

# OPERATIONAL GUIDANCE NOTE

## SUDAN

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#### 1. Introduction

**1.1** This document evaluates the general, political and human rights situation in Sudan and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.

**1.2** This guidance must also be read in conjunction with any COI Service Sudan Country of Origin Information at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

**1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## Source documents

- 1.4 A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

- 2.1 The President of the Republic of Sudan is Lt. Gen. Omar Hassan al-Bashir, who took power from the previous democratically elected government in a coup on 30 June 1989. Lt. Gen. Omar Hassan al-Bashir abolished the constitution, the previous regime's National Assembly, all political parties and trade unions. President al-Bashir and his party were elected in December 2000, but the elections were uncontested due to a boycott by the main opposition parties.<sup>1</sup>

### South Sudan

- 2.2 On 9 January 2005 the 20 year old civil conflict was formally ended when the Government of Sudan and Sudan People's Liberation Movement SPLM signed the Comprehensive Peace Agreement (CPA). The text of the 9 January 2005 agreement stated that the six-month pre-interim period commenced from the date of the CPA's signing. The Interim National Constitution (INC) was signed on 9 July 2005. The parties have now established a Government of National Unity (GNU) comprising members of the National Congress, SPLM and other northern and southern political forces. The Presidency of the GNU, comprising of President Field Marshall Bashir, First Vice President Garang [who was succeeded by Lt. Gen. Salva Kiir Mayardit following Garang's death on 30 July 2005] and Vice President Taha, was sworn in on 9 July, the National Assembly first sat on 1 September and the formation of the Government of National Unity was announced on 20 September 2005.<sup>2</sup> On 16 September 2006, the SPLM Politburo renewed its commitment to the full implementation of the CPA with the ruling National Congress Party (NCP).<sup>3</sup>

### West Sudan - Darfur

- 2.3 Despite the progress made on implementing the CPA, conflict continues in the Darfur States. Government forces have been fighting the Sudan Liberation Movement/Army (SLM/A) - formerly the Darfur Liberation Movement/Front - and the Justice and Equality Movement (JEM) in the Darfur States since February 2003. Attacks on civilians continued in 2005 and 2006. This followed the signature of a humanitarian ceasefire agreement on 8 April 2004 and Security and Humanitarian Protocols on 9 November 2004 in Abuja. While fighting between the Government and rebels has been limited in 2007, the security situation in Darfur remains precarious, with neither side abiding by their commitments. Government bombing of civilian villages resumed in April 2007 and banditry is rife; insecurity hampers the delivery of humanitarian assistance and Darfuri citizens continue to be displaced in large numbers.<sup>4</sup>

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<sup>1</sup> COIS Sudan COI Report(History)

<sup>2</sup> COIS Sudan COI Report(History; Peace and conflict in Sudan - South Sudan)

<sup>3</sup> COIS Sudan COI Report(Peace and conflict in Sudan - South Sudan)

<sup>4</sup> COIS Sudan COI Report(History; Peace and conflict in Sudan - Darfur)

- 2.4** In May 2006 the Khartoum government and the faction of the main rebel group the SLM(A) headed by Mini Minnawi signed a peace accord. The other faction of the SLM, headed by Abdel Wahid, and the JEM rejected the deal and fighting returned to its worst level since 2004. In August 2006 the Khartoum government rejected a United Nations resolution calling for a UN peacekeeping force in Darfur, saying it would compromise Sudanese sovereignty.<sup>5</sup>
- 2.5** The Sudanese government has now accepted the second phase of UN support to the 7,000 African Union troops in Darfur. This support package of 3,000 UN personnel will bolster the AU's logistics, police and engineering capabilities to pave the way for the planned AU-UN Hybrid force. It is designed as a stepping stone to this joint force of up to 20,000, that is the third and final phase of planned deployments. The Government of Sudan has yet to agree to this.<sup>6</sup>

### **East Sudan**

- 2.6** Though rebel groups have clashed intermittently with government forces in eastern Sudan since 1996, tension has risen in recent years. In February 2005 it was reported that the Beja Congress (BC) and Rashaida Free Lions (FL) had merged to become the Eastern Front (EF), following their withdrawal from the Cairo talks between the Government and the Sudan National Democratic Alliance (NDA). Low-level sporadic clashes between the Eastern Front and government forces occurred throughout 2005.<sup>7</sup>
- 2.7** In January 2006 increased tension between the Eastern Front and government forces in and near the town of Hamesh Koreb was reported. Despite, in November 2005, the parties to the conflict having expressed their willingness to participate in Libyan and Eritrean mediated peace talks, the commencement of such proceedings was delayed on four successive occasions. The involvement of Eritrea - a long-time supporter of the BC, at least politically and morally if not militarily, as claimed by the National Congress Party - in the talks, as originally proposed in November 2005, proved to be the main obstacle to the NCP's participation in early February 2006.<sup>8</sup> In June 2006 rebels in eastern Sudan and the government signed a ceasefire deal at talks in Eritrea. Both sides agreed to end hostilities to pave the way for a lasting settlement, the Eritrean mediators said.<sup>9</sup> In October 2006 the Sudanese government and the Eastern Front rebels signed a peace agreement to end the conflict in Eastern Sudan.<sup>10</sup>

### **Neighbouring countries**

- 2.8** In January 2006 Chad and Sudan discussed the possibility of engaging in talks to ease the tension that has grown between the two countries since late 2005. Chad has accused Sudan of supporting Chadian rebels operating from

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<sup>5</sup> COIS Sudan COI Report (Human rights; Political affiliation, Peace and conflict in Sudan – Darfur)

<sup>6</sup> BBC News 'Sudan agrees to UN peacekeepers' 16 April 2007.

