of the 1994 Nationality Act, as amended in 2011 and 2018, provides that:

(1) The President of the Republic may decide to revoke Sudanese nationality from any Sudanese national by birth of complete capacity who has attained the age of majority, if it is proved that:

- (a) he made a declaration renouncing his Sudanese nationality provided that the President of the Republic may reject such a declaration if it was made during any war which Sudan participated in, or;
- (b) he joined the service of any foreign country or continued in such service contravening any express provision of any law prohibiting such an act.

(2) (a) without prejudice to section 4 sub-section 3, Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan.

(b) the Minister may exempt any person from the application of section 2 (a) if it is proved that his ancestors domiciled in Sudan in or before the first of January 1924.

In addition, section 11 provides that:

(1) The President of the Republic may decide to withdraw Sudanese nationality from any Sudanese national by naturalization if it is proved that he:

- (a) acquired Sudanese nationality by naturalization by way of fraud or provision of a false statement or concealment of any material fact;

(b) during any war that Sudan is or was participating in he traded with the enemy or contacted the same or traded with any person belonging to the enemy country or contacted the same or he is a party to any transaction and he knows that such transaction was meant to assist the enemy in war or has a connection with such a transaction.

(c) was convicted in Sudan of an offence of espionage for the interest of any foreign country;

(d) expressed through acts or words outside of Sudan his disloyalty to or hatred of Sudan;

(e) was convicted in Sudan of an offence involving his disloyalty to or hatred of Sudan;

(f) before the expiry of five years from the date of his naturalization he was sentenced in any country to imprisonment for a term of not less than one year for an offence involving obscene conduct;

(g) has made a written application or a declaration for withdrawal of his Sudanese Nationality.

(2) The President of the Republic may before issue a decision under sub-section (1) inform the person in writing of the reason for the decision, and inform him that he may refer the matter to an inquiry committee.

(3) If the person submits a request pursuant to sub-section (2) before the expiry of six months from the date of notification, the President of the Republic may refer the matter to an inquiry committee.

Section 12 establishes the inquiry committee referred to in section 11.

Section 15 provides protection against statelessness for minors in case of revocation or withdrawal of nationality from a parent, stating that:

If Sudanese nationality is revoked from the responsible father of a minor under the provisions of section 10 the minor shall not lose his Sudanese nationality save if he is or was the national of any country other than Sudan according to the laws of that country.

Section 16 also provides that:

Without prejudice to Section 10(2), the President of the Republic may, upon application, reinstate nationality to any person whose Sudanese nationality was revoked.

The authorities on some occasions have deprived naturalized citizens of Sudanese nationality, mainly claiming that naturalized persons have obtained naturalization certificates through fraud in violation of Section 11(1)(a). In 2020, it was reported that Sudan's transitional government had stripped many foreigners, including Syrians, of their naturalised Sudanese citizenship.²⁴ The government said that the foreigners had acquired the Sudanese nationality in 'illegitimate ways during the era of the ousted President Omar Al-Bashir'. The Sudanese Interior Ministry had called on all naturalized citizens from 2014 to 2019 'to visit the ministry's Passports and Immigration office', noting that all naturalised citizenships issued after last year would be 'stripped from their holder'. It is to be noted that since 2015, Sudan was the only country in the world which did not require Syrians to have an entry visa. However, in 2020 Sudan introduced visas for Syrians. The regime of Al-Bashir had 'accepted the Syrians and Yemenis into [Sudan]

²⁴ See Africa Middle East news, Sudan strips citizenship from thousands of Syrians, 29 October 2020. Available at <https://www.middleeastmonitor.com/20201029-sudan-strips-citizenship-from-thousands-of-syrians/>.

based on the concept of Muslim solidarity to brothers' and Syrians could apply for Sudanese nationality during Bashir's time in office.²⁵

4. Current issues

4.1 Compliance with international standards on nationality

The provisions on citizenship of the Constitutional Document of 2019 are in conformity with international and regional human rights instruments related to nationality insofar as they provide for equality between the sexes in transmission of nationality to children from either parent. The Nationality Act of 1994, as amended, also includes the presumption of nationality for children of unknown parents. However, the Act does not explicitly include the protection required by the African Charter on the Rights and Welfare of the Child that a child born in Sudan shall acquire Sudanese nationality if he or she does not acquire any other nationality at birth.²⁶ The Act also continues to apply discrimination in transmission to children, in that an application is required by the child of a Sudanese mother, whereas if the father is Sudanese, the child acquires nationality automatically at birth. The international human rights treaties to which Sudan is a party are an integral part of Sudan's legal system and in case of conflict they prevail.²⁷

