

OPERATIONAL GUIDANCE NOTE

SUDAN

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment	2.1 – 2.12
3. Main categories of claims	3.1 – 3.5
Members of the Beja Congress	3.6
Members of armed opposition groups	3.7.1
- Members or associates of the SPLM/A (inc. the Nuba)	3.7.2
- Members or associates of the SLM/A or JEM	3.7.3
Members of non-Arab ethnic groups from the Darfur States	3.8
Prison conditions	3.9
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.3
6. List of source documents	
7. Appendix	

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. Caseowners 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
- 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, caseowners 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.¹

South Sudan

2.2 On 9 January 2005 the 20 year old civil conflict was formally ended when the Government of Sudan (GoS) and Sudan People's Liberation Movement (SPLM) signed the Comprehensive Peace Agreement (CPA). This agreement included key issues such as self-determination for the South and established a permanent ceasefire. The parties 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. The CPA provided for a devolved Government of Southern Sudan (GoSS) and also made provisions for national elections in 2009 together with a referendum for determining the status of the South in 2011.²

2.3 In October 2007 Salva Kiir, First Vice-President of the GNU and President of the GoSS announced the suspension of GoSS from the GNU, citing several CPA provisions that had not been implemented on schedule.³ The boycott ended in December following a meeting between Kiir and Sudan's President Omar al-Bashir at which most differences were reported to have been resolved, including the withdrawal of northern militias in the south. Al-Bashir has issued a decree appointing new members of the former southern rebel movement to the national unity government.⁴ On 9 January 2008 the Sudanese Armed Forces (SAF) announced that it had completed its redeployment from the south in accordance with agreed deadlines, although according to UNMIS only 88% had been deployed as at 15 January 2008. The Sudan Tribune reported on 14 February 2008 that the Sudanese President Omar Hassan Al-Bashir had reshuffled the ministers of the National Congress party in the national cabinet, sacking the justice minister and making 7 new cabinet appointments.⁵

2.4 The demarcation of the disputed oil-rich Abyei region remains unsettled. Preparations for a new census, an important pre-requisite for successful elections (due in 2009) are behind schedule. While the CPA's security arrangements are making progress in parts of the South, the presence of other armed groups such as the Lord's Resistance Army remain a threat to maintaining peace.⁶ [A ceasefire agreement, due to come into effect once a comprehensive peace accord is reached, was signed on 24 February 2008 at peace talks between the Ugandan government and the Lord's Resistance Army.⁷]

West Sudan - Darfur

¹ COIS Sudan COI Report (History)

² COIS Sudan COI Report (History; Peace and conflict in Sudan - South Sudan)

³ FCO Country Profile 6 November 2007

⁴ [BBC News 'Southerners to take Sudan posts' 27 December 2007](http://news.bbc.co.uk/1/hi/world/africa/7161203.stm) <http://news.bbc.co.uk/1/hi/world/africa/7161203.stm>

⁵ COIS Sudan COI Report (recent events)

⁶ FCO Country Profile November 2007

⁷ IRIN Sudan-Uganda 'Optimism as government, LRA sign ceasefire' 3 March 2008
[IRIN <http://www.irinnews.org/Report.aspx?ReportId=76933>](http://www.irinnews.org/Report.aspx?ReportId=76933)