<sup>7</sup> COIS Sudan COI Report (History; Peace and conflict in Sudan - East Sudan)

<sup>8</sup> COIS Sudan COI Report (History; Peace and conflict in Sudan - East Sudan)

<sup>9</sup> COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan)

<sup>10</sup> COIS Sudan COI Report (History; Peace and conflict in Sudan - East Sudan)

Darfur, although Sudan has denied that the rebels are in Sudanese territory. Following an 8 February 2006 agreement in Libya to end support to each other's rebel groups, cross-border raids continued and high-level defections from Chad's army to the Darfur-based Chadian rebels increased the likelihood of the escalation of tension between the countries.<sup>11</sup>

## Human rights

- 2.9** In 2004, 2005 and 2006, the abuse of individuals and groups, and the severe restriction of fundamental freedoms, were reported in detail by various international governments and agencies, and both international and national human rights groups such as the United States Department of State (USSD), United Nations (UN), Human Rights Watch (HRW), Amnesty International (AI), the Sudan Organisation Against Torture (SOAT) and the Sudan Human Rights Organisation-Cairo (SHRO-Cairo).<sup>12</sup>
- 2.10** The government's human rights record remained poor in 2006, and there were breaches of international humanitarian law and gross and systematic violations of human rights, including evidence of mass murder in Darfur, for which the government and the *janjaweed* militias continued to bear responsibility.<sup>13</sup> While the creation in October 2005 of a southern government that is transparent and accountable and enforces human rights looked highly ambitious, the early willingness to let people choose their representatives is a good sign. They already enjoy more human rights than do their northern fellow citizens, in that the presence of security forces in the southern garrison towns is lessened and there has been more free speech, free press and free assembly in the south than for decades.<sup>14</sup> The (northern) Sudanese Armed Forces (SAF), however, have not yet withdrawn from the south but under the peace agreement they have two years to complete the process. Although there was sporadic violence in different areas of the south in 2006, the north-south ceasefire agreement largely held and both the Sudanese Armed Forces and the Sudan People's Liberation Army made progress redeploying their forces under the terms of the CPA.<sup>15</sup>
- 2.11** The following human rights problems were reported in 2006: abridgement of citizens' rights to change their government; evidence of war crimes; extra-judicial and other unlawful killings by members of the security forces and government-allied militias acting with impunity; killings of civilians in conflict; abductions; torture, beatings, and rape by security forces; harsh and life-threatening prison conditions; arbitrary arrest and detention, including incommunicado detention of suspected government opponents, and prolonged pretrial detention; executive interference in the judiciary and denial of fair trial in civilian and military courts; forced military conscription of underage men; obstructions to humanitarian assistance in Darfur; infringement of citizens' privacy rights; severe restrictions on freedom of speech, press, assembly, association, religion, and movement within the country; harassment and detention of internally displaced persons (IDPs); harassment of human rights organisations; violence and discrimination against women and female genital mutilation (FGM); abuse of children,

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<sup>11</sup> COIS Sudan COI Report(History; Peace and conflict in Sudan - East Sudan)

<sup>12</sup> COIS Sudan COI Report(History; Peace and conflict in Sudan - East Sudan)

<sup>13</sup> US State Country Report 2006: Introduction

<sup>14</sup> COIS Sudan COI Report (Human rights; Introduction & Peace and conflict in Sudan) ?

<sup>15</sup> Human Rights Watch Report 2007 'Mixed progress in South Sudan'

particularly in Darfur; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers' rights; forced labour, including forced child labour, by security forces and associated militias and widespread child labour.<sup>16</sup>

- 2.12** Anti-government insurgent groups and associated militia forces were reported to have committed numerous, serious abuses in 2005 and 2006. The SPLM Army (SPLM/A) in the south, the Sudan Liberation Army (SLA), and the JEM in Darfur committed killings, beatings, abductions, rape, robbery, destruction of property, and forcible conscription. They restricted freedom of movement of populations under their control and access of relief workers and supplies, and kidnapped and killed non-governmental organisation (NGO) workers.<sup>17</sup>

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Sudan. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All asylum instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Agency internet site at:

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<sup>16</sup> US State Country Report 2006: Introduction

<sup>17</sup> US State Country Report 2006: Introduction

<http://www.ind.homeoffice.gov.uk/lawandpolicy/policyinstructions/>

### **3.6 Members of the Beja Congress**

- 3.6.1** Some applicants will make an asylum and/or human rights claim based on alleged mistreatment at the hands of the authorities on account of their association with, or membership of, the Beja Congress (BC).
- 3.6.2** ***Treatment.*** The BC was originally created in 1953 to draw attention to the political and economic grievances of the Beja tribes from the Port Sudan region. Following the 1989 coup after which all political parties were dissolved, the BC turned to armed struggle and waged several military confrontations with al-Bashir's regime. In August 2004, the BC which claims to control large parts of the east, continued to observe a self-imposed ceasefire and would attack only if provoked. The BC's ceasefire had been in effect since November 2003, as the rebels awaited the final result of the north-south peace talks.<sup>18</sup>
- 3.6.3** The Beja Congress refused to attend the January 2005 Government of Sudan-National Democratic Alliance (NDA) peace talks in Cairo that resulted in a preliminary peace agreement between the two sides. In January 2005, leading members of the Beja tribe presented a list of demands to the Government authorities in Port Sudan, an action followed by the demonstration of thousands of Beja. In February 2005 the BC and the Free Lions, also a member of the NDA, had merged to become the Eastern Front. The two groups had withdrawn from the National Democratic Alliance in 2004. However, it is not clear whether a full split had occurred, or if such a split was permanent.<sup>19</sup>
- 3.6.4** Demonstrations in January 2005 by the Beja tribes and BC members in Port Sudan resulted in several deaths and many arrests. There was also an increase in armed Government action against the BC and reported attacks on individual Bejans/BC associates in April 2005. In June 2005, the Government and the NDA signed a reconciliation deal allowing the NDA into a power-sharing administration. However, the Eastern Front (comprising the Beja Congress, Free Lion and the JEM), formed later in 2005, has effectively split from the NDA and does not consider itself bound by the June 2005 agreement. All those detained following the January 2005 demonstrations had been released by the end of June 2005 and there have been no reports of significant confrontations since.<sup>20</sup>
- 3.6.5** The government has invested some resources in eastern Sudan. In February 2005, it dispatched a committee, led by the former minister for roads and bridges and now governor of Red Sea State, Mohamed Tahir Aila, to promise development aid. At an April 2005 meeting in Kassala attended by most of the tribal, religious and political leaders and sponsored by the National Congress Party, Minister of Finance al- Zubeir Ahmed al-Hassan pledged \$88 million over three years. However, there were reports in 2005 of the authorities undermining the position of the Beja Congress and sowing distrust between the Beja and non-Beja communities, and between the different Beja tribes

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<sup>18</sup> COIS Sudan COI Report (Peace and conflict in Sudan; East Sudan & Annex B)

<sup>19</sup> COIS Sudan COI Report (Peace and conflict in Sudan; East Sudan & Annex B)

