

SOUTH SUDAN NATIONALITY: COMMITMENT NOW AVOIDS CONFLICT LATER

As the newest nation in the world, the Republic of South Sudan (RoSS) is undertaking the monumental task of building a nation state. Creating a functioning government would be an epic challenge for any country, but it is even greater for RoSS because it is faced with millions of displaced people, internal and external conflict, widespread food insecurity, a stagnant economy, and a population that includes dozens of tribes, ethnicities, indigenous communities and identities. The situation is further complicated by the internal conflict that re-ignited in South Sudan following the decades-long civil war. During the war, southerners were pitted against a common enemy in Khartoum. Now, absent that enemy, competing tribal and ethnic interests are fueling internal conflict, such as in Jonglei state. To ensure the successful transition of RoSS to a functioning nation, an identity must emerge that trumps all these competing interests. Citizenship should be based on place of birth or familial origin without any regard to the person's color, faith, tribe, ethnicity, or other attribute.

BACKGROUND

RoSS is home to over eight million people and more than 60 ethnic groups. The population grows daily as southerners arrive from Sudan, neighboring countries, and other nations of refuge during the civil war. Up to 40,000 citizens

hold nationality certificates in Juba, South Sudan, while more than 1200 have nationality certificates and 12,000 have been issued emergency travel documents in Sudan. In January 2011, Sudan's President Omar Al-Bashir assured those participating in the secession referendum that their

POLICY RECOMMENDATIONS

- ❑ The Republic of South Sudan (RoSS) and the Government of Sudan (GoS) should make all efforts to protect nationals of both countries through respect of the "Four Freedoms," including freedom of movement, residence, property, and employment, as stated in the UN Security Council Resolution 2046
- ❑ The GoS should provide all southerners with access to an individual hearing to determine whether they remain nationals of the country, as well as facilitate the return of vulnerable southerners awaiting passage to RoSS
- ❑ RoSS should:
 - Consider all southerners in possession of a travel document issued by a South Sudanese embassy as nationals
 - Increase its capacity to identify citizens by hiring and training more officers authorized to review and approve nationality certificates and identification cards
 - Include oversight as an integral component of the nationality adjudication process through visits by independent and impartial officers, and the use of pro bono paralegals and attorneys by applicants
- ❑ Major donors, in particular the U.S., the UK, and Norway, should allocate funds to support the RoSS Directorate of Nationality, birth and civil registrar, and the successful completion of a nationwide census planned for 2014

rights to the “Four Freedoms” would be safeguarded. Instead, in August 2011 the Government of Sudan (GoS) amended its nationality law to preclude “southern” Sudanese from holding dual nationality, denationalized en masse all southerners of their Sudanese citizenship, fired southern civil servants, and gave all southerners nine months to regularize their status or face deportation similar to any other unlawful foreigner.

The longer the period between departure from Sudan and recognition as South Sudanese nationals, the more vulnerable southerners are to violence, exclusion, and poverty.

PREVENTING STATELESSNESS IN SUDAN

Because Sudan’s Nationality Act prohibits only South Sudanese from holding dual nationality, it is discriminatory on its face. Moreover, restricting the rights of southerners because they may have automatically acquired South Sudanese nationality through birth or descent violates international law as it occurs regardless of the person’s preference or whether they will in fact be recognized as South Sudanese.

It is in Sudan’s interest to develop an administrative system that individually assesses whether a person remains a national. Due to the current political and military tensions between Sudan and RoSS the months-long presence of southerners at Sudanese departure points is creating security concerns. With assistance from the international community, “denationalization” hearings for southerners who elect this process would create time and space to alleviate backlogs for departure, the adjudication of nationality certificates at the RoSS embassy in Khartoum, and it would facilitate the voluntary, safe, and dignified return of those found to be South Sudanese.

Citing security concerns in the Sudanese border town of Kosti, in early May 2012, the GoS agreed to the movement of 12,000 people by air with the technical assistance of the International Organization for Migration (IOM). According to IOM, thousands have already left Sudan and the remainder is expected to depart within a month. Other movement out of Sudan, however, is almost impossible because the GoS has stopped all barges down the Nile for security reasons. Neither trains nor buses are viable options as they require movement through Southern Kordofan, where ongoing fighting between the Sudan Armed Forces and the Sudan People’s Liberation Movement – North makes passage unsafe. Travel south has been further complicated by the arrival of the rainy season. These conditions will inevitably create new logjams for those waiting to leave Sudan. As many as 500,000 southerners still live in Sudan. Among the most vulnerable to attack and discrimination are the 127,000 in

Khartoum who have registered their intent to leave. The GoS should extend its work with IOM to facilitate the mass movement of this population by flight from Khartoum to Juba.

In the meantime, RoSS and the GoS must assume full responsibility for protecting each others’ nationals and bring into force the Framework Agreement on the Status of Nationals of the Other State and Related Matters, which includes respect for the Four Freedoms.