- 2.5** Despite the signing of the Darfur Peace Agreement (DPA) in May 2006 between the Government of Sudan (GoS) and the Minni Minawi faction of the Sudan Liberation Movement (SLM), conflict in Darfur continues. Although the roots of the conflict are complex, it is largely a local struggle for resources, land, water and grazing rights and the related attempts to win power within the indigenous tribal administration structure. In late 2002, the conflict escalated with the overt involvement of government forces and the establishment of the Sudan Liberation Movement (SLM). The SLM waged an increasingly effective guerrilla war against the central government, police and security forces. In response, the government equipped and mobilised groups of Arab militias (known as the 'Janjaweed') as counter insurgency forces to fight the rebels. The excesses of the Janjaweed included rape, burning of thousands of villages and forcing the sedentary population to flee to refugee camps.⁸
- 2.6** Since the beginning of the conflict, described by the UN as one of the world's worst humanitarian crises, around 2 million people (one third of the population) have been displaced and over 3.5 million are in need of humanitarian assistance. In 2007, fighting between rebel groups, security forces and the Janjaweed continued.⁹ At least 25,000 civilians were displaced during the months of May and June 2007, with more than 160,000 persons identified as newly displaced since the beginning of the year.¹⁰
- 2.7** The UN Secretary General reported in July 2007 that the overall security situation in Darfur was characterised in the preceding months by continual violence and insecurity. The nature of that insecurity, however, differed in the three states of the region. Western Darfur suffered from cross border tensions between Chad and the Sudan, including direct hostilities in early April. Northern Darfur remained heavily affected by the conflict between the GoS and the Darfur Peace Agreement non-signatory factions, while in Southern Darfur persistent tribal conflict also continued to result in violent attacks.¹¹
- 2.8** The humanitarian situation in Darfur continued to steadily deteriorate during the third quarter of 2007, with non-stop armed clashes causing massive population displacements, several restrictions on humanitarian access, increased unrest and violence inside the IDP camps and a high incidence of targeted attacks against humanitarian workers. By 1 October 2007, over 2,387,000 people were displaced, while another 1.8 millions were considered in need of humanitarian aid. The third quarter of 2007 continued to witness the same pattern of armed confrontations between GoS forces (and their proxies) and the non-signatory movements, which included the use of aerial bombardments, militia attacks on unarmed citizens, inter-tribal fighting and frequent incidents of road banditry. Since the beginning of 2007, over 260,000 have been newly displaced. New armed movements continued to emerge.¹²
- 2.9** Human Rights Watch (HRW) reported in January 2008 that the proliferation of rebel groups, which clashed with each other as well as with government military and allied forces, not only challenged peace initiatives but also created an increasingly unpredictable situation on the ground for civilians, peacekeepers and humanitarian agencies. Throughout the year, parties on all sides of the conflict committed atrocities against civilians. The Sudanese government played a central role in fomenting the chaos, both continuing to carry out direct attacks on civilians and failing to rein in or hold accountable individuals responsible for abuses.¹³
- 2.10** On 31 July 2007, the UN Security Council unanimously adopted Resolution 1769 which mandates the AU/UN Hybrid force for Darfur: up to 20,000 AU and UN peacekeeping

⁸ FCO country profile November 2007

⁹ COI report November 2007 (para 3.12, 3.13)

¹⁰ Reliefweb: Humanitarian News from the Sudan, Monthly Digest June 2007: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/SHES-75UR5H?OpenDocument>

¹¹ COI report November 2007 (para 24.30)

¹² UN Darfur Humanitarian Profile No.29 published 20.12.07: <http://www2.reliefweb.int/rw/rwb.nsf/db900sid/KHII-7A48G7?OpenDocument>

¹³ Human Rights Watch Report 2008

forces, and up to 6,000 police and civilians to support the implementation of the DPA and any subsequent peace agreement in Darfur. This is considered an important step towards ending the conflict.¹⁴ In December 2007 it was reported that, after months of negotiations, the UN had taken control of the peacekeeping mission for Darfur but that the force, UNAMID, remains seriously under strength. The Sudanese authorities have been accused of blocking the full deployment of the force due to their objection to its international composition.¹⁵

- 2.11** Following a meeting of Darfur rebels in Arusha in August 2007, preliminary talks, led by the AU and UN, between the rebels and the GoS resumed in Libya in October but were boycotted by key rebel groups. It was reported that international mediators would travel to Darfur to consult with the main rebel groups before actual peace negotiations are held at an unspecified date.¹⁶

