

AGREEMENT ON FREE MOVEMENT AND THE RIGHTS OF RESIDENCE, ECONOMIC ACTIVITY AND OWNERSHIP OF PROPERTY FOR CITIZENS OF THE REPUBLIC OF SUDAN AND THE REPUBLIC OF SOUTH SUDAN

Between

THE GOVERNMENT OF THE REPUBLIC OF SUDAN

And

THE SUDAN PEOPLE'S LIBERATION MOVEMENT

The Parties:

Considering that the outcome of the referendum on self-determination for the people of South Sudan was a choice for the secession of Southern Sudan from the Republic of Sudan;

Affirming that the Sudanese people will remain bound together by ties of history, culture, economy and geography in a common national heritage;

Convinced that sustaining the freedom of the Sudanese people to move, reside, own property and undertake economic activities within the territory of the two Sudanese states is essential for promoting the social and economic viability of both states;

Acknowledging that the full enjoyment of the above freedoms requires the continued cooperation between the two States and the establishment of common principles and institutions of oversight;

Have agreed as follows:

PART I Interpretation

Article One

In this Agreement;

"the Border Area" refers to territory within the administrative states of the Republic of Sudan and the Republic of South Sudan immediately on either side of the international border between the two States;

"Common Area" refers to the territory defined in Article 2 of this Agreement;

"Common National" has the meaning ascribed by Article 3 of this Agreement, and does not include any person who possesses the citizenship of both States;

"CPA Interim Period" refers to the interim period provided for in the Comprehensive Peace Agreement, which ends on 8th July 2011;

"Ministerial Commission" refers to the Joint Ministerial Commission established by Article 24 of this Agreement;

"national authorities" refers to the official institutions of either State and includes professional bodies;

"person" includes all entities that possess legal personality;

"public sector" refers to all sections of the government;

"security services" includes the armed forces, police, national intelligence services, prisons service, and any other agency responsible for maintaining security within each State;

"State" refers to the Republic of Sudan or the Republic of South Sudan;

"the other State" in relation to a Common National refers to the State of which that Common National is not a citizen;

"the Parties" means the Government of the Republic of Sudan and the Sudan People's Liberation Movement;

"the two States" refers to the Republic of Sudan and the Republic of South Sudan;

“transboundary communities” includes pastoralists and other nomadic peoples who cross the international border between the two States in pursuit of their livelihoods.

PART II

Key Concepts

Article Two Common Area

For purposes of this Agreement, the territory of the Republic of Sudan and the Republic of South Sudan shall constitute a Common Area.

Article Three Common Nationals

For purposes of this Agreement, citizens of the Republic of Sudan and of the Republic of South Sudan shall be referred to as Common Nationals.

Article Four The Rights and Freedoms

Common Nationals shall enjoy the following rights and freedoms:

- (i) The right to reside within the territory of the other State.
- (ii) The right to move freely between the two States.
- (iii) The right to undertake economic activity within the territory of the other State.
- (iv) The right to own property within the territory of the other State.

Part III
Elaboration of Rights and Freedoms

Article Five
Right of Residence

A Common National shall have the right to reside on the territory of the other State without a residence permit and without any limit on the period for which he or she may remain and, while residing there, to exercise all other rights associated with residence.

Article Six
Rights Associated with Residence

1. When residing on the territory of the other State, Common Nationals shall enjoy, on the same terms as citizens, all rights associated with residence, including access to public services such as education, health and other social services and the freedom to exercise religious, cultural and social rights.
2. The two States may adopt additional measures to give effect to the provisions of paragraph 1 of this Article.

Article Seven
Freedom of Movement

1. Common Nationals shall have the right to enter and exit the territory of the other State through official points of entry and exit, with a valid passport or any other form of identification agreed upon by the two States, without requiring a visa.
2. Neither State shall impose any limit or condition on the period for which a citizen of the other State may remain on its territory except as is consistent with Part V of this Agreement.

Article Eight
Transboundary Communities and Border Area Residents

The two States shall make special arrangements to facilitate the cross-border movement of Common Nationals from transboundary communities or who reside within the Border Area.

Article Nine

Right to Undertake Economic Activity

1. A Common National shall have the right to undertake economic activity within the other State and shall not be subjected to conditions less favourable than those to which the citizens of that State are subjected.
2. Economic activity shall include the following: employment; self-employment; the setting up and managing of a business or trade; the practising of a profession or calling; the provision of other services; and, the undertaking of training and educational courses.

Article Ten

Right to Own Property

Common Nationals shall have the right to acquire, own and dispose of movable or immovable property within the territory of the other State.

PART IV General Principles

Article Eleven

Removal of obstacles and other measures

Each State shall remove any obstacle in the way of the enjoyment of the rights and freedoms conferred by this Agreement, and shall take such other measures as are necessary for ensuring the efficacy of those rights and freedoms.

Article Twelve

Non-discrimination

In the exercise of rights under this Agreement, Common Nationals shall not be discriminated against, whether directly or indirectly, on the basis of their citizenship.

Article Thirteen

Non-discrimination in economic activity

Each State shall secure for the citizens of the other State who are on its territory, the same treatment as its citizens in relation to employment or self-employment rights, including with respect to the following:

- (i) Tax advantages and social services;
- (ii) Access to work-related training;
- (iii) Participation in trade unions.