PREVENTING STATELESSNESS IN THE ROSS

RoSS’ 2011 nationality law and regulations require only that a person submit a birth certificate or age assessment and present a witness from his tribe who can attest to the person’s place of origin. While the burden of proof is on the applicant, they need only demonstrate that they are likely to be a national (put simply, the interviewer must be at least 51% satisfied the applicant is a national). Unfortunately, included in the definition of a national are people born in or originating from “indigenous communities,” which is a subjective assessment without reference to a designated list. If a question exists as to the person’s place of origin, two local authorities (at Boma and Payam levels) may attest to the origin of the individual. The nationality law contains a right to judicial review, but RI was told by the Director of the Nationality, Passport and Immigration office that no one has elected the process as most of the 80–100 denied applications were fraudulent. RI was unable to review the applications or adverse decisions. The general flexibility of RoSS’ Nationality Act and regulations, if implemented correctly, should result in high rates of nationality certification and the prevention of statelessness. However, if implemented incorrectly, too rigidly, or in a discriminatory or arbitrary manner, the risk of statelessness will increase exponentially. Unfortunately, early indications suggest that all three concerns are present in the adjudication of nationality applications in Juba.

Early Indications of Discriminatory Decision-Making

Opened in January 2012 in Juba, the Directorate of Nationality, Passports and Immigration is processing thousands of applications for nationality certificates, identification cards, and passports. While queues for an application can be days long, for many the result is a nationality certificate. For other South Sudanese, however, the experience is exceptionally burdensome and time consuming. Based on RI’s observations and discussions with individuals and organizations, people from communities or tribes outside the Juba area, particularly in the Equatorias and border regions,

are finding it more difficult to demonstrate they are “likely” South Sudanese. Even after providing a witness and attestations from two local authorities, some nationality officers are requesting more evidence. But the evidence required to dispel an officer’s concerns are neither articulated nor provided in writing. Individuals in process told RI that excessive demands were discouraging them from continuing to pursue a nationality certificate, which may ultimately constitute de facto denials without the right of review.

On numerous occasions, nationality office employees, applicants going through the nationality process, and employers of South Sudanese nationals told RI that not “looking” South Sudanese creates barriers to successfully acquiring a nationality certificate. Not “looking” South Sudanese is a reference directly to the skin color of an applicant – the lighter the applicant’s skin, the more likely they will be assumed to originate from outside RoSS. There is nothing objective about this analysis; rather it is based on an individual officer’s perception of a person absent any oversight or accountability. Even if all other requirements are met, a person’s skin color could result in the need for more documentation, regardless of whether the person’s origins are actually in question.

Historically migrant populations, including the Falata and Mbororo, are at an exceptionally high risk of statelessness despite their decades-long presence in the nation. Falata, the term used in both Sudan and RoSS for all Muslims of West African migrant origin, already faced barriers to fair nationality proceedings in the former united Sudan, and there is little indication that the process will be easier in the RoSS. While the Mbororo (also known as Fulbé, Peul, Fula, or Fulani) have historically been a semi-nomadic people, many have a habitual residence in RoSS that goes back decades. Some have left the pastoral livelihood and are settled business owners. Yet the government and many South Sudanese believe the Mbororo are “outsiders” from Chad. Moreover, some government officials claim that the Mbororo are allied with the GoS. These misconceptions and prejudices give rise to significant concerns that Mbororo and Falata individuals will not be recognized as nationals of South Sudan and will be rendered stateless. To avoid this outcome they will require specific identification and assistance in acquiring nationality applications.

RI is concerned that a variety of other factors may exclude, or make very difficult, the acquisition of nationality certificates. Several additional ethnic groups are at high risk of statelessness due to their cross-border populations. The Kresh, Kara, Yulu, Frogai, and Bigna reside on both sides of the new Sudan-RoSS border – several in disputed areas. Some

individuals belonging to these groups have affirmatively moved north to Sudan because they are afraid that they will not be accepted as nationals of RoSS, especially those in mixed marriages or who have family members from both sides of the border. Opening nationality offices with local employees in all 10 of RoSS’ states should be a priority, as officers from the area are more likely to know the presence, history, and nuances of communities. In the meantime, mobile nationality teams that can go from village to village should be developed and funded. Moreover, the United Nations Refugee Agency (UNHCR) should be adequately staffed to provide training for all nationality officers on the right to nationality, consequences of statelessness, and the principle of non-discrimination, as well as consistent oversight of adjudications in partnership with an impartial government unit.

For the vast majority of RoSS’ nationals, the fees associated with making an application are prohibitive. Supported by the international community, the government should waive application fees when appropriate so that millions of nationals in RoSS who cannot afford the process will be able to access a nationality certificate.