East Sudan

- 2.12** Eastern Sudan is reported to have suffered from years of marginalisation and neglect. As such, it is one of the least developed areas in Sudan. In response to this a number of rebel groups, formed mainly from the Beja and Rasha'ida tribes have in recent years carried out attacks on government targets. Although isolated and small scale, these skirmishes had the potential to erupt into a larger-scale conflict. In order to avoid such an escalation, in August 2006, the Government of Eritrea convened negotiations between the Eastern rebels, known as the Eastern Front (EF) and the GoS. A peace deal was signed on 14 October 2006, guaranteeing greater development for Eastern Sudan.¹⁷
- 2.13** The State of Emergency in Eastern Sudan has been lifted and the ceasefire holds. The United Nations Development Programme (UNDP) is working closely with the GoS on the disarmament, demobilisation, and reintegration of EF troops.¹⁸ It was reported that in May 2007 leading members of the Eastern Front were assigned government posts as part of the implementation of the peace accord. In August 2007 the last of eastern Sudan's former rebels returned from exile in Eritrea to be sworn into the central government in Khartoum, having established a political structure in preparation for their return to Sudan.¹⁹ A press statement issued by the Chairman of the Eastern Front and assistant to the President on the implementation of the Eastern Sudan Peace Agreement stated that the implementation mechanisms had been established and that the Eastern Sudan Rehabilitation Fund would begin implementing development projects in 2008.²⁰

Human rights

- 2.14** The International Commission of Inquiry (ICI) reported in January 2005 on human rights abuses. It detailed the many atrocities that had taken place in Darfur. The GoS, Arab militias and rebels are all guilty of serious violations of human rights and humanitarian law, which may amount to crimes against humanity and/or war crimes. The report also found that the GoS has not pursued a policy of genocidal intent in Darfur, although a 'competent court' will need to decide whether certain individuals have done so. The report also stresses that the crimes which have taken place in Darfur 'may be no less serious and heinous than genocide'. The ICI recommended that the situation in Darfur be referred to the International Criminal Court (ICC) and in March 2005 UN Security Council Resolution 1593 gave effect to this recommendation. Since then the ICC has been actively pursuing its investigations. In May 2007 the ICC issued arrest warrants for the two individuals named in connection with alleged atrocities in Darfur.²¹

¹⁴ FCO country profile November 2007 (UK response to the crisis in Darfur)

¹⁵ BBC News 'UN takes over Darfur peace force' 31 December 2007 <http://news.bbc.co.uk/1/hi/world/africa/7165443.stm>

¹⁶ BBC News 'Struggle to salvage peace talks' 29 October 2007 <http://news.bbc.co.uk/1/hi/world/africa/7066792.stm>

¹⁷ FCO country profile November 2007

¹⁸ FCO country profile November 2007

¹⁹ Sudan Tribune, 'Eastern Sudan rebels to join government' 25 August 2007 <http://www.sudantribune.com/spip.php?article23424>

²⁰ COI country report (recent developments)

²¹ FCO country profile November 2007

- 2.15** USSD reported in March 2008 that the following human rights problems in 2007: abridgement of citizens' rights to change their government; extrajudicial and other unlawful killings by government forces and other government-aligned groups throughout the country; torture, beatings, rape, and other cruel, inhumane treatment or punishment by security forces; harsh prison conditions; arbitrary arrest and detention, including incommunicado detention of suspected government opponents, and prolonged pre-trial detention; executive interference with the judiciary and denial of due process; forced military conscription of underage men; obstruction of the delivery of humanitarian assistance; restrictions on privacy and freedoms of speech, press, assembly, association, religion, and movement; harassment of internally displaced persons (IDPs) and of local and international human rights and humanitarian organizations; violence and discrimination against women, including the practice of female genital mutilation (FGM); child abuse, including sexual violence and recruitment of child soldiers, particularly in Darfur; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers' rights; and forced labour, including child labour, by security forces and both aligned and non-aligned militias in Southern Sudan and Darfur.²²
- 2.16** Antigovernment and insurgent groups also committed numerous, serious abuses in Darfur. Factions of the SLA, the Justice and Equality Movement (JEM) and other rebel groups in Darfur committed killings, including of AMIS peacekeeping forces, beatings, abductions, rape, robbery, destruction of property, forcible conscription, and recruitment of child soldiers. They restricted freedom of movement of populations under their control and access of relief workers and supplies, and kidnapped non-governmental organization (NGO) workers.²³

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)

