

Citizenship and the Phenomenon of Statelessness

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CITIZENSHIP AND THE PHENOMENON OF STATELESSNESS

By Sarah L. Bosha*

*Participation constitutes a right which is to be applied both in the economic and in the social and political field.***

*Every migrant is a human person who, as such, possesses fundamental, inalienable rights that must be respected by everyone and in every circumstance.****

*A natural consequence of men's dignity is unquestionably their right to take an active part in government.*****

EXECUTIVE SUMMARY

There is an emerging international law norm placing an obligation on states to prevent statelessness. Whilst it is settled law that the determination of nationality is within the domain of domestic jurisdiction, the International Court of Justice (ICJ) in the Nottebohm case held that these laws must be consistent with international custom and the principles of law generally recognized with regard to nationality.¹

South Sudan's Transitional Constitution (TC) provides in Article 45(1) that "*Every person born to a South Sudanese mother or father shall have the inalienable right to enjoy South Sudanese citizenship and nationality.*" This means a child becomes a citizen on the basis of birth to parents who are (either one of them) South Sudanese citizens. Where a child is born to only non-South Sudanese parents, that child cannot acquire South Sudanese citizenship. In addition Article 17(1) (b) concerning the rights of the child provides for the right of every child "to a name and nationality." The extent of this right to nationality is not clearly stated so as to conclude that it may include a right to South Sudanese citizenship for children born within the territory and not enjoying another nationality. Similarly, Article 10 of the South Sudan Child Act of 2008² provides the same restatement of Article 17(1) of the TC and adds that the state shall protect and assist a child who has been deprived of all or some elements of his or her identity to regain such lost identity. Whether the provision includes assisting stateless children to acquire South Sudanese nationality is unclear.

However, the existing system is likely to exacerbate the problem of statelessness of persons present in South Sudan unless legal provisions are put in place to combat it. The following considerations are salient to the South Sudanese constitutional development process around this issue:

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** Synod of Bishops, *Justitia in Mundo* [1971], 18.

*** Pope Benedict XVI, *Caritas in Veritate* [2009], 62.

**** Pope John XXIII, *Pacem in Terris* [1963], 73.

- Children are considered particularly vulnerable by international law where they are born to stateless persons. The African system of human rights specifically advocates for the rights of stateless children to nationality based on the territory of birth to be enshrined in the constitution of the land.
- South Sudan as a successor state may consider following the examples of Mozambique, Zimbabwe and Angola and adopt the principle of “substantial connexion to a territory through habitual residence” as one factor among others in granting nationality to otherwise stateless persons.
- Given the supreme importance of the right to nationality in the exercise of all rights by a human being, the trend across many countries has been to deal extensively with issues of nationality and citizenship in the text of the constitution, in addition to subsidiary legislation.

BACKGROUND

The manner in which citizenship is granted has long been the domain of national jurisdictions. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Law³ in article 1 states, “It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.” The International Court of Justice goes on to emphasize in the Nottebohm case, that the law enacted by a state for the purpose of determining who its nationals are “shall be recognized by other states in so far as it is consistent with ...international custom and the principles of law generally recognized with regard to nationality.”⁴

Generally public international law has left the determination of nationality to the exclusive domain of a state to decide its own rules for granting nationality or citizenship to its members.⁵ There is no uniform state practice or the obligation to employ the principle of nationality by parentage or the principle of nationality by place of birth over the other, although it is generally accepted that conferment of nationality can be based on either of the two or on a combination of these principles.⁶

In discussing the issue of stateless persons, the following international instruments are instructive:

- United Nations General Assembly Convention on the Reduction of Statelessness,⁷
- The Hague Convention on the Certain Questions Relating to the Conflict on Nationality Law⁸
- The Draft Articles on Nationality of Natural Persons in relation to the Succession of States⁹
- African Charter on the Rights and Welfare of the Child (AWCRC)¹⁰
- Convention on the Rights of the Child (CRC)¹¹
- International Covenant on Civil and Political Rights (ICCPR)¹²
- Universal Declaration of Human Rights (UDHR)¹³
- Resolution 234 on the Right to Nationality of the African Commission for Human and Peoples Rights¹⁴