It is important to note here that in actual practice the constitutional provisions and bills of rights remain ink on paper with regard to the protection of vulnerable groups in the society, including integration of asylum seekers and refugees, as well as stateless persons and *in situ* stateless populations.²⁸ There are various obstacles relating to the actual implementation of international law by the courts of Sudan, as well as lack of rule of law with regard to its application to such vulnerable groups.²⁹ Courts rarely implement international human rights treaties despite the constitution declaring that they are an integral part of Sudan's national legal framework. Furthermore, the constitutional court in its previous practice largely failed to protect constitutional rights, including issues related to nationality,³⁰ particularly after the secession or

²⁵ It is reported that the Sudanese authorities have since 2016 revoked the citizenship of 13,000 out of 18,000 foreign-born citizens. See 'Racism and secularism have changed Sudan's treatment of Syrian refugees', Middle East Monitor, 16 December 2020, available at <http://citizenshiprightsafrika.org/racism-and-secularism-have-changed-sudans-treatment-of-syrian-refugees/>.

²⁶ Art 6(4) of the African Charter on the Rights and Welfare of the Child (adopted on 1 July 1990, entry into force 29 November 1999).

²⁷ Article 27(3) of the INC 2005 reads: 'All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill'.

²⁸ Babiker, Mohamed Abdelsalam, 'Why Constitutional Bills of Rights fail to protect Civil and Political Rights in Sudan: Substantive Gaps, Conflicting Rights, and 'Arrested' Reception of International Human Rights Law, pp. 14-31, in *The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives*, publication of University of Khartoum and Redress, 2014, available at: <http://www.redress.org/downloads/publications/140127final-sudan-uok-report.pdf>, or available at: <http://www.pclrs.com/downloads/140127final-sudan-uok-report.pdf>. See also Babiker, Mohamed Abdelsalam, 'Criminal Justice and Human Rights: An agenda for effective human rights protection in Sudan's new constitution', February 2012, Project for Criminal Law Reform in Sudan. Available at <http://www.pclrs.com/downloads/1203%20Sudan%20Criminal%20Justice%20and%20Human%20Rights.pdf>.

²⁹ These challenges of implementing international human rights norms include disparity between the international human rights treaties and constitutional bill of rights at the normative level; conflict between hierarchy of norms between Sharia law and international law.

³⁰ Redress, *Arrested Development: Sudan's Constitutional Court, Access to Justice and the Effective Protection of Human Rights*, August 2012, available at www.redress.org/downloads/.../1208arrested_development_sudan.pdf. Also available at: <http://www.refworld.org/docid/50641ad82.html> [accessed 29 April 2016].

independence of South Sudan regarding cases related to loss or arbitrary deprivation of nationality.

4.2 Risks of statelessness following the independence of South Sudan

The legal regime governing citizenship was changed with respect to Sudanese nationals of southern Sudan origin after the secession or independence of South Sudan in 2011. This new political reality triggered massive changes and the adoption of new nationality laws or decrees and new administrative procedures and, as a result, many individuals were rendered stateless by law. As noted above, the Legislative Assembly's amendment to the 1994 Sudanese Nationality Act adopted in 2011 provided that Sudanese nationality would automatically lapse if a person acquired, '*de facto* or '*de jure*', the nationality of South Sudan (Section 10(2)). This new Section 10(2) would mean that southerners would '*de facto*' lose their existing Sudanese nationality after independence. In practice, the protection against statelessness in Section 15 did not apply, since the Sudanese authorities applied Section 10(2) in cases where it was understood that a person's father had acquired South Sudanese nationality, irrespective of whether or not they had taken any steps to gain recognition of this presumed right.