²² US State Country Report 2007: Introduction

²³ US State Country Report 2007: Introduction

- 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:

<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 founded in 1958 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 1995 the BC joined the National Democratic Alliance (NDA), an umbrella organisation of opposition political parties and groups and began military activities in the East in coordination with the Sudan People's Liberation Movement/Army (SPLM). In August 2004, the BC which claimed 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.²⁴
- 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.²⁵
- 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, had effectively split from the NDA and did 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.²⁶
- 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 themselves. Government agents and media have allegedly intimated to the Tigre-speaking Beja that the Beja Congress is solely a TuBedawiye-speaking organisation that will not represent their interests.²⁷

²⁴ COIS Sudan COI Report (Peace and conflict in Sudan; East Sudan & Annex B)

²⁵ COIS Sudan COI Report (Peace and conflict in Sudan; East Sudan & Annex B)

²⁶ COIS Sudan COI Report (Peace and conflict in Sudan; East Sudan & Annex B)

²⁷ COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan)

- 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.²⁸
- 3.6.7** The State of Emergency in Eastern Sudan has been lifted and the ceasefire holds in 2007. The United Nations Development Programme (UNDP) is working closely with the GoS on the disarmament, demobilisation, and reintegration of EF troops.²⁹ It was reported that in May 2007 leading members of the Eastern Front were assigned government posts as part of the implementation of the peace accord. In August 2007 the last of eastern Sudan's former rebels returned from exile in Eritrea to be sworn into the central government in Khartoum, having established a political structure in preparation for their return to Sudan.³⁰ A press statement issued by the Chairman of the Eastern Front and assistant to the President on the implementation of the Eastern Sudan Peace Agreement stated that the implementation mechanisms had been established and that the Eastern Sudan Rehabilitation Fund would begin implementing development projects in 2008.³¹
- 3.6.8** **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.
- 3.6.9** **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.
- 3.6.10** **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.
- 3.6.11** 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**
- 3.7.1** 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) –

²⁸ COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan)

²⁹ FCO Country Profile

³⁰ Sudan Tribune 'Eastern Sudan rebels to join government' 25 August 2007 <http://www.sudantribune.com/spip.php?article23424>

³¹ COIS Sudan COI Report (recent developments)

formerly the 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.³²

3.7.2 Members or associates of the SPLM/A (inc. the Nuba)

3.7.2.1 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.³³

3.7.2.2 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.³⁴

3.7.2.3 In October 2007 Salva Kiir, First Vice-President of the GNU and President of the GoSS announced the suspension of GoSS from the GNU, citing several CPA provisions that had not been implemented on schedule.³⁵ The boycott ended in December following a meeting between Kiir and Sudan's President Omar al-Bashir at which most differences were reported to have been resolved, including the withdrawal of northern militias in the south. Al-Bashir has issued a decree appointing new members of the former southern rebel movement to the national unity government.³⁶ On 9 January 2008 the Sudanese Armed Forces (SAF) announced that it had completed its redeployment from the south in accordance with agreed deadlines, although according to UNMIS only 88% had been deployed as at 15 January 2008. The Sudan Tribune reported on 14 February 2008 that the Sudanese President Omar Hassan Al-Bashir had reshuffled the ministers of the National Congress party in the national cabinet, sacking the justice minister and making 7 new cabinet appointments.³⁷

3.7.2.4 The demarcation of the disputed oil-rich Abyei region remains unsettled. Preparations for a new census, an important pre-requisite for successful elections (due in 2009) are behind schedule. While the CPA's security arrangements are making progress in parts of the South, the presence of other armed groups such as the Lord's Resistance Army remain a threat to maintaining peace.³⁸ [A ceasefire agreement, due to come into effect once a comprehensive peace accord is reached, was signed on 24 February 2008 at peace talks between the Ugandan government and the Lord's Resistance Army.³⁹]

³² COIS Sudan COI Report (Peace and conflict in Sudan - East Sudan & Annex B)

³³ COIS Sudan COI Report (Ethnic groups – Central Sudan)

³⁴ COIS Sudan COI Report (History; Peace and conflict in Sudan - South Sudan)