<sup>20</sup> COIS Sudan COI Report (Peace and conflict in Sudan; East Sudan & Annex B)

themselves. Government agents and media have allegedly intimidated the Tigre-speaking Beja that the Beja Congress is solely a TuBedawiye-speaking organisation that will not represent their interests.<sup>21</sup>

- 3.6.6** On 19 June 2006 the Sudanese government and rebels of the Eastern Front (EF) signed a ceasefire and agreed on a framework for substantive peace talks to end a simmering civil conflict. Preparatory talks between the government and the EF – comprising the Beja Congress and the Rashaida Free Lions - began in Eritrea on 13 June and concluded on 19 June with the signing of two agreements. They signed a declaration of principles - a framework for future talks - and an agreement on creating a conducive environment for peace, which includes a ceasefire, the lifting of the state of emergency, the release of prisoners of war, and an agreement to refrain from hostile media campaigns. Subsequently, in October 2006 the Sudanese government and the Eastern Front rebels signed a peace agreement to end the conflict in Eastern Sudan.<sup>22</sup>
- 3.6.7 *Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.6.8 *Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.6.9 *Conclusion.*** In June 2006 the Eastern Front Alliance in which the BC operates finalised a ceasefire agreement with the Khartoum government in which a ceasefire was announced with immediate effect. A peace agreement was signed in October 2006. In light of this conciliatory agreement and the observance of the ceasefire, it is not likely that any level of BC members are now at real risk of persecution. The grant of asylum in such cases is therefore unlikely to be appropriate.
- 3.6.10** Caseowners should note that members of the BC have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the BC and the evidence suggests he/she has been involved in such actions, then caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners should refer all such cases within this category of claim to a Senior Caseworker in the first instance. Further guidance on Article 1F can be found in the Asylum Instructions on 'Exclusion – Articles 1F and 33(2) of the Refugee Convention

### **3.7 Members of armed opposition groups**

Some applicants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to their alleged membership of, or association with, one of the main armed opposition groups. These are: the Sudan People's Liberation Movement/Army (SPLM/A) which dominates large parts of Equatoria, Bahr el-Ghazal and Upper Nile regions in the South and the Sudan Liberation Movement Army (SLM/A) – formerly the

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<sup>21</sup> COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan)

<sup>22</sup> COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan)

Darfur Liberation Movement/Front – and the Justice and Equality Movement (JEM) which operate in the three Darfur regions of western Sudan. Any ethnic dimension to these categories will usually involve members of the Nuba group being associated with the SPLM/A or members of one of the non-Arab ethnic groups in Darfur being associated with the SLM/A or JEM.<sup>23</sup>

### **3.7.1 Members or associates of the SPLM/A (inc. the Nuba)**

**3.7.1.1 Treatment.** The Nuba people have experienced abductions followed by slavery in the past, but the ceasefire, which has been in effect since January 2002, was in part instigated to address the problem of abductions. Their native Nuba Mountains are in central Sudan and not in the southern war zone where most of the civil war fighting has taken place. The SPLM/A have been based in the Nuba Mountains and some Nuba people have joined the SPLM/A to fight against government forces.<sup>24</sup>

**3.7.1.2** The end of the 21-year civil conflict between the Government and the SPLM/A was formally enshrined in January 2005 when representatives of the Government and the SPLM/A signed a Comprehensive Peace Agreement (CPA). The parties have also established a Government of National Unity (GNU) comprising members of the National Congress, SPLM and other northern and southern political forces. The Presidency of the GNU was sworn in on 9 July 2005, the National Assembly first sat on 1 September 2005 and the formation of the GNU was announced on 20 September 2005. In accordance with the CPA, a Government of Southern Sudan (GSS) was announced in October 2005 which gives a large degree of administrative autonomy to the south and the chance to vote for full independence in six years' time.<sup>25</sup> On 16 September 2006, the SPLM Politburo renewed its commitment to the full implementation of the CPA with the ruling National Congress Party (NCP).<sup>26</sup>

**3.7.1.3 Sufficiency of protection.** Since the conclusion of the CPA in January 2005 and the establishment of the GSS in October 2005, individuals associated with the SPLM/A are not at risk of ill treatment amounting to persecution at the hands of the state authorities. The availability and necessity of state protection for such applicants is not a relevant consideration.

**3.7.1.4 Internal relocation.** Since the conclusion of the CPA in January 2005, and the establishment of the GSS in October 2005, individuals associated with the SPLM/A are not at risk of ill treatment amounting to persecution at the hands of the state authorities. Internal relocation to another part of the country is not a relevant consideration as those affiliated to the SPLM/A would now be able to safely reside in any part of the country.

**3.7.1.5 Conclusion.** Since the peace agreement in January 2005 and the subsequent establishment of the GSS in October 2005, affiliates of the SPLM/A who had previously suffered ill treatment by the authorities prior to January 2005 are not now likely to be at risk of the same treatment. Claimants who claim to have suffered persecution on the basis of their affiliation at any level to the SPLM/A or associated membership of the Nuba will be unlikely to have a well-founded claim for asylum.

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<sup>23</sup> COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan & Annex B)

<sup>24</sup> COIS Sudan COI Report (Ethnic groups – Central Sudan)

<sup>25</sup> COIS Sudan COI Report (History; Peace and conflict in Sudan - South Sudan)

<sup>26</sup> COIS Sudan COI Report (Peace and conflict in Sudan - South Sudan)



**3.7.1.6** Caseowners should note that members of SPLM/A have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the SPLM/A and the evidence suggests he/she has been involved in such actions, then caseowners should consider whether one of the Exclusion clauses is applicable. Further guidance on Article 1F can be found in the Asylum Instruction on 'Exclusion – Articles 1F and 33(2) of the Refugee Convention. Caseowners should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

### **3.7.2 *Members or associates of the SLM/A or JEM***

**3.7.2.1 *Treatment.*** The Sudanese Liberation Movement (SLM/A) and Justice and Equality Movement (JEM) are armed opposition groups in the western Darfur states who are made up of, and represent, non Arab ethnic Sudanese groups in those regions. These groups' focus is an armed resistance campaign against government-sponsored Arab militias. The Government of Sudan, SLM and JEM engaged in African Union (AU) led peace talks and signed a Declaration of Principles, setting out the parameters for a final settlement to the conflict, on 5 July 2005. In August 2005, the United Nations Secretary General reported that generally the ceasefire had been holding, but noted that renewed fighting between the Government and the SLM/A in July 2005 threatened to complicate further peace talks..<sup>27</sup>