The International Law Commission (ILC), which is a body of international legal experts created for the promotion of the progressive development of international law and its codification,¹⁵ has compiled draft articles on “Nationality of Natural Persons in relation to the Succession of States”.¹⁶ The writings of legal experts working as the ILC provide a valuable source of international law (as stated in Article 38(1) (d) of the Statute of the International Court of Justice)¹⁷ as well as a tool of interpretation of what the law entails. These draft articles produced by the ILC on statelessness provide strong legal authority for the current international law on the issue – including interpretation and also (in some instances) an indicator of state practice.

Rights and duties for the individual such as the right to protection against other states by the country of nationality are connected to and flow from citizenship. It affects every aspect of an individual’s existence and the protection of his or her fundamental human freedoms – stateless persons are at the mercy of their hosts.¹⁸ The United Nations High Commissioner for Refugees defines statelessness as the condition of an individual who is not considered as a national by any state.¹⁹

In practice, states have rarely made use of their right to confer their nationality on stateless persons although this might be desirable in the interest of elimination of statelessness.²⁰ Stateless persons are defined in the United Nations General Assembly Convention on the Reduction of Statelessness as a person who is not considered as a national by any State under the operation of its law.²¹

The African Commission for Human and Peoples Rights (ACHPR) has stated that, it is in the general interest of the people of Africa for all African States to recognize, guarantee and facilitate the right to nationality of every person on the continent and to ensure that no one is exposed to statelessness. ACHPR further reiterates that African States be guided by international law principles including those embodied in the United Nations Convention on the Reduction of Statelessness to adopt and implement provisions in their constitutions and legislation to prevent and reduce statelessness.²² The ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States in article 4 provides that states should take all appropriate measures to prevent statelessness as a result of state succession.

It is important to be aware of the emerging customary international law obligation to prevent statelessness. The Convention on the Reduction of Statelessness contains relevant principles of international customary law.²³ Numerous human rights instruments such as the UDHR (everyone has the right to nationality),²⁴ the ICCPR (every child has the right to nationality)²⁵ and various regional instruments provide for the right to nationality – as do many constitutional provisions as shall be shown below.

The ILC has identified numerous causes of statelessness including the failure to acquire nationality at birth and the deprivation of nationality. These two causes are intimately connected to the creation of the new South Sudan from the former Sudan – where certain former Sudanese nationals of African heritage and appearance were deemed to be South Sudanese and deprived of their Sudanese citizenship, and the failure to provide citizenship by birth to the children of persons with neither South Sudanese nor Sudanese nationality born on South Sudanese soil.

The ILC has opined that laws based exclusively on *jus sanguinis* (*nationality by parentage*) and those establishing *jus soli* (*nationality by place of birth*) as a subsidiary link of attribution of nationality are particularly apt to lead to statelessness.²⁶ The current provision on citizenship is based on Article 45(1) of the Transitional Constitution (TC) which states, “Every person born to a South Sudanese mother or father shall have the inalienable right to enjoy South Sudanese citizenship and nationality.” This means a child becomes a citizen on the basis of birth to parents who are (either one of them) South Sudanese citizens. Where a child is born in South Sudan to only non-South Sudanese parents, that child cannot acquire South Sudanese citizenship.