³⁵ FCO country profile 6 November 2007

³⁶ BBC News 'Southerners to take Sudan posts' 27 December 2007' <http://news.bbc.co.uk/1/hi/world/africa/7161203.stm>

³⁷ COIS Sudan COI Report (recent events)

³⁸ FCO Country Profile November 2007

³⁹ IRIN Sudan-Uganda 'Optimism as government, LRA sign ceasefire' 3 March 2008
[IRIN http://www.irinnews.org/Report.aspx?ReportId=76933](http://www.irinnews.org/Report.aspx?ReportId=76933)

3.7.2.5 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.

3.7.2.6 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.

3.7.2.7 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.

3.7.2.8 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.

3.7.3 Members or associates of the SLM/A or JEM

3.7.3.1 Treatment. The Justice and Equality Movement (JEM) which emerged in 2001 and the Sudanese Liberation Movement (SLM/A) which emerged in 2003 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.⁴⁰

3.7.3.2 The SLM/A and JEM took up arms against the government in February 2003. Rebels claimed there had been years of political, economic and social marginalisation of the region. The rebels are made up of predominantly African sedentary tribes, such as the Fur, Zaghawa and Massaleit. After a string of military victories in spring 2003, the government responded to the rebellion by arming Arab "Janjaweed" militia to clear civilian population bases of African tribes thought to be supporting rebellion. Violence and broken ceasefires continued throughout 2004 and 2005 despite intermittent peace talks and the presence of an African Union protection force from August 2004. Divisions between and within the two rebel groups exacerbated the conflict and hindered negotiations.⁴¹

3.7.3.3 The largest of the movements, the Sudan Liberation Movement/Army (SLA), formally split in 2005 into two factions after months of wrangling among its leaders. One faction is headed by Abdel Wahid Mohamed Nur, who commands the following of his Fur people. The rival faction, led by Minni Minawi, is militarily stronger, with fighters predominantly from the Zaghawa people.⁴² After seven rounds of peace talks, the Darfur Peace Agreement was signed in May 2006 by the government and the faction of the SLM led by Minni Minnawi, who subsequently took up an advisory post with the government in Khartoum.⁴³

⁴⁰ COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur & Annex B)

⁴¹ International Crisis Group (ICG): Conflict history – Sudan:

http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=101

⁴² ICG: 'Darfur's Peace Plan – The view from the ground' 24 May 2006: <http://www.crisisgroup.org/home/index.cfm?id=4134>

⁴³ ICG: Sudan country profile: <http://www.crisisgroup.org/home/index.cfm?id=1230>

The JEM rejected the deal and the region was destabilised by fighting to its worst level since 2004. In the second half of 2006 attacks on civilians and NGO workers increased dramatically and security dropped to its lowest level since the beginning of the conflict.

- 3.7.3.4** 2007 continued to witness the same pattern of armed confrontations between GoS forces (and their proxies) and the non-signatory movements, which included the use of aerial bombardments, militia attacks on unarmed citizens, inter-tribal fighting and frequent incidents of road banditry. Since the beginning of 2007 over 260,000 have been newly displaced. New armed movements continued to emerge.⁴⁴
- 3.7.3.5** Following a meeting of Darfur rebels in Arusha in August 2007, preliminary talks, led by the AU and UN, between the rebels and the GoS resumed in Sirte, Libya in October but were boycotted by key rebel groups. It was reported that international mediators would travel to Darfur to consult with the main rebel groups before actual peace negotiations are held at an unspecified date.⁴⁵
- 3.7.3.6** In November 2007 it was reported that the SLM and the JEM have splintered into a bewildering array of often warring factions. There are now up to 16 armed groups with origins in either the JEM or SLM. Mediators of the current peace process face major difficulties due to the proliferation of groups and their disunity. Key players who did not attend the opening of the talks in Libya, included Minnawi and Abdul Wahid.⁴⁶
- 3.7.3.7** Human Rights Watch (HRW) reported in 2008 that the proliferation of rebel groups, which clashed with each other as well as with government military and allied forces, not only challenged peace initiatives but also created an increasingly unpredictable situation on the ground for civilians, peacekeepers and humanitarian agencies. Throughout the year, parties on all sides of the conflict committed atrocities against civilians. The Sudanese government played a central role in fomenting the chaos, both continuing to carry out direct attacks on civilians and failing to rein in or hold accountable individuals responsible for abuses.⁴⁷
- 3.7.3.8 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.
- 3.7.3.9** 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.⁴⁸ 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.
- 3.7.3.10 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.
- 3.7.3.11** Low-mid level affiliates are unlikely to be at risk of persecution outside the Darfur States⁴⁹ 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