**3.7.2.2** However, during 2004, 2005 and 2006 there were numerous reports of allegations that government forces, including allied militias, were guilty of committing violations of the cease fire and in September 2005, it was reported that neither side was abiding fully by their commitments to the earlier agreements. According to reports, the Government was responsible for the arrest, detention and disappearance of persons suspected of supporting rebels in the Darfur region in 2005. In parallel to SLM/A and JEM attacks, the Government increased its clampdown on local leaders, used military tribunals to try those accused of insurrection and ramped-up military operations..<sup>28</sup>

**3.7.2.3** There were reports that the Government's security forces tortured such persons. It was also alleged that some of the numerous persons arrested in 2004 and 2005 for suspected support of the rebels in Darfur were tried, convicted and sentenced to death under Special Courts and an indeterminate number of Darfurians remained in detention throughout 2005. Amnesty International (AI) and the Sudan Organisation Against Torture (SOAT) recorded in 2004 and 2005, that Darfuris residing in Khartoum and other areas of north Sudan were arrested and detained, apparently on suspicion of being members of/supporting the SLM/A and JEM in Darfur. The vast majority of the cases reported by AI and SOAT involved students, educated persons or influential members of a tribe or community, such as Sheiks and Omdas. There were no reports to suggest that members of the SLM/A or JEM, other than those in prominent positions, were at risk of being arrested or detained in Khartoum in 2005..<sup>29</sup>

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<sup>27</sup> COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur & Annex B)

<sup>28</sup> COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur & Annex B)

<sup>29</sup> COIS Sudan COI Report (History; Judiciary; Political affiliation; Peace and conflict in Sudan – Darfur & Annex B)

**3.7.2.4** In May 2006 the Khartoum government and a faction of the SLM/A signed a peace accord. However the JEM rejected the deal and the region was destabilised by fighting to its worst level since 2004. In August 2006 the Khartoum government rejected a United Nations resolution calling for a UN peacekeeping force in Darfur, saying it would compromise Sudanese sovereignty.<sup>30</sup> The Sudanese government has now accepted the second phase of UN support to the 7,000 African Union troops in Darfur. This support package of 3,000 UN personnel will bolster the AU's logistics, police and engineering capabilities to pave the way for the planned AU-UN Hybrid force. It is designed as a stepping stone to this joint force of up to 20,000, that is the third and final phase of planned deployments. The Government of Sudan has yet to agree this.<sup>31</sup>

**3.7.2.5 Sufficiency of protection.** If this category of claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to their high profile status in the SLM/A or JEM, they cannot apply to these agents or any other state authority for protection.

**3.7.2.6** If this category of the claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to their low or mid level affiliation to the SLM/A or JEM, they cannot apply to these agents for protection. However, the Janjaweed operate exclusively in Darfur and there is no evidence that they operate in any other part of Sudan.<sup>32</sup> As low-mid level affiliates may return to a part of Sudan where these persecutory agents are not present, the availability of adequate protection from the authorities in other regions is irrelevant.

**3.7.2.7 Internal relocation.** If this category of claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to their high profile status in the SLM/A or JEM, they cannot relocate to another part of the country to escape this threat.

**3.7.2.8** Low-mid level affiliates are unlikely to be at risk of persecution outside the Darfur States<sup>33</sup> and it is considered that it is not unduly harsh to expect them to relocate to an area within Sudan in which they will be safe. Freedom of movement outside the war zones is generally unhindered. Failed asylum seekers are returned to Khartoum therefore they may remain there or safely relocate to another area.

**3.7.2.9 Conclusion.** While a nominal peace agreement was signed in May 2006 between the Khartoum government and the SLM/A, the JEM was not party to the agreement and fighting between the various rebel factions and the government-backed forces in Darfur continues.<sup>34</sup> There is a strong likelihood that leading members and prominent figures in the SLM/A or JEM, those with significant involvement in these organisations and affiliated persons considered by the authorities to be 'intellectual' will be subject to treatment amounting to persecution in Khartoum or the Darfur states. Therefore, for these categories, a grant of asylum will be appropriate. There is no evidence to suggest that low or mid-level activists or affiliates, who allege ill treatment amounting to persecution in the Darfur region, and fear similar threats in the future, are likely to come to the adverse attention of the

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<sup>30</sup> COIS Sudan COI Report (Human rights; Political affiliation, Peace and conflict in Sudan – South Sudan)

<sup>31</sup> BBC News 'Sudan agrees to UN peacekeepers' 16 April 2007.

<sup>32</sup> COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur)

<sup>33</sup> COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur)

<sup>34</sup> COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur)

authorities in Khartoum. The grant of asylum in such cases is therefore unlikely to be appropriate.

**3.7.2.10** Caseowners should note that members of the SLM/A and JEM have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the SLM/A and the evidence suggests he/she has been involved in such actions, then caseowners should consider whether one of the Exclusion clauses is applicable. Further guidance on Article 1F can be found in the Asylum Instruction on 'Exclusion – Articles 1F and 33(2) of the Refugee Convention. Caseowners should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

### **3.8 Members of non-Arab ethnic groups from the Darfur States**

**3.8.1** A significant proportion of applicants will make an asylum and/or human rights claim on the basis of ill treatment at the hands of government-sponsored militias due to their membership of the Massaleit (aka Massalit), Zaghawa (aka Zaghewa), Fur (aka For or Four) or another of the non-Arab ethnic groups from the Darfur States.

**3.8.2** ***Treatment.*** There have been credible reports that Arab militia groups have attacked these ethnic minorities, reportedly with government support. Villages have been damaged, livestock has been stolen or slaughtered and people from these ethnic minorities have been attacked and in some cases murdered, as reported by Human Rights Watch, Amnesty International and the UN Secretary General in 2004, 2005 and 2006. Although the attacks seem to mainly target the aforementioned groups, there have been reports of other non-Arab African groups, such as the Dajo, Tunjur and Tama, being subjected to similar abuses.<sup>35</sup>

**3.8.3** Fighting between government troops and the SLM/A and JEM reportedly continued during 2004, 2005 and 2006, as did attacks on civilians by government-aligned militia and the rebel groups. Many of the human rights reports published in 2005 and 2006 expressed extreme concern at the serious and numerous killings and human rights abuses and atrocities being carried out against the population in Darfur by militia apparently acting systematically, with government support and impunity. National and international human rights organisations, the UN and the US all concurred that very serious human rights abuses continued to occur in Darfur during 2004, 2005 and 2006.<sup>36</sup>