The amendment violated the constitutional rights guaranteed in Article 7 of the INC 2005 in force at the time, namely that every person born to a Sudanese mother or father should have the inalienable right to nationality. The section 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.³¹ While existing laws grant dual nationality for all other nationalities, Section 10 singles out the southern Sudanese as the only persons who 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.³² This amendment resulted in rendering thousands of South Sudanese stateless, who arbitrarily lost their entitlement to nationality and citizenship rights.³³ South Sudan also does not extend automatic nationality for the minority northerners who have resided in South Sudan for years. The nationality regimes of both countries do not institute any preferential treatment or pay particular attention to the plight of the thousands of vulnerable Sudanese after secession. Such legal regimes are inadequate and do not envisage any 'transitional regulations' that need to be in place to avert arbitrary loss of nationality and mitigate the risks and dangers that many Sudanese may be rendered stateless.

In reality, in the post secession period, many vulnerable groups have lost their citizenship rights and were rendered stateless, including southerners in the north, northerners in the south, women, internally displaced persons (IDPs), border communities and pastoralists. Women, for example, were discriminated against due to existing national citizenship laws related to acquisition or retention of nationality. IDPs were also affected by the secession, in particular southerners who were living in the north whose legal status has been changed after secession, 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

³¹ 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.

³² Ibid.

³³ Assal, Munzoul, 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.

they intend to reside legally in north Sudan.³⁴ In addition, there are new refugees from South Sudan, who fled the civil war there in 2013. Similarly, pastoralists and border ethnic communities, approximately 5 million people in total, who make up to 11% of the total population of Sudan and live at the north-south border, were also affected.³⁵ Such groups are mobile and some of them spend many months in southern Sudan and have a 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 adopted in the post secession period not only defeats any possibility for dual citizenship but 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.³⁶ 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 South Sudan need to be conducted. This seemed possible after the peaceful revolution in 2018, which removed the 30-year dictatorship responsible for such abusive laws, but reforms are now facing new challenges after the military coup of 25 October 2021, which ended partnership with civilians.

The model of single citizenship would mean that residents of 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 citizen.³⁷ However, the difficulty with this option is that following the introduction of the new unconstitutional amendment of Section 10(2) of the 2011 Sudan Nationality Act, all those accepting or choosing citizenship in the new southern Sudan state would ‘*de facto*’ lose their current Sudanese nationality. This situation could have been mitigated through careful legislation, if both law-makers and policy-makers had opted for a humanitarian position through which southerners would be allowed to maintain their ‘inherent’ right to the nationality of a Sudanese mother, as provided for in the current constitution and international human rights treaties ratified by the Sudan.

This author believes that the racist position of the 2011 amendments to the law, as implemented, denies any future possibility for the two parts of Sudan(s) to co-exist peacefully and in harmony. The 2018 amendments to Section 10(2) (outlined above) concerning automatic revocation of Sudanese nationality if a person has acquired, *de jure* or *de facto*, the nationality of South Sudan is not satisfactory. This is still discriminatory and provides wide discretionary powers. The Minister ‘may’ exempt any person from the application of the law if proved that his or her ancestors domiciled in Sudan in or before the first of January 1924. Proof of ancestors since January 1924 rather than 1956 particularly for south Sudanese as opposed to other nationals, is in itself a form of discrimination based on nationality. It also contradicts the amendments made to Section 4(1)(b)(ii) of the same act, requiring domicile for ancestors since 1956.³⁸

³⁴ 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.

³⁵ *Id.*

³⁶ See Babiker, Mohamed Abdelsalam, *Nationality Laws, Citizenship Rights and Statelessness in Post secession Sudan*, *supra* note 31.

³⁷ *Ibid.*

³⁸ See amendments of Section 4 (1) (b) (ii) changed dates from 1/1/1924 for ancestors from the father’s side residing in Sudan since 1/1/1956, resolution of Transitional National Assembly No. 59, 1994.

It is imperative at this particular time that Sudanese legislation endeavours 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 legislation that losing the Sudanese nationality depends on the granting of the 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 be arbitrarily denied rights. In addition, there must be collaborative procedures for confirming nationality and exchanging of information and documents so that nobody will be rendered stateless.³⁹ The law must ensure that procedures for acquiring nationality and for obtaining citizenship documentation are 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 witness evidence and age assessment certificates (as is currently under Sudanese law).⁴⁰

One of the last resort options is to grant *qualified* southerners and northerners *long-term (or permanent) residence* without citizenship. This entails that individuals would be permitted to reside as 'citizens of other nations' but without being citizens. This could be regarded as a practical option in the context of the Abyei area (on the border between Sudan and South Sudan, where a referendum is supposed to be held on its final status), as it would allow pastoralist communities to enjoy permanent residency in both the north and the south so that their grazing rights and freedom of movement will not be obstructed.