⁴⁴ UN Darfur Humanitarian Profile No.29 published 20.12.07

⁴⁵ BBC News 'Struggle to salvage peace talks' 29 October 2007 <http://news.bbc.co.uk/1/hi/world/africa/7066792.stm>

⁴⁶ IRIN Sudan: A who's who of the Darfur groups in Sirte, 27 February 2008
<http://www.globalsecurity.org/military/library/news/2007/11/mil-071101-irin02.htm>

⁴⁷ Human Rights Watch Report 2008

⁴⁸ COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur)

⁴⁹ COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur)

unhindered. Failed asylum seekers are returned to Khartoum therefore they may remain there or safely relocate to another area.

3.7.3.12 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, despite further peace initiatives in 2007, fighting between the various rebel factions and the government-backed forces in Darfur continues.⁵⁰ 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 authorities in Khartoum. The grant of asylum in such cases is therefore unlikely to be appropriate.

3.7.3.13 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 Massalit (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. Since early 2003, Sudanese government forces and the Janjaweed have been engaged in an armed conflict with the SLM/A and the JEM (see 2.4.1 – 2.4.7 and 3.7.2) As part of its operations against the rebels, government forces have waged a systematic campaign against the civilian population who are members of the same ethnic groups as the rebels. Sudanese government forces and the Janjaweed have burned and destroyed hundreds of villages, caused tens of thousands of civilian deaths, displaced millions of people, and raped and assaulted thousands of women and girls.⁵¹

3.8.3 As of September 2007, approximately 2.2 million displaced people live in camps in Darfur and more than 200,000 people have fled to neighbouring Chad, where they live in refugee camps. In addition to the people displaced by the conflict, at least 2 million additional people are considered "conflict-affected" by the UN and many need some form of food assistance because the conflict has damaged the local economy, markets, and trade in Darfur.⁵²

3.8.4 In early 2005, the number of government attacks on civilians decreased but the situation dramatically worsened after the May 2006 Darfur Peace Agreement. In late 2006 and 2007 the Government renewed its bombing campaign, striking areas purportedly under rebel control in North Darfur on an almost daily basis. Government-backed militias have attacked the civilian population in West, South, and North Darfur, including in camps for internally displaced persons. Residents of North Darfur have increasingly complained about abuses carried out by forces aligned with former rebel leader Minni Minawi, who signed the Darfur

⁵⁰ COIS Sudan COI Report (History; Political affiliation; Peace and conflict in Sudan – Darfur)

⁵¹ Human Rights Watch News: 'Q&A What has happened in Darfur?' <http://www.hrw.org/english/docs/2004/05/05/darfur8536.htm>

⁵² Human Rights Watch News: Q&A What has happened in Darfur? <http://www.hrw.org/english/docs/2004/05/05/darfur8536.htm>

Peace Agreement in May 2006. These abuses against civilians, as well as clashes between SLA/Minawi fighters and rebel groups, have also caused substantial displacement.⁵³