Article Fourteen
Mutual Recognition of Qualifications

1. In order to facilitate economic activity by Common Nationals, each State shall recognise the qualifications awarded by the educational and professional institutions of the other State.
2. The two States may adopt additional measures to give effect to the provisions of paragraph 1 of this Article.

Article Fifteen
Extension of Rights to Family Members

A Common National who is exercising rights of residence or movement under this Agreement shall have the right to be accompanied or joined by members of his or her immediate family who are not Common Nationals.

Article Sixteen
Guarantee of Rights

A person who has already exercised any of the rights conferred by this Agreement shall not be deprived of that right by reason of the amendment or termination of this Agreement.

Article Seventeen
Cooperation

The two States shall cooperate and may adopt further measures for the implementation of this Agreement, including with respect to:

- (i) Promoting public awareness of the provisions and measures under this Agreement;
- (ii) Joint training of personnel responsible for implementing the various aspects of this Agreement in either State;
- (iii) Establishing mechanisms for preventing the illegal movement of persons within the Common Area;
- (iv) Adopting special arrangements at points of entry for the

processing of travelling Common Nationals, including issuing standard, simplified immigration forms;

- (v) Making special arrangements for the travelling needs of transboundary communities and residents of the Border Area.
- (vi) Ensuring that opening times for border points are harmonised and that some border points remain open for extended hours.

PART V

Permissible Limitations on Freedoms

Article Eighteen Permissible limitations

1. Neither State shall impose limitations on the exercise by Common Nationals of the freedoms provided for in this Agreement, except where such limitations are prescribed by law and are necessary in the interests of maintaining national security, the protection of public order or the protection of public health.
2. It shall be for the State imposing a limitation pursuant to paragraph 1 of this Article to demonstrate the necessity of its action.

Article Nineteen Adverse Decisions

1. A State shall not expel or refuse entry to a Common National, or members of their family who are exercising rights under this Agreement, except on the grounds specified in Article 18 (1) of this Agreement.
2. Where a decision pursuant to paragraph 1 of this Article is to be taken on public policy or public security grounds, the following principles shall apply:
 - (a) The decision must be based on the personal conduct of the individual exclusively;
 - (b) The individual must represent a genuine and sufficiently serious threat to the interests of the State in question;
 - (c) The decision must be based on the principle of proportionality;

- (d) All the personal circumstances of the affected individual shall be taken into consideration including the length of their residence and strength of connections to the State concerned and their connections to their country of origin;
 - (e) The decision must not be taken to serve economic ends.
3. The State making an adverse decision against a person pursuant to this Part of the Agreement shall respect the civil rights of the affected individual.

Article Twenty
Limitations on Employment

- 1. Either State may impose such restrictions on the employment of citizens of the other State in the public sector as are necessary for protecting national security.
- 2. Either State may impose an absolute limitation on the employment of the citizens of the other State in its security services.

Article Twenty One
Individual Redress

- 1. Common Nationals shall have an unfettered right to seek redress in the courts of the State within which the rights provided by this Agreement may have been violated.
- 2. Without prejudice to the provisions of paragraph 1 of this Article, the two States may adopt further provisions to facilitate access to administrative and judicial redress for individuals with respect to the rights and freedoms conferred by this Agreement.

PART VI
Implementation of the Agreement

Article Twenty Two
Legal Effect of the Agreement

This Agreement shall take precedence over the national laws of each State.

Article Twenty Three
National Legislation and other Measures

1. Subject to Article 22 of this Agreement, each State shall adopt legislation and other measures to give full effect to the rights and freedoms guaranteed by this Agreement.
2. The two States shall harmonise their national laws and measures that they may adopt pursuant to paragraph 1 of this Article.

Article Twenty Four
Common Institutions

1. The two States shall establish the following mechanisms to ensure the effective implementation of this Agreement:
 - (a) a Joint Ministerial Commission;
 - (b) a Joint Technical Committee, which shall report to the Ministerial Commission.
2. The two States shall determine the composition, working methods, financing arrangements and further functions of the Ministerial Commission and of the Technical Committee established under paragraph 1 of this Article.
3. The Ministerial Commission shall allocate responsibilities to the Joint Technical Committee.

Article Twenty Five
The Ministerial Commission

The Ministerial Commission shall have primary responsibility for overseeing the implementation of this Agreement and in particular, the cooperation between the two States in accordance with Article 17 of this Agreement.

Article Twenty Six
Measures for Implementing Agreement

1. The Ministerial Commission shall have the power to adopt additional measures for giving effect to this Agreement.
2. Each State shall ensure that the measures proposed by the Ministerial Commission are given full legal effect within its

national system.

Article Twenty Seven
Complaints and Disputes

1. Either State may raise with the other State a complaint concerning the treatment of its nationals or the implementation of this Agreement.
2. Disputes arising from the implementation of this Agreement shall, in the first instance, be addressed through the Joint Ministerial Commission established under Article 24 of this Agreement.

Article Twenty Eight
Interpretation

Any question concerning the interpretation of this Agreement shall in the first instance be addressed by the Joint Technical Committee, which shall refer the matter to the Ministerial Commission in the event that the Committee does cannot resolve the matter.

Done and Signed by the Parties etc.