**3.8.4** Members of non-Arab ethnic groups from the Darfur States are not known to be collectively at risk of persecution solely on the basis of their ethnicity in other parts of north Sudan, such as Khartoum. Between late 2004 and mid-2005, it was reported that the Government demolished large parts of three main camps for internally displaced persons (IDPs) in the Khartoum region. The Government claimed the demolitions were part of an area-replanning programme. These camps were home to refugees from neighbouring

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<sup>35</sup> COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur)

<sup>36</sup> COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur)

countries as well as IDPs from all regions of Sudan, including Darfur. The Government's demolition of these camps, the main reception facility and point of refuge in Khartoum for Darfuris did not deliberately target ethnic Darfuris, but applied to all refugees and IDPs who were resident there. Nevertheless, the basic living conditions in Khartoum for former residents of the camps are extremely poor with access to any basic services being very limited.<sup>37</sup>

- 3.8.5** In August 2006 a UN official warned that the world's largest humanitarian operation in the western Sudanese region of Darfur is on the verge of collapse due to escalating violence, with insecurity is at its highest level since 2004 and access at its lowest levels since that date. Since the signing of the May 2006 Darfur Peace Agreement between the Sudanese government and one of the three main rebel groups, fighting has escalated between signatories and non-signatories to the peace deal. As many as 50,000 people have been displaced across the region, while nine humanitarian aid workers were killed and 20 vehicles hijacked in July 2006. As a result, access to the affected population is at its lowest level since the start of the conflict in 2003.<sup>38</sup>
- 3.8.6** ***Sufficiency of protection.*** If this category of claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to them being leading members, high profile human rights activists or 'intellectuals' of non-Arab ethnic Darfuri tribal origin, they cannot apply to these or any other state agents for protection.
- 3.8.7** If this category of claimants' fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to them being ordinary non-Arab ethnic Darfuris, they cannot apply to these agents for protection. However, the Janjaweed operate exclusively in Darfur and there is no evidence that they operate in any other part of Sudan.<sup>39</sup> As ordinary non-Arab ethnic Darfuris may return to a part of Sudan where these persecutory agents are not present, the availability of adequate protection from the authorities in other regions is irrelevant.
- 3.8.8** ***Internal relocation.*** If this category of claimants' fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to them being leading members, high profile human rights activists or 'intellectuals' of non-Arab ethnic Darfuri origin, they cannot relocate to another part of the country to escape this threat.
- 3.8.9** Ordinary non-Arab ethnic Darfuris are not at risk of persecution outside the Darfur States<sup>40</sup> and it is considered that it is generally not unduly harsh to expect them to relocate to an area within Sudan in which they will be safe. Freedom of movement outside the war zones is generally unhindered. However, the individual circumstances may suggest it could be unduly harsh to relocate internally. (see 3.8.11 – 3.8.13 below)

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<sup>37</sup> COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur, IDPs)

<sup>38</sup> COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan - Darfur)

<sup>39</sup> COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur)

<sup>40</sup> COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur)

### 3.8.10 **Caselaw.**

**AB (Sudan) [2004] CG UKIAT 00260.** Return of Southern Sudanese individuals. This case also confirms AA 00167 [2004] which can be found in the returns section. The IAT found that there is no evidence that, at the present time, a person who originates from southern Sudan is at a real risk on return to Khartoum. They go on to state that conditions in displaced persons camps in Khartoum (for those originating from Sudan) are not a violation of Article 3 of ECHR.

**LM (Sudan) [2005] UKIAT 00114.** This case followed the country guidance of AE Sudan [2005] UKAIT 00101, but also considered the US State Department Report for 2004 which was not before the Tribunal in that case. The AIT found that there is no general risk for Sudanese who are not from Darfur and concluded that there is no general risk to Sudanese returning to IDP camps except for students, lawyers, traders, merchants and possibly those with a known or perceived rebel profile from African ethnic groups. The AIT also concluded that the Government's stated aim to promote voluntary relocation of IDPs does not engage the refugee or HR convention. However, the AIT found that those with a genuine political profile with the Beja Congress Party may be at risk upon return to Sudan.

**HGMO (Sudan) CG [2006] UKAIT 00062.** Relocation to Khartoum. The Tribunal's conclusions as to return to Khartoum are as follows.

**NB Please read in conjunction with AH (Sudan) and Others v Secretary of State for the Home Department [2007] EWCA Civ297 (04 April 2007) (see below)**

- (1) The fact that a returnee has unsuccessfully sought international protection in the United Kingdom is likely to be known to the Sudanese authorities, either by way of a generalised assumption (based upon his documentation) or as a result of the questioning which he is likely to receive at the airport from the immigration authorities. However, a person will not as such be at real risk on return to Khartoum, either at the airport or subsequently, simply because he or she is an involuntary returnee of Sudanese nationality (paragraphs 172-182).
- (2) A Sudanese national will not be at risk on return to Khartoum either at the airport or subsequently merely because he or she is a failed asylum-seeker. Although the fact of having claimed asylum (and having spent time in the UK) is likely to be known to the Sudanese authorities there, the evidence does not suffice to show that this would make him or her the subject of adverse attention (paragraphs 183-186).
- (3) A person who may be eligible for military service will not be at risk on return for that reason alone, even if he or she is or would be perceived as being a draft evader or deserter (paragraphs 187 to 194).
- (4) A person will not be at risk on return to Khartoum either at the airport or subsequently solely because he or she is of Darfuri origin or non-Arab Darfuri origin. Neither at the airport or subsequently will such a person face a real risk of being targeted for persecutory harm or ill-treatment merely for that reason (paragraphs 195 to 220).
- (5) The evidence does not show that any returnee of either of the origins described in sub-paragraph (4) will, regardless of their personal circumstances, have no option but to live in an IDP camp or a squatter area, if returned from the United Kingdom to Khartoum. It has not been suggested that the Sudanese authorities have a policy of requiring a returnee of either of the origins

described in sub-paragraph (4) to go and live in IDP camps or squatter areas. The burden of proof is on the appellant to show a reasonable likelihood of having to live in such a place. This will involve showing that it is not reasonably likely that the returnee will have any money, or access to money, or access to friends or relatives who may be able to assist in helping the returnee to establish him or herself (paragraphs 221-228).