- 3.8.5** 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 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.⁵⁴
- 3.8.6** There are nearly 900,000 IDPs living in four IDP-designated camps (Mayo, El Salaam, Wad El Bahir and El Salaam) and 15 squatter areas around Khartoum. The Coordination of Humanitarian Affairs (OHCA) in Khartoum stated in 2008 that the situation has become much harder, especially for the most vulnerable groups, resulting in an increased willingness of many to return to their homes. It is estimated that the total number of Khartoum IDP could be 1.8 million, some of who were integrated into host communities. A government official said the demolitions of mud-brick houses in the camps in El Salaam and Wad El Bashir were part of a larger programme to provide plots for residents and bring them vital services such as electricity and water. Some 25,000 families had applied for the new government-allocated plots that are expected to replace the area cleared by the demolitions. From these families, 11,000 could afford a plot and had the necessary documents, such as a birth certificate and a medical assessment of age, to make the purchase. However, 6,000 could not afford the costs of constructing a new home. According to a humanitarian source in Khartoum, the average price for a plot in El Salaam was 106,916 Sudanese dinars (\$414), in Wad El Beshir 189,182 dinars (\$732) and in Mayo 279,456 dinars (\$1,081).⁵⁵
- 3.8.7** **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 tribal leaders, persons whose conduct marks them out as oppositionist or anti-government, which may include those classed as 'intellectuals' (students, lawyers, professional traders or merchants) or prominent human rights activists from non-Arab ethnic groups who have been identified through their political activity or their expression of anti-government views, cannot apply to these or any other state agents for protection.
- 3.8.8** 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.⁵⁶ 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.
- 3.8.9** **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 tribal leaders, persons whose conduct marks them out as oppositionist or anti-government, which may include those classed as 'intellectuals' (students, lawyers, professional traders or merchants) or

⁵³ Human Rights Watch News Q&A 'Crisis in Darfur – What is happening in Darfur now?' <http://www.hrw.org/english/docs/2004/05/05/darfur8536.htm>

⁵⁴ COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur, IDPs)

⁵⁵ IRIN: Sudan: Longing for home as IDP camp life toughens 28.02.08 <http://www.irinnews.org/InDepthMain.aspx?InDepthId=16&ReportId=62533&Country=Yes>

⁵⁶ COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur)

prominent human rights activists from non-Arab ethnic groups who have been identified through their political activity or their expression of anti-government views, cannot relocate to another part of the country to escape this threat.

3.8.10 Ordinary non-Arab ethnic Darfuris are not at risk of persecution outside the Darfur States⁵⁷ 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 – 3.8.14 below)

3.8.11 *Caselaw.*

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

- (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).
- (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).

⁵⁷ COIS Sudan COI Report (Ethnic groups – West Sudan; Peace and conflict in Sudan – Darfur)

- (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 of 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).

NB: On 4 April 2007 the Court of Appeal, while accepting certain findings of the AIT, nevertheless allowed the appeal of H,G and M (reported as *AH and others* EWCA civ 297), finding that it would be unduly harsh for ordinary non-Arab Darfuris, to relocate from Darfur to Khartoum to escape persecution. The Court held that the AIT had erred in comparing conditions prevailing (in camps) in Khartoum (the safe haven) with conditions prevailing in Sudan as a whole. It stated that the correct comparison was between conditions in the place of habitual residence (i.e. here Darfur) and those in the 'safe haven' or prospective place of internal relocation. The Home Office appealed this decision and on 4 October 2007 the House of Lords upheld the Secretary of State's view that it would not be unduly harsh to return Darfuris of non-Arab ethnicity to Khartoum and re-instated in full the findings of HGMO above.

The House of Lords re-emphasised the stringency of the test to be applied and affirmed its earlier findings in *Januzi* that 'The decision-maker taking account of all relevant circumstances pertaining to the claimant (including age, gender, experience, health, skills and family ties) and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.....' It further stated that 'There is no warrant for excluding, or giving priority to, consideration of the applicant's way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country...There was no contest between

the two cases in *Januzi* and nothing was said to suggest that one basis is to be preferred or is to be the starting point. Both are relevant, and the weight to be given to each is a matter to be judged by the decision-maker in the context of a claim for asylum by a particular applicant in a particular case...the test propounded by the House in *Januzi* was one of great generality, excluding from consideration very little other than the standard of rights protection which an applicant would enjoy in the country where refuge is sought.'