In addition, Article 17(1) (b) of the TC concerning the rights of the child provides for the right of every child “to a name and nationality.” The extent of this right to nationality is not sufficiently clear as to the availability of South Sudanese citizenship for all children born within the territory, especially if born to stateless parents or if parents are unable to transmit their nationality to the child. Similarly, Article 10 of the Child Act of 2008²⁷ provides the same restatement of Article 17(1) of the TC and adds that the state shall protect and assist a child that has been deprived of all or some elements of his or her identity, to regain such lost identity. Whether the provision includes assisting stateless children to acquire South Sudanese nationality is unclear. However, the current uncertain position has the potential to create vast numbers of stateless individuals in South Sudan – a situation that should be avoided. Stateless persons in South Sudan’s current scenario would include those who have been stripped of Sudanese citizenship and are unable to establish their South Sudanese citizenship.

DISCUSSION

1. Stateless Children

The Hague Convention on Certain Questions Relating to the Conflict of Nationality Law is the culmination of efforts by the international community to eliminate or reduce statelessness and mitigate the hardships and improve the position and treatment of stateless persons.²⁸ Many of the principles stated in the Hague Convention are present in various international instruments such as Article 15, which states that children of stateless persons should acquire the nationality of their country of birth – regardless of the fact that their parents have no nationality or citizenship.²⁹ The provision reads, “Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.” Additionally, article 14 of the same instrument provides that a foundling (child) is, until the contrary is proved, presumed to have been born on the territory of the State in which it is found. International law expert Ian Brownlie argues that in many instances this rule applies also to children born of parents of unknown nationality or who are stateless.³⁰ Additionally the United Nations Convention on the Rights of the Child in its Article 7(2) urges states to put in place national laws in accordance with international obligations to protect children born on their soil that would otherwise be stateless.³¹

Although South Sudan has not signed the African Charter on the Rights and Welfare of the Child³² (ACWRC), as a member of the African Union³³ the state has committed to taking into

account the provisions of Charter of the United Nations and the Universal Declaration of Human Rights. South Sudan is also bound to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.³⁴

Article 1 of the United Nations Convention on the Reduction of Statelessness provides that a state shall grant its nationality to a person born on its territory who would otherwise be stateless. This is consonant with the (ACRWC) which places a duty upon states in Article 4(6), "...to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its law."³⁵ Resolution 234 of the ACHPR reiterates the importance of constitutional and legislative measures to ensure that all children have the right to the nationality of the State where they are born particularly in situations where they would otherwise be stateless.³⁶

South Sudan's Child Act in section 29(2) mentions refugee children, which often includes stateless children but does not clearly provide nationality to such children although it offers protection similar to that granted to children of South Sudanese nationality. The provision provides for the right to protection and care to refugee children similar to that provided for children that are citizens of South Sudan. The provision reads, "Where no parents, legal guardians or close relatives can be found, every refugee and displaced child shall be accorded the same care and protection as any other child permanently or temporarily deprived of his or her family environment for any reason." When read in light of article 8(4) of the Nationality Act,³⁷ children found on the territory of South Sudan are not presumed to be South Sudanese, but deserted infants (infant is not defined in the Act) are deemed to be South Sudanese at birth. This situation places many children at risk of statelessness and prejudices their future in South Sudan – as they will grow into stateless adults unable to benefit from the protection and privileges provided by the state to its citizens. It should be noted that the ILC's Draft Articles on Nationality of Natural Persons in relation to the Succession of States, particularly article 13, provides that a child who has not acquired any nationality has the right to the nationality of the state in whose territory that child is born.

South Sudan has included a provision in article 8(4) of its Nationality Act 2011 which presumes South Sudanese nationality for deserted infants, but not for children. There is no definition of infant and a child means a person under the age of eighteen years under the Child Act 2008. The deliberate use of the word infant over that of child makes it difficult to assert that the right would include all persons under eighteen as acquiring South Sudanese nationality if they are of unknown parentage. This provision needs to be clearer in terms of the beneficiary of the right by stating the cut-off age of beneficiaries, as is the case in other constitutional provisions. In line with the ACRWC directive, including the provision in the constitution would better protect the rights of children.