Having outlined the above models one needs to re-emphasize that entitlements to nationality for both southerners and northerners should be based on objective and non-discriminatory criteria, such as birth in territory or connection to the territory or habitual residency or domicile. However, 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. Moreover, individuals should be allowed to maintain or acquire the nationality of Sudan or South Sudan depending on where they have a stronger connection and other inclusive criteria. If they are equally connected with both North and South, they should be allowed to have both nationalities. 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 nationality of the South. In addition, 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.⁴¹

4.3 Citizenship and ethnicity

Citizenship laws in Sudan are not predicated on race, ethnicity, or tribal affiliation. However, Sudanese citizenship laws are predominantly descent-based (*jus sanguinis*) and in practice ethnicity plays an important role in recognition of citizenship. This approach constitutes an

³⁹ See UNHCR, UNMIS, Symposium on Citizenship Issues in Sudan: Summary of Proceedings and Related Documents, Khartoum, 6-7 November 2010. Available at <https://www.unhcr.org/uk/protection/statelessness/4d877ce2fc0/symposium-citizenship-issues-sudan-summary-proceedings-related-documents.html>.

⁴⁰ Ibid. at p. 13.

⁴¹ Ibid.

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.⁴² Scholars have also argued that the colonial system of indirect rule resulted in politicizing race and ethnicity in Sudan.⁴³ For instance, tribes were given homelands and tribal leaders were vested with the authority of tax collection and even judicial powers over their subjects.⁴⁴

When applying for nationality documents since independence, a tribal subject has 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 spectre of colonialism lurking in the background.⁴⁵ 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 fellow members of their own communities.

Hence, dealing with citizenship and nationality is not purely a legal issue but mixed with identity and ethnic identification. Anthropologists have criticised this descent-based citizenship (*jus sanguinis*) which allows ethnicity to become an instrument of abuse by various parties for political purposes.⁴⁶ In Sudan's post-colonial state, social stratification is entrenched, wherein some groups consider themselves superior to others. Categories like *gharraba* (people from western Sudan), *gannobiyyin* (people from southern Sudan), *shimaliyyin* (people from northern Sudan) and *zurga* (blacks) are widely used terms with derogatory connotations.⁴⁷ Accordingly, some persons face difficulty in obtaining papers due to their ethnic background, while for others this is not an issue.⁴⁸ Due to armed conflicts and displacement, individuals and communities are displaced from their original homes to other places, where it takes them a long time to establish their lives.⁴⁹ Where people are forced to leave their traditional or habitual areas as a result of war or forced displacement, they often find it difficult to prove their citizenship.

4.4 Citizenship and gender

Although the amendment to the 1994 Nationality Act following the adoption of the Interim National Constitution of 2005 was a progressive step, as it harmonises Sudanese nationality law with the provisions of the constitution, 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 following an application process.⁵⁰ In other words, the amendment only allows the children of Sudanese mothers to obtain her citizenship, if they submit an application. Given the clear constitutional provision that every person born to

⁴² Assal, Munzul, Citizenship, Statelessness and Human Rights Protection in Sudan's Constitutions in post South Sudan Secession Challenges, *supra*, note 33.

⁴³ Zambakari 'Sudan and South Sudan: identity, citizenship, and democracy in plural societies', note 1 at pp. 73–4.

⁴⁴ Talal Asad, *The Kababish Arabs: Power, Authority and Consent in a Nomadic Tribe* (Hurst & Co 1970).

⁴⁵ *Ibid.*

⁴⁶ Assal, Munzoul, Citizenship, Statelessness and Human Rights Protection in Sudan's Constitutions in post South Sudan Secession Challenges, *supra*, note 33.