Case owners/workers are referred to the Asylum Instruction on 'internal relocation' (update pending)

- 3.8.12 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. Tribal leaders, persons whose conduct marks them out as oppositionist or anti-government, which may include those classed as 'intellectuals' (students, lawyers, professional traders or merchants) or prominent human rights activists from non-Arab ethnic groups who have been identified through their political activity or their expression of anti-government views, may be liable for treatment amounting to persecution. The grant of asylum in such cases is therefore likely to be appropriate.
- 3.8.13** 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.
- 3.8.14** 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 2007. 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.⁵⁸
- 3.9.4** Juveniles often were held with adults and in some cases subjected to sexual abuse by the adult inmates in 2007. The government did not permit regular visits to prisons by domestic human rights observers. In 2005 the government agreed to allow unfettered access to UN monitors; however, the government routinely denied requests by the UN and International Committee of the Red Cross (ICRC) to visit prisons in 2007. By contrast, the Prisons Directorate of the GoSS routinely granted prison access to the ICRC, UN and other international observers.⁵⁹

⁵⁸ COIS Sudan COI Report (Prison conditions)

⁵⁹ USSD 2007 Section I (d)

3.9.5 Detention centres operated by rebel forces were comparable to those operated by the government. On 14 August, UNMIS observers visited a detention facility operated by SLA/Minawi in Dar al Salaam, North Darfur, where the observers were able to interview detainees. All detainees reported very poor detention conditions and lack of food. Three detainees had been whipped and beaten during their detention. The SLA and other rebel groups allowed the ICRC access to some prisoners during 2007.⁶⁰

3.9.6 Case law.

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 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.

⁶⁰ USSD 2007 Section 1(d)

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.⁶¹

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.⁶²

4.4.4 The FCO Country Profile 2007 stated that the prolonged civil war has made it difficult to access healthcare and as such the health status of the population has suffered greatly. The reported noted, however, that immunisation rates for most childhood diseases are greater than 50%. An estimated 54 million children under the age of five would be targeted for immunisation in 2007. The GoSS Ministry of Health would disperse US\$20 million worth of drugs to the southern states. The first of ten planned county hospitals was due for completion in 2007. Physicians for Human Rights (PHR) reported on 7 March 2007 that the organisation applauds the introduction of the African Health Capacity Investment Act of 2007 which is expected to supply \$600 million over three years to stem the flood of doctors and nurses out of African countries. BBC News reported on 1 March 2007 details of a new low-cost malaria drug targeted at children which has been launched, aimed especially at the children in sub-Saharan Africa.⁶³

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

⁶¹ COIS Sudan COI Report (Medical issues)

⁶² COIS Sudan COI Report (Medical issues)

⁶³ COIS Sudan COI Report (Medical issues)

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.⁶⁴

- 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 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 reiterates its call upon all governments to refrain from any forced returns of Darfuris to Sudan.⁶⁵ 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** In October 2007, the Aegis Trust published a report alleging mistreatment of non-Arab Darfuri returnees to Sudan. The allegations contained within the Aegis Trust report have been carefully investigated. No evidence has been found to establish that unsuccessful non-Arab Darfuri asylum seekers are as such at real risk of mistreatment by the Sudanese authorities in Khartoum upon their return there from the UK. The House of Lords has determined that people facing persecution in Darfur can reasonably relocate to Khartoum. There is nothing in the House of Lords judgment to stop us returning failed asylum seekers to Sudan. Each application should continue to be considered on a case by case basis.
- 5.4** 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 Organization 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 0800 783 2332 or www.iomlondon.org.

6. List of source documents

⁶⁴ COIS Sudan COI Report (Medical issues)

⁶⁵ UNHCR Position paper on Darfuri asylum seekers from Sudan February 2006

- UK Home Office COI Service Sudan Country of Origin Information Report November 2007
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/txis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=43f5dea84>
- Human Rights Watch Report 2008
<http://hrw.org/englishwr2k7/docs/2007/01/11/sudan14715.htm>
- USSD 2007
<http://www.state.gov/g/drl/rls/hrrpt/2007/78759.htm>
- FCO Country Profile 2007
<http://www.fco.gov.uk/en/about-the-fco/country-profiles/sub-saharan-africa/sudan>

Asylum Policy

9 April 2008