Indeed as shown below, the trend has been to place such provision in the constitution as opposed to subsidiary acts of parliament. Examples of how states have incorporated these norms into their constitutional provisions appear below as follows:

Mozambique

The Mozambican constitution³⁸ is the best example of a direct provision that addresses stateless persons and the status of their children, directly conferring citizenship by *jus soli*. Article 23(1) (b) reads, “The following persons shall, provided that they were born in Mozambique, be Mozambicans: Children whose parents are stateless or of unknown nationality.” Additionally, Mozambique has a provision for citizenship by birth in article 24(1) which reads, “Persons born in Mozambique after the proclamation of independence are Mozambican nationals.”³⁹

Zimbabwe

Regarding the Zimbabwean constitution, Article 36(3) provides, “A child found in Zimbabwe who is, or appears to be, less than fifteen years of age, and whose nationality and parents are not known, is presumed to be a Zimbabwean citizen by birth.”

Kenya

In the Kenyan Constitution, Article 14(4) reads, “A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.”⁴⁰

Angola

Article 9(3) of the Angolan Constitution reads, “A newborn child found in Angolan territory shall be presumed an Angolan citizen by origin.” This means that a child born in Angola automatically becomes a citizen – regardless of the nationality status of the mother or parents.

2. Stateless Immigrant Populations

The Convention on the Reduction of Statelessness is also instructive on dealing with persons who may be granted citizenship through a principle of strong link to the country through habitual residence. Article 1 (5)(b) provides that a state may grant nationality considering among other issues: that the person has been habitually resident in a territory for a certain period – which may be fixed by the state – prior to making his application; or that the person concerned has always been stateless.⁴¹ Therefore the fact that a person is stateless and has been habitually resident in a territory can be considered by a state in its citizenship laws and policies.⁴²

There is a strong argument under international law for the obligation of states to prevent statelessness, as argued above, and the ILC has pointed out that habitual residence is the test that has most often been used in practice for defining the basic body of nationals of the successor State, even if it was not the only test.⁴³ The arguments in favour of the principle of a strong connexion based on (among other reasons) habitual residence within the territory of the successor state have been put forth by the ILC⁴⁴ in its Draft Articles on Nationality of Natural Persons in relation to the Succession of States. There it is argued that persons having their habitual residence in a territory affected by succession are presumed to acquire the nationality of the successor state at the date of succession.

Mozambique

Article 23(1) (c) of the constitution uses the strong link standard and states, “The following persons shall, provided that they were born in Mozambique, be Mozambicans: Those who were domiciled in Mozambique at the time of independence and did not choose any other nationality, expressly or tacitly.”

This is a more simplistic approach to issues of nationality that could apply in a state secession scenario such as that of South Sudan. The Constitutional provision regarding nationality can confer South Sudanese nationality on all persons within the borders of the territory as at the time the Permanent Constitution (PC) comes into effect – unless a person expressly or through other means opts for the nationality of another state. Given the complex dynamic of South Sudan in that there are Arabic nomadic tribes that consider South Sudan their home – and many displaced persons that may have lost entire families with relatives that would otherwise support their claim to citizenship by descent – such an approach would ease the potential threat of statelessness.

Zimbabwe

Although Zimbabwe is not a state party to The Hague Convention on the Certain Questions Relating to the Conflict on Nationality Law, Article 43(2) of the Zimbabwe Constitution embodies the spirit of its Article 5 (b) and reads, “Every person who was born in Zimbabwe before the effective date is a Zimbabwean citizen by birth if

- (a) one or both of his or her parents was a citizen of a country which became a member of the Southern African Development Community established by the treaty signed at Windhoek in the Republic of Namibia on the 17th August, 1992; and
- (b) he or she was ordinarily resident in Zimbabwe on the effective date.”