⁴⁷ *Ibid.*

⁴⁸ Munzoul AM Assal, *Nationality and Citizenship Questions in Sudan after the Southern Sudan Referendum Vote* (Sudan Report Series No 1 Chr Michelsen Institute 2011).

⁴⁹ 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).

⁵⁰ Nasredeen Abdulbari, *Citizenship Rules in Sudan and Post-Secession Problems*, 8 (2010), available at <http://www.cmi.no/sudan/doc/?id=1284>.

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 enacting 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. Moreover, the law continues to discriminate in acquisition of citizenship based on marriage, despite non-discrimination provisions in the law. Although in 2018, during the short-lived post-revolution transition, some miscellaneous amendments were made with regard to various laws, there were no further discussions to amend the law for gender equality.

Other laws also impose certain restrictions on Sudanese citizens. 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.⁵¹ Despite various Sudanese Bills of Rights guaranteeing every citizen 'the right to liberty of movement and freedom to choose his/her residence',⁵² as well as international human rights treaties requiring that states parties provide men and women with the same rights with regard to freedom of movement,⁵³ Sudanese immigration law discriminates against women as full citizens. It should be noted that there are many legal obstacles which prevent women from exiting the country and travelling freely abroad, as they need to obtain authorization from their guardians and from the immigration authorities.⁵⁴

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 their husband or guardian, are not allowed to travel alone unless it is for medical treatment, academic conferences or business, and must provide documentation to validate their claims for an exemption.⁵⁵ In the past, 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.⁵⁶ In order for women to travel for official missions or courses of study, Regulation 28(1)(a) of the Rules and Regulations adopted under this legislation requires written approval of the husband for a married woman and the approval of a guardian if the woman is unmarried. Regulation 28(1)(d) restricts women from travelling on their own, even to seek medical treatment. Again, the regulation 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 the 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.

⁵¹ 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.

⁵² Comprehensive Peace Agreement, 2005, Art. 1.6.2.14.

⁵³ 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.

⁵⁴ BABIKER, *Gender and Migration*, supra note 11.

⁵⁵ Ibid.

⁵⁶ 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 continue to deny the enjoyment of full citizenship. Sudanese immigration law, for example, obliges women not to leave the country or migrate long-term with their children, unless their guardians give them permission. Parental responsibility and guardianship (*wisaya*) is always with the father, unless otherwise determined by a competent court of law.⁵⁷

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.⁵⁸ Furthermore, these discriminatory provisions also contradict the constitutional framework adopted to govern the transitional period after the 2018 December revolution. Its Article 59 on freedom of travel and residence provides as follows:

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.

Some miscellaneous administrative changes were made after the removal of the previous dictatorship in Sudan's peaceful revolution of 2018. Notably, women could leave the country freely without the need to obtain authorization from guardians and the immigration authorities.

5. Conclusion

Citizenship in Sudan is governed by the Constitutional Document adopted on 17 August 2019, which repeated the provisions of the Interim Constitution in relation to citizenship, and the Sudanese Nationality Act 1994, as amended in 2011 following the independence of South Sudan. As outlined earlier, the Constitution provides that "[e]very person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship". The law, however, discriminates against women in terms of access to citizenship for children. Although amendments to the law in 2005 in principle provided for the right for a mother to transmit her nationality to her child, it provides for automatic citizenship for children of Sudanese men, but requires children of Sudanese mothers to go through an application process. Since it was adopted in 1994, the law has allowed for dual nationality.

Following the secession of South Sudan, the 1994 Nationality Act was amended in 2011 to discriminate against millions of Sudanese of southern origin, the majority of whom were rendered stateless. In 2018, the Nationality Act 1994 was amended again to reduce the impact of the 2011 amendments on the Sudanese of southern origin. These amendments preceded the 2018 revolution, which then ushered in a new era of political transition in Sudan after 30 years of autocratic rule and Islamic dictatorship and created a great hope that Sudan was marching towards democratization, the rule of law and constitutionalism. This hope was shattered after the military coup of 25 October 2021, which aborted any processes of democratization in the country, where the civilian cabinet was dissolved and all legislative, judicial and executive powers were concentrated in the hands of the military. Positive changes to the law seem unlikely under the current regime.

⁵⁷ Babiker, *Gender and Migration*, supra, note 11.

⁵⁸ Ibid.

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