Arbitrary Decision-Making

Over several days, RI observed the processing of nationality certificates and noted that at times applicants were required to submit evidence of South Sudanese origin beyond regulatory requirements and even after the submission of formal letters by authorities at local levels. At other times, applications were approved without the inclusion of a required birth certificate, age assessment, and/or the presence of a witness who had previously acquired a nationality certificate. These irregularities could reflect the different review procedures of adjudicators at the Nationality Directorate rather than a discriminatory factor, and reinforce the need for oversight by an independent government unit together with the UNHCR to ensure a process that is consistent, fair, and transparent.

Incorrect Implementation of the Nationality Act

Although not required by the Nationality Act or regulations, the Nationality Directorate requires that the results of a blood test be attached to a nationality application. Purportedly to promote the good public policy of easily identifiable blood type, this extra obligation instead creates another financial hurdle for applicants and is ultimately not useful, as blood type is neither identified on the nationality certificate nor the identification card. Contrary to the regulations, the Directorate also requires that the witness to a nationality appli-

cation already possess a nationality certificate. Given that only about 40,000 individuals currently possess a nationality certificate out of a population of more than eight million, for many, particularly outside Juba, this requirement will create an insurmountable obstacle to the successful acquisition of nationality.

CONCRETE ACTIONS FOR SAFEGUARDING THE RIGHT TO NATIONALITY

Travel Documents Issued by RoSS Embassies

Leaving Sudan requires an emergency travel document, which the RoSS embassy has issued to 12,000 people deemed to be South Sudanese. The travel document, however, cannot be used as proof of South Sudanese nationality, which undermines its utility. While emergency travel documents do not require as much evidence as a nationality application, not considering them as proof of presumptive nationality is a waste of administrative resources in Khartoum and Juba, and it leaves this population even more vulnerable to statelessness if they are not recognized as nationals of RoSS. If ultimately denied South Sudanese nationality, such individuals will almost surely be deprived of Sudanese nationality as well, since they were granted prima facie proof of nationality by RoSS and the Sudanese nationality law does not permit dual nationality.

Travel documents issued by RoSS embassies around the world should be considered proof of nationality with all the rights and obligations of citizenship, until an individual is recognized as a foreigner after a formal administrative procedure with the right of review in South Sudan. To do otherwise is to put at risk the nationality of hundreds of thousands of individuals who are making the affirmative decision to reside in RoSS.

Oversight and Accountability

Because no oversight or accountability is built into the system, the predispositions, mood, or personality of an adjudicator may be determinative as to whether a person receives a nationality certificate, is required to provide more information, or is denied proof of nationality. Because the authority to exercise or abuse discretion is a constant concern in all administrative offices throughout the world, a concrete system of oversight and accountability is critical for identifying and resolving cases of discriminatory or arbitrary decision-making. This mechanism does not exist in the Nationality Directorate, but could be implemented through spontaneous visits from impartial and knowledgeable reviewers. Moreover, oversight could be achieved through a program that trained locals as paralegals to assist in the completion of applications and to monitor how applications are adjudicated – considering factors such as the

time spent securing a nationality certificate, origin of applicants, skin color, the adjudicator, and other possible indications of discrimination or arbitrary decision-making. Work by paralegals could be buttressed by the addition of several attorneys with the knowledge and resources to challenge adverse decisions or excessive evidentiary requirements in court when appropriate.

2014 National Census

South Sudan's national census scheduled for 2014 provides an opportunity to identify citizens already residing in the country. In April 2012, the Chairperson for the South Sudan National Census publicly pled for the \$99 million estimated funds required to conduct a timely and consistent process. The United Nations Population Fund (UNFPA) is the lead agency within the UN system that provides financial and technical support to census operations and should be consulting with South Sudanese counterparts to identify how it can best support the process. Funding of the census is vital, as the results will form the basis for the first national elections to be held in 2016. The U.S. should commit to fully funding UNFPA's work with RoSS so that the census is timely and accepted as an accurate and credible record. Individuals who identify as South Sudanese during the census process should be presumed to be citizens of RoSS unless recognized otherwise in a formal individual hearing. In no way should the omission of individuals from census records negatively impact their ability to register in South Sudan or acquire nationality certificates at a later date if they are otherwise able to demonstrate eligibility for citizenship under the nationality law.

Registration

Birth and civil registration lay the foundation for protecting and ensuring basic human rights by serving as proof of citizenship at the time of birth or by demonstrating the link between an individual and the state later in life (i.e. during nationality adjudications). The United Nations Children's Fund (UNICEF) should work with RoSS to make free birth registration accessible to all children and encourage the use of good practices such as coupling registration with nationwide public health campaigns, training community health officers to also act as registrars, and by placing registration offices in health institutions. All parents, regardless of geographic location or socioeconomic status, should be made aware of and have access to birth registration for their children. The establishment of an effective birth registration system could prove one of the most effective ways to prevent statelessness for future generations.

Sarnata Reynolds assessed the risk of statelessness in South Sudan in April 2012.