- (6) But even if a such a person shows that it is reasonably likely he or she will end up in such a camp or area, conditions there, though poor, are not significantly worse than the subsistence level existence in which people in Sudan generally live. Applying the principle set out in *Januzi*, the conditions in such camps or areas are not generally such as to amount to unduly harsh conditions (paragraphs 229-245). **(see case below – this finding has been substituted by AH and Others)**
- (7) Health facilities in the camps and squatter areas of Khartoum are, compared with the provision of such facilities in Sudan as a whole, not as bad as to deprive those living there of the most basic of human rights that are universally recognised. A person who bases his claim on a medical condition for which he is being treated in the UK must do so by reference to the article 3 test espoused by the House of Lords in *N* or show truly exceptional circumstances contrary to article 8 (paragraphs 246-260).
- (8) Sub-paragraphs (1)-(7) above deal with the general assessment of risk and of likely conditions on return. However we do think that there will be persons who may be able to show that to return them to Khartoum would be contrary to the United Kingdom's obligations under either the Refugee Convention or Article 3 of the ECHR or both because of particular risk factors arising in their case:
  - i. The fact that a person of non-Arab Darfuri origin is from one of the villages or areas of Darfur which are "hotspots" or "rebel strongholds" or whose village has been raided by the Janjaweed and/or government forces would not in itself give rise to a real risk of persecutory harm, although it would be a significant factor when assessing risk on return if, for example, he was from one the villages from which the current rebel leaderships come or if he has spent some time recently in Chad (paragraphs 267-270).
  - ii. However, persons whose conduct marks them out as oppositionist or anti-government activists remain a current risk category. Persons in this category may include some (but certainly not all) students, merchants/traders, lawyers, journalists, trade unionists, teachers and intellectuals. Such conduct may take the form of being a political opponent of the government or of speaking out against the government. It may also take the form of being a member of a student organisation that is allied to an opposition party or that is opposed to the government's policies (paragraphs 271-283).
  - iii. Those who have been tribal leaders of Darfuri tribes whilst in Sudan are also likely to be at real risk on return (paragraph 280).
  - iv. Not all *sur place* activities conducted by a Sudanese citizen, whilst in the United Kingdom, will give rise to a real risk on return. Whilst the fact that a person has engaged in such activities may become known as a result of questioning, if not through the work of Sudanese intelligence agents, the authorities are reasonably likely to be concerned only about activities which they regard as significantly harmful to their interests and will not be concerned about a person who is in reality an apolitical opportunist. Nor will mere knowledge on the part of the Sudanese authorities about at least some details of a Sudanese asylum-seeker's claim (e.g. following publicity about a high-profile case) suffice (paragraphs 286-304).

- v. A female returnee will not be at real risk unless there is reason to believe her to be associated with a man who is of adverse interest to the authorities. However if a woman shows that there is a reasonable likelihood that she will be returned as a female head of household to live in a squatter area or IDP camp, the circumstances of her case may call for consideration as to whether they would give rise to treatment contrary to Article 3 or undue hardship (paragraphs 305-308).

**AH (Sudan) and Others v Secretary of State for the Home Department [2007] EWCA Civ297 (04 April 2007)**

The Court of Appeal considered the AIT's conclusions in HGMO (Sudan) CG [2006] UKAIT 00062 (above) :-

**Risk on return to persons of non-Arab Darfuri origin/ persons eligible for military service.**

On the question of risk on return to persons of non-Arab Darfuri origin, the appellants' appeal failed.

Similarly, on the military service issue, the appellants' appeal failed.

The Court acknowledged that the AIT had dealt in some detail with various particular categories of returnees, and also with claims to refugee status *sur place*. However, as much of these conclusions (*sic*) were not germane to the appeal, the Court did not think it appropriate to pursue those issues further in its judgment.

The AIT conclusions on the above issues in the case of HGMO (Sudan) CG [2006] are, therefore, upheld and remain country guidance.

**Internal relocation.**

The Court of Appeal did, however uphold the Appellants' appeal against the AIT's findings on internal relocation. It held that the AIT had misapplied the test established in *Januzi* (see below) in finding that it was not unduly harsh for the Appellants (as non-Arab Darfuris) to relocate to Khartoum rather than seek international protection. The Court applied the tests as it believed them to be set out in its decision in *E and anor v SSHD* [2004] QB 531 [E] and the House of Lords' decision in *Januzi v SSHD* [2006] 2 AC 426, as follows:

The AIT had erred in comparing conditions prevailing (in camps) in Khartoum (the safe haven) with conditions prevailing in Sudan as a whole. The correct comparison is between conditions in the place of habitual residence (i.e. here Dafur) and those in the 'safe haven' or prospective place of internal relocation. The Court set out the following approach to whether internal relocation is available in a particular case (bearing in mind always that the standard for rejecting that option is rigorous):

- Compare the conditions prevailing in the place of habitual residence with those in the safe haven
- Those in the safe haven must be assessed according to the impact they will have on a person with the characteristics of the asylum seeker
- If under those conditions the asylum seeker cannot lead a relatively normal life according to the standards of [his] country it will be unduly harsh to expect him to go to the safe haven
- Traumatic changes of life-style, for instance from a city to a desert, or into slum conditions, should not be forced on an asylum seeker

The AIT had failed to consider the original condition of the asylum seeker and the effect on him of new conditions. The evidence was that the appellants here were rural subsistence farmers who had been able to survive economically as such prior to the arrival of the *Janjaweed* and who were ill equipped for city slum life. The AIT had erred in regarding this as irrelevant. The Court concluded that if an asylum seeker who was formerly a subsistence farmer in Dafur ends up in a camp in Khartoum he will not be living a relatively normal life compared with the life from which he has been expelled or compared with the general standards of his country. In particular, (i) because he will lack all the resources necessary for economic survival in the way that he survived previously; and (ii) because the change from stable rural village life to a refugee or squatter camp is a structure of life so completely different and thus a powerful factor indicating that the change would be unduly harsh.

It followed that the AIT had erred when it read the test in *Januzi* as requiring for undue harshness nothing less than breaches of articles 2 and 3 of the ECHR.

The Court set aside the AIT's conclusions on the internal relocation issue and substituted them for its own judgment that in the circumstances of the three appellants it would be unduly harsh to require internal relocation to Khartoum. The appropriate sections in **HGMO (Sudan) CG [2006] UKAIT 00062** (specifically the paragraphs leading to the conclusion in (6) above) should no longer be relied on.

**3.8.11 Conclusion.** Sudanese of non-Arab background may face a heightened risk of scrutiny by the security apparatus, but there is no evidence to indicate that the authorities will target each and every Darfuri of non-Arab background on their return. Leading members of non-Arab ethnic Darfuri tribes, those classed as 'intellectuals' (students, lawyers, professional traders or merchants) or who are prominent human rights activists from non-Arab ethnic groups are liable for treatment amounting to persecution. The grant of asylum in such cases is therefore likely to be appropriate.

Applicants who claim to be ordinary members of non-Arab ethnic groups and fear persecution from state-sponsored Arab militia groups solely on the basis of their ethnicity in the Darfur States are not generally at risk of treatment amounting to persecution outside the Darfur States. However, when considering the viability or otherwise of internal relocation, caseowners should have regard to the issues raised by the Court of Appeal in *AH (Sudan)* with particular reference to the four point test adopted by the Court (shown in summary above). Caseowners should approach cases potentially falling within the remit of *AH* as follows:-

- The starting point will be to carefully examine and test the individual circumstances to establish as far as possible whether the applicant is a Sudanese non-Arab Darfuri subsistence farmer from a sedentary, rural background.
- If this is accepted to be the case (findings should, in any event, be reflected in the written decision), caseowners should then seek to establish precise details as to the economic, living and social conditions in the applicant's former home prior to the alleged persecution, as a basis for comparison with the likely economic and living conditions in the place of relocation
- As failed asylum seekers are returned to Khartoum, an assessment should be made of the likely consequences to the individual of return to Khartoum and, in particular, whether the applicant's financial and other resources would



leave him with no option other than to live in an IDP camp or squatter settlement and potentially face economic destitution or existence below bare subsistence level; or whether his/her resources are such that he/she could live elsewhere. Factors to be considered include the returnee's ability to survive economically, given the particular circumstances of the individual concerned (language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health, available or realisable assets).

- 3.8.12** The appellants in *AH* were all Darfuris who it was accepted (by the Court) would be required to relocate to IDP camps in Khartoum and face destitution. Case owners should be aware that the availability of the assisted voluntary returns (AVR) package through the IOM (see 5.3 and Appendix) means that, for returnees from the UK, that need not necessarily be the case. Case owners should include the implications of this option in considering, on a case by case basis, whether the individual circumstances suggest that internal relocation would be 'unduly harsh'
- 3.8.13** If the enhanced financial provision suggests, on an individual level, that internal relocation is unlikely to be 'unduly harsh', a grant of asylum will not be appropriate. A failed asylum seeker who refuses to return voluntarily and take advantage of the AVR package would then be outside of his country, not because of a well-founded fear of persecution (and in circumstances in which it is reasonable for him to relocate), but because he chose not to return and relocate. The Court of Appeal did not find that an 'ordinary' non-Arab Darfuri would face treatment that breaches Article 3 on return to Sudan, so enforced return, in the circumstances described, is unlikely to breach the appellant's rights under the ECHR.
- 3.8.14** Bearing in mind that the standard for rejecting the availability of internal flight is rigorous (per Brooke LJ in *Karanakaran v SSHD* [2000] 3 All ER 449 at p 456, and Lord Carswell in *Januzi* [2006] 2 AC 426 [67]), if the individual circumstances of a case suggest that internal relocation is likely to be 'unduly harsh' along the lines set out in *AH (Sudan)* a grant of Refugee status is likely to be appropriate. Case owners should see the Asylum Instruction on Internal Relocation and consult a Senior Caseworker for further guidance if necessary.
- 3.8.15** If a grant of asylum is not appropriate but other factors are present which indicate that the UK's obligations under the ECHR may be engaged, a grant of HP or DL may be considered. Case owners should consult the relevant Asylum Instructions on HP and DL.

### **3.9 Prison conditions**

- 3.9.1** Claimants may claim that they cannot return to Sudan due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Sudan are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is

not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

**3.9.3 Treatment.** Prison conditions remained harsh and overcrowded in 2006. Most prisons were old and poorly maintained, and many lacked basic facilities such as toilets or showers. Health care was primitive, and food was inadequate. Prison officials arbitrarily denied family visits to prisoners. High-ranking political prisoners reportedly often enjoyed better conditions than did other prisoners.<sup>41</sup>

**3.9.4** Juveniles often were held with adults and in some cases subjected to sexual abuse by the adult inmates in 2006. The government did not permit regular visits to prisons by domestic human rights observers. In the latter part of 2005, the government allowed limited access to UN monitors but in May 2006 it denied a request by the UNHCR to visit the NISS diction of Khobar prison in Khaartoum North. The government refused to grant the International Committee for the Red Cross (ICRC) access to government prisons during 2006.<sup>42</sup>

**3.9.5** In April 2005, conditions in the main prison facility [Rumbek Prison] under the newly established Government of Southern Sudan were 'extremely poor'. There are two wings (one for men, one for women), Facilities are missing: no beds, no medical ward. The women's ward has two toilets. Male prisoners are 'chained' when sitting in the open spaces of the prison compound. Food is provided by relatives of the prisoners and -sometimes- by the Church (Diocese of Rumbek). Due to lack of funding, the prison authorities are unable to provide food. Cases of malnourishment were witnessed. Pre-trial detainees and convicted criminals are not separated. Children are being imprisoned with adults, there aren't separate holding facilities. There are no recreational or educational facilities. The youngest prisoner seen in Rumbek was a boy of (reportedly) 8 years old convicted of murder.<sup>43</sup>

#### **3.9.6 Caselaw.**

**MA (Sudan) [2005] UKAIT 00149.** Operational Guidance – prison conditions – significance. So long as the IND Operational guidance Note on Sudan continues to view prison conditions in Sudan as being "likely to reach the Article 3 threshold", the Tribunal will expect the Home Office to concede in all appeals based on Article 3 where it is accepted that the appellant has demonstrated a real risk of imprisonment on return to Sudan.

**BA (Sudan) CG [2006] UKIAT 00006.** Military service – no risk. The Tribunal stated, "while accepting that prison conditions are contrary to Article 3 we do not accept (the appellant's representative's submissions) that there is currently a real risk the draft evaders generally would face imprisonment (paragraph 32)." Rather than imprison draft evaders, the Sudanese authorities take steps to ensure they serve in the army under supervision (paragraph 33). The background evidence does not indicate that draft evaders and deserters, in general, face a real risk of imprisonment (paragraph 35). There is no compelling evidence to show that draft evaders, deserters or conscripts are being forced to fight in Darfur (paragraph 41).

The case of **AM (Sudan Draft Evader) Sudan 2004 UKIAT 00335** is no longer an authority on the issues of draft evasion and desertion. AM does not have an

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<sup>41</sup> COIS Sudan COI Report (Prison conditions)

<sup>42</sup> USSD 2006 Section I (d)

<sup>43</sup> COIS Sudan COI Report (Prison conditions)

evidential basis to show that draft evaders or deserters would be forced to fight in Darfur, where involvement in the military conflict may be contrary to the basic rules of human conduct (paragraph 53). The latest CG case **HGMO Sudan CG UKAIT 00062** replaces as country guidance the case of **AE (Relocation-Darfur-Khartoum an option) Sudan CG [2005] UKAIT 00101**.

**3.9.7 Conclusion.** Prison conditions in Sudan are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, widespread abuse of inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in Sudan are likely to reach the Article 3 threshold. Where caseowners believe that an individual is likely to face imprisonment on return to the Sudan they should also consider whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseowners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Sudan and exclusion is not justified, a grant of Humanitarian Protection will be appropriate.

#### **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Sudan the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions..

#### **4.4 Medical treatment**

- 4.4.1** Claimants may claim they cannot return to Sudan due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** In northern Sudan, the infrastructure network and the workforce are quite developed in absolute numbers. However, up to a third of health facilities are reported not to be fully functional. The low sectoral performance is due to a combination of causes: limited utilization of health services (at aggregate level, 40-60%) also due to financial barriers, large regional and economic access inequalities; facilities and equipment deterioration resulting from lack of maintenance. Services and coverage are worst in the South where there is absence of infrastructure, poor transport, and low technical and managerial capacity of local authorities. Public health financing is low and skewed towards hospital services and urban areas; decentralization has not been supported by transfer of resources nor capacity.<sup>44</sup>
- 4.4.3** There are approximately 160 hospitals in Sudan, but they are poorly supplied and standards of hygiene are poor. Dysentery, giardia, hepatitis and other water-borne diseases are common, and malaria is becoming more frequent. Only 15% of the population is estimated to have access to essential medicines. What little primary health care there is, is provided by an NGO, Operation Lifeline Sudan. While hospitals in Darfur received substantial international support, access to medical care was still a problem in rural and opposition-controlled areas.<sup>45</sup>
- 4.4.4** Sudan had an overall HIV prevalence of approximately 2.3% in 2004, the worst in North Africa and the Middle East. The HIV/AIDS epidemic is most severe in south Sudan. No anti-retroviral (ARV) treatment is available through the state medical scheme but ARV drugs are available for those who can afford them. Mental health services and facilities are reportedly very limited and access to mental health care and therapeutic drugs in the primary health care system is reportedly unavailable. There is also reportedly a shortage of personnel, especially qualified Psychiatrists.<sup>46</sup>
- 4.4.5** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

#### **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however

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<sup>44</sup> COIS Sudan COI Report (Medical issues)

<sup>45</sup> COIS Sudan COI Report (Medical issues)

<sup>46</sup> COIS Sudan COI Report (Medical issues)

be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

- 5.2** The UNHCR has recommended that asylum-seekers originating from the Darfur States of Sudan are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status then complementary forms of protection. UNHCR also re-iterates its call upon all governments to refrain from any forced returns of Darfuris to Sudan.<sup>47</sup> The UNHCR's position paper of February 2006 provides a broad assessment of the situation in Darfur and Sudan more generally and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems in Darfur. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation, that it is unsafe for all Darfuris who have been found not to be in need of some form of international protection to return to Sudan.
- 5.3** Sudanese nationals may return voluntarily to any region of Sudan at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Sudan. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sudanese nationals wishing to avail themselves of this opportunity for assisted return to Sudan should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

**6. List of source documents**

- UK Home Office RDS-IND COI Service Sudan Country of Origin Information Report January 2007  
[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- UNHCR Position paper on Darfuri asylum seekers from Sudan February 2006  
<http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=43f5dea84>
- Human Rights Watch Report 2007  
<http://hrw.org/englishwr2k7/docs/2007/01/11/sudan14715.htm>
- USSD 2006  
<http://www.state.gov/g/drl/rls/hrrpt/2006/78759.htm>
- BBC News 'Sudan agrees to UN peacekeepers: 16 April 2007  
<http://news.bbc.co.uk/1/hi/world/africa/6559897.stm>

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<sup>47</sup> UNHCR Position paper on Darfuri asylum seekers from Sudan February 2006

## Appendix

### Voluntary Assisted Return and Reintegration Programme (VARRP)

VARRP is run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help; obtaining travel documents and booking flights, as well as organising reintegration assistance in Sudan. The programme is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers.

The current package of £4000 in total (£1000 cash and £3000 reintegration assistance) ends on 31.05.07. During June the package is £500 cash and £2000 in reintegration assistance. From 1.07.07 the standard package will revert to £1000 of 'in kind' assistance.

The Sudanese Embassy in London is very flexible in issuing Travel Documents for IOM clients provided they have ID to show that they are from Sudan. The process takes around 30 minutes. If no ID is available, applicants are required to take 2 Sudanese nationals with their ID or passport to the Embassy as witnesses for the Travel Document to be issued.

For those who wish to take up reintegration assistance, returnees are given reintegration letters prior to departure with details of the IOM mission in Khartoum in order that they can approach the IOM in Khartoum when they arrive and throughout the duration of their package. If returnees are not met by family and friends, onward transportation is arranged by IOM as required.

The assistance can be used for setting up a small business, vocational training or education for children.

Summary of reintegration activities in Sudan for 2006:-

- The profile of returnees to Sudan is young single male. Average age is approximately 25 to 35 and most of the assisted set up some kind of transport business (see figures below)
- The majority of returnees travel to Khartoum or the greater area of Khartoum.
- From the 2006 returnees, 40 have been assisted with reintegration and the majority set up a small business:-
  - i) 37 with business
  - ii) 1 with education
  - iii) 2 with cash

Reintegration by activity:-

- Only two returnees chose the cash option
- One returnee was assisted with education. He chose a computer course.
- Business

i)	Transport (taxi, mini-bus, car rental, rickshaw)	27
ii)	Farming (poultry farming and selling farm goods)	2
iii)	Communication centre (selling phones, photocopying service)	3
iv)	Printing business	1
v)	Grocery shop	2
vi)	Selling textiles	1
vii)	Selling and distributing sugar	1