Zimbabwe thus attempts to accommodate persons that do not qualify for citizenship under article 36(1) but have a strong connection to the country in that they are ordinarily resident in Zimbabwe from the date the Constitution becomes effective. Such a provision is unique to the Zimbabwean context and history where individuals from Malawi, Mozambique and other SADC countries migrated to Zimbabwe during the colonial era and had established a home with their families for generations. Many of these individuals were issued with identification documents that recognized them as “aliens” despite their long stay in the country and prevented them from voting or accessing certain privileges for citizens.

CONCLUSION

There is an emerging customary international law obligation to prevent statelessness. To reduce statelessness, South Sudan’s PC provision would make clear that children born of unknown parents, stateless parents, or parents whose nationality is undetermined, shall acquire at birth South Sudanese nationality and citizenship. Also, South Sudan may choose to include the TC’s citizenship-by-descent provision in the PC. It is worthwhile to consider providing a path to citizenship for stateless persons that are habitually resident within the South Sudan borders and possess a substantial connection to the territory (for a stipulated period of years prior to making an application) within stipulated laws.

¹The main principles governing the acquisition of nationality and citizenship are:

- (i) *Jus soli*- which is nationality by birth - persons acquire the nationality or citizenship of the country where they are born. The exception to this principle is the rule under international law, where children born to persons having diplomatic immunity, shall not be nationals by birth to the state to which the diplomatic agent is accredited.
- (ii) *Jus sanguinis* – which is nationality based on that of the parents – a person acquires the nationality or citizenship of their parents.

²Government of South Sudan, The Child Act 2008. Accessed on August 2, 2013 at:

<https://www.dropbox.com/sh/9j9s7qm6igqfkad/PKYIMiHQtp/The%20Child%20Act%202008.pdf>.

³League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, April 13, 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137.E.I.F July 1, 1937. Accessed on July 17, 2013 at:
<http://www.refworld.org/docid/3ae6b3b00.html>.

⁴Nottebohm Case (Liechtenstein v. Guatemala); Second Phase, International Court of Justice (ICJ), April 6, 1955. Accessed on August 2, 2013 at: <http://www.refworld.org/docid/3ae6b7248.html>.

⁵Nottebohm p 23. Accessed on July 17, 2013 at: <http://www.icj-cij.org/docket/files/18/2674.pdf>.

⁶Yearbook of the International Law Commission, Vol. II, 1952 “Nationality including statelessness”, 7. Accessed on July 19, 2013 at: http://untreaty.un.org/ilc/documentation/english/a_cn4_50.pdf.

⁷UN General Assembly, Convention on the Reduction of Statelessness, August 30, 1961, United Nations, Treaty Series, vol. 989, p. 175, E.I.F. December 13, 1975. Accessed on August 2, 2013 at:
<http://www.refworld.org/docid/3ae6b39620.html>.

⁸League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, April 13, 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, E.I.F. July 1, 1937. Accessed on August 2, 2013 at: <http://www.refworld.org/docid/3ae6b3b00.html>.

⁹International Law Commission, *Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)*, April 3, 1999, Supplement No. 10 (A/54/10). Accessed on August 2, 2013 at:
<http://www.refworld.org/docid/4512b6dd4.html>.

¹⁰Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, July 11, 1990, CAB/LEG/24.9/49 (1990), E.I.F. November 29, 1999. Accessed August 2, 2013 at:
<http://www.refworld.org/docid/3ae6b38c18.html>.

¹¹UN General Assembly, Convention on the Rights of the Child, United Nations Treaty Series, vol. 1577, p. 3, E.I.F. September 2, 1990. Accessed on August 6, 2013 at: <http://www.refworld.org/docid/3ae6b38f0.html>. Article 7 reads, “(1)The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. (2) States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

¹²UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171,E. I. F. March 23, 1976. Accessed August 2, 2013 at:
<http://www.refworld.org/docid/3ae6b3aa0.html>.

¹³UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, 217 A (III). Accessed on August 2, 2013 at: <http://www.refworld.org/docid/3ae6b3712c.html>.

¹⁴*The African Commission on Human and Peoples’ Rights, meeting at its 53rd Ordinary Session held from 9 to 23 April 2013 in Banjul, The Gambia, Resolution 234 on The Right Nationality*. Accessed on August 1, 2013 at:
<http://www.achpr.org/sessions/53rd/resolutions/234/>

¹⁵Statute of the International Law Commission, 147, Adopted by the General Assembly in resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981. Accessed on August 1, 2013 at;
http://untreaty.un.org/ilc/texts/instruments/english/statute_e.pdf. Article 1(1) states, “The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.”

¹⁶International Law Commission, Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries), 3 April 1999, Supplement No. 10 (A/54/10). Accessed on August 1, 2013 at:
<http://www.refworld.org/docid/4512b6dd4.html>.

¹⁷*United Nations, Statute of the International Court of Justice*, April 18, 1946. Accessed on August 6, 2013 at:
<http://www.refworld.org/docid/3deb4b9c0.html>. Article 38(1) reads, “The Court, whose function is to decide in

accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”

¹⁸Kay Hailbronner, “Nationality in Public International Law and European Law”, 30. Accessed on July 17, 2013 at: <http://www2.law.ed.ac.uk/citmodes/files/NATACCh1Hailbronner.pdf>.

¹⁹United Nations High Commissioner for Refugees, “Searching for Citizenship”. Accessed on July 17, 2013 at: <http://www.unhcr.org/pages/49c3646c155.html>.

²⁰Yearbook of the International Law Commission, Vol. II, 1952 “Nationality including statelessness”, 9. Accessed on July 19, 2013 at: http://untreaty.un.org/ilc/documentation/english/a_cn4_50.pdf.

²¹UN General Assembly, Convention Relating to the Status of Stateless Persons, September 28, 1954, United Nations, Treaty Series, vol. 360, p. 117. Accessed on July 25, 2013 at: <http://www.refworld.org/docid/3ae6b3840.html>.

Article 1 reads, “For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.”

²²Resolution Number 234 of The African Commission on Human and Peoples’ Rights on the Right to Nationality, April 23, 2013. Accessed on July 29, 2013 at: <http://www.achpr.org/sessions/53rd/resolutions/234/>

²³United Nations Economic and Social Council, “Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1995/69”, E/CN.4/1996/66, January 29, 1996, para 85. Accessed on July 25, 2013 at: <http://www1.umn.edu/humanrts/commission/country52/66-zre.htm>.

²⁴UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, 217 A (III). Accessed on July 29, 2013 at: <http://www.refworld.org/docid/3ae6b3712c.html>. Article 15 (1).

²⁵UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, vol. 999, p. 171, E.I.F. March 23, 1976. Accessed on July 29, 2013 at: <http://www.refworld.org/docid/3ae6b3aa0.html>. Article 24(3).

²⁶Yearbook of the International Law Commission, Vol. II, 1952 “Nationality including statelessness”, 19. Accessed on July 19, 2013 at: http://untreaty.un.org/ilc/documentation/english/a_cn4_50.pdf.

²⁷Government of South Sudan, The Child Act 2008. Accessed on August 2, 2013 at;

<https://www.dropbox.com/sh/9j9s7qm6igqfkad/PKYIMiHQtp/The%20Child%20Act%202008.pdf>.

²⁸Myres S. McDougal, Harold D. Lasswell & Lung-chu Chen “Nationality and Human Rights: The Protection of the Individual and External Arenas”, (83 Yale Law Journal, 1973-1974), 965.

²⁹League of Nations, Convention on Certain Questions Relating to the Conflict of Nationality Law, April 13, 1930, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137.EIF July 1, 1937. Accessed on July 17, 2013 at: <http://www.refworld.org/docid/3ae6b3b00.html>. Article 15 reads, “Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases.”

³⁰Ian Brownlie, *Principles of Public International Law* (7th Edition, Oxford University Press): 2008, 394.

³¹UN General Assembly, *Convention on the Rights of the Child*, November 20, 1989, U.N.T. S. vol. 1577, p. 3. Accessed on July 30, 2013 at: <http://www.refworld.org/docid/3ae6b38f0.html>. Article 7 reads, “1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

³²Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, July 11, 1990, CAB/LEG/24.9/49 (1990). Accessed on July 30, 2013 at: <http://www.refworld.org/docid/3ae6b38c18.html>.

³³African Union, “African Union Welcomes South Sudan as the 54th member State of the Union”, July 27, 2011. Accessed on July 30, 2013 at: <http://www.au.int/en/content/african-union-welcomes-south-sudan-54th-member-state-union>.

³⁴Organization of African Unity, *Constitutive Act of the African Union*, July 1, 2000. Accessed on July 30, 2013 at: <http://www.refworld.org/docid/4937e0142.html>. Article 3 (e) and (h) respectively; “The objectives of the Union shall be to (e) Encourage international cooperation, taking due account of the Charter of the United Nations and the

Universal Declaration of Human Rights; and (h) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments..."

³⁵Organization of African Unity, African Charter on the Rights and Welfare of the Child, July 11, 1990, CAB/LEG/24.9/49 (1990). EIF November 29, 1999. Accessed on July 23, 2013 at:

<http://www.refworld.org/docid/3ae6b38c18.html>.

³⁶Resolution Number 234 of The African Commission on Human and Peoples' Rights on the Right to Nationality, April 23, 2013. Accessed on July 29, 2013 at: <http://www.achpr.org/sessions/53rd/resolutions/234/>.

³⁷Government of South Sudan, The Nationality Act of 2011. Accessed on August 2, 2013 at:

<http://www.refworld.org/docid/4e94318f2.html>. Article 8(4) reads, "A person who is or was first found in south Sudan as a deserted infant of unknown Parents shall, until the contrary is proved, be deemed to be a South Sudanese National by birth".

³⁸Constitution of the Republic of Mozambique, E.I.F. December 21, 2004. Accessed on July 25, 2013 at:

http://www.wipo.int/wipolex/en/text.jsp?file_id=206607#LinkTarget_3595.

³⁹Resolution Number 234 of The African Commission on Human and Peoples' Rights on the Right to Nationality, April 23, 2013. Accessed on July 29, 2013 at: <http://www.achpr.org/sessions/53rd/resolutions/234/>.

⁴⁰Constitution of the Republic of Kenya, Revised 2010. Accessed on July 22, 2013 at:

<http://www.kenyalaw.org/klr/index.php?id=741>.

⁴¹UN General Assembly, *Convention on the Reduction of Statelessness*, August 30, 1961, United Nations, Treaty Series, vol. 989, p. 175. Accessed on August 1, 2013 at: <http://www.refworld.org/docid/3ae6b39620.html>. Article 1(5) reads, "The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions: (a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State; (b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State; (c) that the person concerned has always been stateless."

⁴²Jeffrey L. Blackman, "State Successions and Statelessness: The Emerging Right to An Effective Nationality under International Law", (*Michigan Journal of International Law* Vol. 19; Summer 1998), 1161. Ian Brownlie, an international legal scholar, argues that the population must go with the territory – that is to say – nationals of another state who continue their habitual residence in the successor state, become nationals of that successor state.

⁴³International Law Commission, Draft Articles on Nationality in Relation to the Succession of States, March 8, 1999, A/CN.4/497, 29. Accessed on August 1, 2013 at: <http://www.refworld.org/docid/3ae6b3288.html>.

⁴⁴International Law Commission, Draft Articles on Nationality in Relation to the Succession of States, March 8, 1999, A/CN.4/497. Accessed on August 1, 2013 at: <http://www.refworld.org/docid/3ae6b3288.html>. Article 5 which reads, "Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession".