

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. Case owners 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, case owners 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 the SPLM 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 from the south and a Cabinet reshuffle. Al-Bashir 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 the UN Mission in Sudan (UNMIS) only 88% had been redeployed 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 While the CPA's security arrangements are making progress in parts of the South, the presence of other armed groups such as the Ugandan Lord's Resistance Army in the far south remain a threat to maintaining peace.⁶ The State of South Kordofan, which lies to the north of the border of South Sudan and borders Darfur was bitterly disputed during the north-south war. The demarcation of the disputed oil-rich Abyei region, which was incorporated into Southern Kordofan under the 2005 peace deal, remains unsettled and led to violent clashes between northern and southern groups in 2008. Tensions remain high in the region in 2009.⁷

2.5 The NGO Refugees International has warned that fighting could flare in the next two years due to polls and a referendum on separating southern Sudan from the north. Elections are

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

⁵ COI Sudan COI Report

⁶ FCO Country Profile November 2007

⁷ BBC News: 'UN warned of South Sudan violence' 7.01.09 and "Sudan could face new Darfur war" 22.10.08

due to take place in 2009 although Refugees International does not believe the polls will take place until 2010 because of logistical difficulties and insecurity. It believes that the demarcation of the border between north and south, and power-sharing arrangements over the control of resources that have not yet been agreed “risks aggravating” the situation.⁸

- 2.6** On 24 February 2009 heavy fighting broke out in Malakal, capital of Upper Nile State, between the two constituent parts of the Joint Integrated Unit⁹ (JIU) based in Malakal. The southern Sudan army claimed this had been prompted by the return of a Khartoum backed militia leader, General Gabriel Tang Ginya, who had been held responsible by the south for violence in Malakal in 2006. Following the November 2006 clashes, that left some 200 dead, the President of Southern Sudan described Tang as a criminal and asked Khartoum to hand him over to justice. The recent fighting started when General Tang arrived in Malakal, ostensibly to visit his family, and refused to leave the town. The Southern Sudan Assembly was informed on 19 March that 57 people had been killed: 26 civilians, 15 Sudanese Peoples Liberation Army (SPLA) and 16 Sudan Armed Forces (SAF).¹⁰
- 2.7** In early March 2009 (7-13), inter-tribal fighting broke out, primarily between Lou-Nuer and Murle tribesmen, in the east of Jonglei state, near the Ethiopian border. Accurate reports are hard to come by but this has left at least 400 dead, and could be as many as 700. The SPLA did not at first seek to intervene to stop the fighting but have now said they will take a more active protection role. UNMIS is seeking to respond as well, with more patrolling in the area and greater visibility of events on the ground. The fighting has died down, as at the end of March 2009, but the area remains tense.¹¹
- 2.8** On 18 March 2009, SPLA war veterans staged demonstrations protesting non-payment of their salaries by blocking roads to southern Sudan in the border towns of Yei and Nimule. The Commander in Chief of the SPLA visited the town of Yei to meet with the disabled soldiers and ordered the immediate payment of salary arrears. By 21 March the situation was reported to be back to normal.¹²

West Sudan - Darfur

- 2.9** Despite the signing of the Darfur Peace Agreement (DPA) in May 2006, the 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, and from the centre in Khartoum. The conflict escalated in February 2003 when the Sudan Liberation Army/Movement (SLA/M) and Justice and Equality Movement (JEM) rebels – predominantly from African Fur, Zaghawa, Massaleit tribes – attacked a government garrison. In response to the increasingly effective guerrilla war being waged, 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. Despite the 2004 deployment of the African Union Mission in Sudan (AMIS), attacks on civilians continued and Khartoum failed to rein in militias. In March 2005, UNSC referred the Darfur situation to the International Criminal Court (ICC). The ICC issued arrest warrants for government minister, Ahmed Harun, and Janjaweed commander, Ali Kushayb, in April 2007 but Khartoum has so far refused to hand them over.¹³

⁸ BBC News: ‘UN warned of South Sudan violence’ 7.01.09

⁹ JIUs comprise a 50:50 northern:southern split of forces and were written into the CPA to form the basis of a new national army, should the 2011 referendum result in a vote for unity.

¹⁰ Sudan Tribune “S.Southern Assembly hears reports on Malakal fighting” 19.03.08

¹¹ Sudan Tribune ‘UN calls for restraint in Jonglei’s Pibor’ 28.03.09

¹² Sudan Tribune “Calm returns to South Sudan border town after Salva Kiir’s visit” 22.03.09

¹³ FCO country profile November 2007 and International Crisis Group conflict history

- 2.10** The Darfur Peace Agreement (DPA) was signed by the government and one SLA/M faction (led by Minni Minawi) but was undermined by the absence of other parties. JEM rejected the deal. Attacks on civilians and aid workers increased dramatically from late 2006. Groups have splintered since. 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. The SLA/MM as well as the Janjaweed and government forces are responsible for increasing attacks on civilians. Retaliatory attacks accelerated and intensified from early 2008, when the government launched major aerial and ground attacks in west and north Darfur. Access for humanitarian aid also became more difficult.¹⁴
- 2.11** On 10 May 2008, JEM launched an assault on Omdurman, a western suburb of Khartoum which left at least 200 dead. The attack was a milestone in the Darfur conflict, constituting the first military strike on the capital for 30 years. Government forces defeated the rebels but there were reports of arbitrary arrests by the Sudanese authorities, extra-judicial executions and ill-treatment of detainees following the attack.¹⁵ The Foreign and Commonwealth Office (FCO) stated in June 2008 that, following the fighting, large numbers of non-Arab Darfuris living in Khartoum were reportedly detained. Reports suggested the Government detained anyone identified as Zaghawa. Press reports and eye-witness accounts suggested there may have been up to 3,000 arrests. The exact number of detainees was impossible to verify as there had been no access to places of detention in Khartoum. The FCO understood that a number of detainees had since been released but others (reports indicate 450) remained in custody and reports continued to arrive of further detentions. There had also been allegations of torture, mistreatment and inhumane detention conditions.¹⁶
- 2.12** A June report by Human Rights Watch entitled "Crackdown in Khartoum" and a September report by Geneva-based human rights organisation, the Darfur Relief and Documentation Centre (DRDC) gave accounts of the Sudanese government's response to the attack. DRDC estimated that at least 500 individuals from Darfur, whether civilians or presumed JEM combatants, were summarily executed or extra-judicially killed in the first three days following the attack. It also cites executions that occurred after that time and provides details on arrests, executions and torture. The report seeks to establish a broader picture of racially-propagated violence and a dysfunctional judiciary, tying the security crackdown to International Criminal Court (ICC) allegations against President Bashir.¹⁷ The report also said that more than 4,000 people – mostly civilians with no ties to the rebel movement were arbitrarily arrested after the attack. The government denied the allegations and disputed the numbers. The State Minister of Information stated that arrests were only on the basis of evidence and that 90% had been released immediately because of insufficient evidence. He said that the only people left in custody were the 50 or so who had been charged and were now on trial.¹⁸
- 2.13** Human Rights Watch reported that Anti-Terrorism Special Courts set up by the Sudanese government to try individuals accused of participating in the attack on the capital did not meet minimum international fair trial standards. Lawyers said they had limited or no access to clients and described the court proceedings as arbitrary, forcing some defence lawyers to withdraw. Under Sudanese law, a defendant can be convicted on the basis of a confession made while in incommunicado detention or during coerced interrogations.

¹⁴ International Crisis Group: The current situation

¹⁵ IRIN news "Rights groups decry Khartoum crackdown 26 May 2008

¹⁶ FCO letter 29 June 2008 (hard copy available)

¹⁷ Sudan Tribune 'NGO report details new dimensions of violence after Khartoum attack' 14.09.08

¹⁸ IRIN 'Mounting criticism against government following rebel attack' 23.09.08

Cases must be appealed within seven days of the judgment, which is considered insufficient time to bring an appeal against such serious charges.¹⁹

- 2.14** Sudan cut diplomatic ties with Chad on 13 May 2008. Chad denied any involvement in the attack but has a history of close military ties with JEM. Relations between the two countries were already poor.²⁰
- 2.15** On 4 March 2009 the ICC announced that an arrest warrant was issued against President Bashir for seven counts of war crimes and crimes against humanity in Darfur but found that the material provided by the Prosecution in support of its application for a warrant of arrest failed to provide reasonable grounds to believe that the Government of Sudan acted with specific intent to destroy, in whole or in part, the Fur, Masalit and Zaghawa groups. Consequently, the crime of genocide is not included in the warrant. Nevertheless, the Judges stressed that if additional evidence is gathered by the Prosecution, the decision would not prevent the Prosecution from requesting an amendment to the warrant of arrest in order to include the crime of genocide. France, the UK, the US, Germany, the European Union Presidency and the UN called for Sudan to cooperate with the ICC.²¹ A number of Arab states expressed concern at the decision by the ICC.²² SLM-Minnaw and JEM backed the ICC action.²³ Immediately following the issue of the arrest warrant, Sudan expelled 13 foreign NGOs from Darfur: Oxfam, CARE, MSF-Holland, Mercy Corps, Save the Children, the Norwegian Refugee Council, the International Rescue Committee, Action Contre la Faim, Solidarites and CHF International. It also dissolved three local organisations: Khartoum Center for Development and Environment, the Sudan Social Development Organisation (SUDO), and Amal Center for Rehabilitation of Violence Victims.²⁴ On 16 March 2009, President Bashir stepped up his clampdown on foreign aid groups by ordering that local relief organisations take over food distribution within a year.²⁵ Other members of the government have subsequently modified this to an intention to gradually “Sudanize” delivery of aid.²⁶ The Sudanese state minister for Humanitarian Affairs, Ahmed Haroun, said that operating UN organisations would not be impacted.²⁷ President Bashir also announced that his government is prepared to expel foreign missions if they exceed their mandate. He added that there were 87 NGOs in Darfur and that he had expelled 12 which he considered had intelligence-linked activities.²⁸ The ICC prosecutor, Luis Moreno-Ocampo denied allegations by Sudan that his office received information from aid groups operating in Darfur.²⁹
- 2.16** A later joint Government of Sudan/UN report puts the expulsions of large foreign aid agencies at 13, mostly from Darfur. Four of the expelled NGOs served some 1.1 million people.³⁰ At least five of the NGOs asked to leave have been UNHCR implementing partners carrying out important humanitarian programmes in Darfur, Blue Nile State and Khartoum State.³¹ The UN humanitarian affairs coordinator has said that most critical needs are being filled for now but that by the beginning of May, as the hunger gap approaches, and unless the World Food Programme has found partners able to take on distribution, people will not receive the assistance they need. The UN assessment also warned that

¹⁹ Human Rights Watch ‘Sudan: End Unfair trials 24.06.08

²⁰ Guardian ‘Sudan severs Chad ties after Darfur rebels attack capital’. 12.05.08

²¹ Sudan Tribune ‘EU, France, Germany, UK, UN, US call for cooperation with world court’ 5.03.09

²² Sudan Tribune ‘Arab states reactions fall short of condemning ICC over Bashir warrant’ 6.03.09

²³ Sudan Tribune ‘SLM-Minnaw backs ICC move against Sudan president’ 7.03.09

²⁴ Sudan Tribune ‘Sudan expels 10 aid NGOs and dissolves 2 local groups’ 5.03.09

²⁵ Sudan Tribune ‘Sudan’s Bashir warns foreign diplomats that they face expulsion’ 16.03.09

²⁶ Thomson Reuters Foundation: ‘Sudan minister says no to mass aid expulsion’ 17.03.09

²⁷ Sudan Tribune ‘Sudan’s Bashir orders foreign relief groups out within a year’ 23.03.09

²⁸ Sudan Tribune ‘Sudan’s Bashir warns foreign diplomats that they face expulsion’ 16.03.09

²⁹ Sudan Tribune ‘ICC prosecutor says he received zero information from NGOs in Sudan’ 21.03.09

³⁰ BBC News ‘Joint Darfur aid warning issued’ 24.03.09/Joint Government of Sudan - United Nations assessment on the situation created by the departure of NGOs in Darfur 24.03.09

³¹ UNHCR – March 2009 Update

major water shortages could develop within two to four weeks if fuel, incentives and spare parts are not continuously provided. Since the expulsions, Sudanese groups have been filling the gaps, denying that there is any problem in distribution of aid. But the head of humanitarian aid for the UN said the Sudanese government had not done enough, and that it had agreed that gaps existed. He also said that capacity does not exist on the ground at the moment.³²

- 2.17** At a meeting in Doha on 17 February 2009 sponsored by Qatar, the UN, the African Union and the Arab League, JEM signed a declaration of intent to pave the way for broader peace talks with Khartoum.³³ On 7 March, JEM announced that it would reconsider its position towards the peace process if Qatar invited President Bashir to the Arab summit to be held on 30 March.³⁴ On 17 March a leading rebel commander from an SLM group signed a merger agreement with the JEM.³⁵ On 20 March 2009, JEM suspended its participation in the Doha peace process and called on Khartoum to reverse its decisions to expel aid groups and replace all international NGOs with local ones by the end of the year. It would suspend participation until evicted NGOs had returned and resumed operations.³⁶
- 2.18** Since the beginning of the conflict, described by the UN as one of the world's worst humanitarian crises, around 2.7 million people (one third of the population of Darfur) have been displaced, including 250,000 who have fled across the border to Chad. Most now live in camps near Darfur's main towns. Over 3.5 million are in need of humanitarian assistance. The United Nations reports that up to 300,000 people have died from the combined effects of war, famine and disease although President Bashir puts the death toll at 10,000.³⁷
- 2.19** On 31 July 2007, the UN Security Council unanimously adopted Resolution 1769 which mandates the African Union/United Nations (AU/UN) Hybrid force for Darfur: up to 19,555 AU and UN peacekeeping forces, and up to 3,772 police and 5,588 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.³⁸ 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, the United Nations-African Union Mission in Darfur (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.³⁹ As of 2 March 2009, UNAMID had approximately 18,300 troops, police and civilians. Comprising 12,937 military personnel (66% mandated strength) 2,639 Police (41%), and 3,129 civilians (56%).

East Sudan

- 2.20** Eastern Sudan has 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

³² BBC News 'Joint Darfur aid warning issued' 24.03.09/Joint Government of Sudan - United Nations assessment on the situation created by the departure of NGOs in Darfur 24.03.09

³³ BBC News 'Q&A: Sudan's Darfur Conflict' 5.03.09

³⁴ Sudan Tribune 'JEM warns Qatar against hosting Sudanese president for Arab summit' 8.03.09

³⁵ Sudan Tribune 'Darfur rebel faction merges with JEM' 18.03.09

³⁶ Sudan Tribune 'Rebel JEM suspends their participation in Darfur peace process' 21.03.09

³⁷ UN Sudan: History of Conflict

³⁸ FCO country profile November 2007 (UK response to the crisis in Darfur)

³⁹ BBC News 'UN takes over Darfur peace force' 31 December 2007

Eastern Front (EF) and the Sudanese government. A peace deal was signed on 14 October 2006, guaranteeing greater development for Eastern Sudan.⁴⁰

- 2.21** 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 Sudanese Government on the disarmament, demobilisation, and reintegration of EF troops.⁴¹ 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.⁴² 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 2008.⁴³
- 2.22** There were reports in August 2008 of internal power struggles described by Chairman of the Eastern front, Mussa Mohammed Ahmed, as a normal crisis of transition. In September the National Congress party formed a committee to mediate in a bid to bridge differences between the different factions of the former rebel front.⁴⁴ The government allocated 100 million dollars in 2007 to the Rehabilitation Fund which is supposed to receive at least 125 million dollars each year until 2011, but only 25 million has been spent.⁴⁵ Amna Dirar, deputy of the Eastern Front said in August that almost 2,000 soldiers had been waiting in camps in the east to be disarmed, demobilised and reintegrated into society. Another 1,200 has already joined Sudan's police or armed forces.⁴⁶

Human rights

- 2.23** 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 Sudanese government, 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 Sudanese government 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.⁴⁷ The Sudanese authorities have so far refused to hand over two suspects, Humanitarian Affairs Minister Ahmad Harun and militia leader Ali Kushayb.⁴⁸ On 4 March 2009, the ICC issued an arrest warrant against President Bashir. (See 2.10)
- 2.24** The US State Department report published in February 2009 noted that the government's human rights record remained poor, and there were numerous serious abuses, including: abridgement of citizens' right to change their government; extrajudicial and other unlawful killings by government forces and other government-aligned groups throughout the country; disappearances, including of hundreds of Darfuris in Omdurman and Khartoum following

⁴⁰ FCO country profile November 2007

⁴¹ FCO country profile November 2007

⁴² Sudan Tribune, 'Eastern Sudan rebels to join government' 25 August 2007

⁴³ COI country report

⁴⁴ Sudan Tribune 'Ruling party to mediate between eastern Sudan factions' 22.09.08

⁴⁵ Sudan.net 'East Sudan leaders in damaging internal power struggle' 24.08.08

⁴⁶ Sudan Tribune 'Eastern Sudan risks war if soldiers not paid – former rebel' 10.08.08

⁴⁷ FCO country profile November 2007

⁴⁸ BBC News, "UN to withdraw staff from Darfur", 14 July 2008

the May JEM attack; torture, beatings, rape, and other cruel, inhumane treatment or punishment by security forces; harsh prison conditions; arbitrary arrest and detention, incommunicado detention of suspected government opponents, and prolonged pretrial detention; executive interference with the judiciary and denial of due process; obstruction of the delivery of humanitarian assistance; restrictions on privacy; restrictions on freedom of speech; increased restrictions on the press, including direct censorship; restrictions on freedoms of assembly, association, religion, and movement; harassment of IDPs and of local and international human rights and humanitarian organizations; violence and discrimination against women, including female genital mutilation (FGM); child abuse, including sexual violence and recruitment of child soldiers, particularly in Darfur; preventing international human rights observers from traveling to/within Sudan; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers' rights; and forced and child labor.⁴⁹

- 2.25** Rebel factions and bandits in Darfur killed and abducted persons, including civilians, humanitarian workers, and United Nations--African Union Mission in Darfur (UNAMID) peacekeeping troops and workers; beat and raped civilians; recruited and used child soldiers; and restricted humanitarian access.⁵⁰

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 guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to 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 Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant 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 below or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims').

⁴⁹ US State Country Report 2008: Introduction

⁵⁰ US State Country Report 2008: Introduction

- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 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.⁵¹
- 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.⁵²
- 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.⁵³
- 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.⁵⁴

⁵¹ COI Sudan Report

⁵² COI Sudan Report

⁵³ COI Sudan report

⁵⁴ COI Sudan report

- 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.⁵⁵
- 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 Sudanese government on the disarmament, demobilisation, and reintegration of EF troops.⁵⁶ 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.⁵⁷ 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 2008.⁵⁸
- 3.6.8** There were reports in August 2008 of internal power struggles described by Chairman of the Eastern front, Mussa Mohammed Ahmed, as a normal crisis of transition. In September the National Congress party formed a committee to mediate in a bid to bridge differences between the different factions of the former rebel front.⁵⁹ The government allocated 100 million dollars in 2007 to the Rehabilitation Fund which is supposed to receive at least 125 million dollars each year until 2011, but only 25 million has been spent.⁶⁰ Amna Dirar, deputy of the Eastern Front said in August that almost 2,000 soldiers had been waiting in camps in the east to be disarmed, demobilised and reintegrated into society. Another 1,200 has already joined Sudan's police or armed forces.⁶¹
- 3.6.9** **Sufficiency of protection.** Since the ceasefire agreement in June 2006, individuals associated with the Beja Congress 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.
- 3.6.10** **Internal relocation.** Similarly, internal relocation is unlikely to be a consideration. However, if this category of applicants' fear is of ill treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

⁵⁵ COI Sudan report

⁵⁶ FCO Country Profile

⁵⁷ Sudan Tribune 'Eastern Sudan rebels to join government' 25 August 2007

⁵⁸ COI Sudan Report

⁵⁹ Sudan Tribune 'Ruling party to mediate between eastern Sudan factions' 22.09.08

⁶⁰ Sudan.net 'East Sudan leaders in damaging internal power struggle' 24.08.08

⁶¹ Sudan Tribune 'Eastern Sudan risks war if soldiers not paid – former rebel' 10.08.08

- 3.6.11** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.6.12 *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.
- 3.6.13** Case owners 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 case owners should consider whether one of the Exclusion clauses is applicable. Case owners 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) – 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.⁶²

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 in the state of Southern Kordofan and not in the southern war zone where most of the civil war fighting has taken place. However, the northern government did target the Nuba at certain stages of the conflict, besieging them in the Mountains and denying them access to basic rights and freedoms. The SPLM/A saw the Nuba's plight and allied themselves to their cause, basing some fighters in the Nuba Mountains. Some Nuba people joined the SPLM/A to fight against government forces.⁶³ The Nuba remain disadvantaged and marginalised following the signing of the CPA.⁶⁴

- 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

⁶² COI Sudan Report

⁶³ COI Sudan Report

⁶⁴ IRIN: 'S Kordofan the next flashpoint?'

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.⁶⁵

3.7.2.3 In October 2007 Salva Kiir, First Vice-President of the GNU and President of the GoSS announced the suspension of the SPLM from the GNU, citing several CPA provisions that had not been implemented on schedule.⁶⁶ 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 from the south and a Cabinet reshuffle. Al-Bashir issued a decree appointing new members of the former southern rebel movement to the national unity government.⁶⁷ 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 redeployed 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.⁶⁸

3.7.2.4 While the CPA's security arrangements are making progress in parts of the South, the presence of other armed groups such as the Ugandan Lord's Resistance Army in the far south remain a threat to maintaining peace.⁶⁹ The State of South Kordofan, which lies to the north of the border of South Sudan and borders Darfur, was bitterly disputed during the north-south war. The demarcation of the disputed oil-rich Abyei region, which was incorporated into Southern Kordofan under the 2005 peace deal, remains unsettled and led to violent clashes between northern and southern groups in 2008. Tensions remain high in the region in 2009.⁷⁰

3.7.2.5 The NGO Refugees International has warned that fighting could flare in the next two years due to polls and a referendum on separating southern Sudan from the north. Elections are due to take place in 2009 although Refugees International does not believe the polls will take place until 2010 because of logistical difficulties and insecurity. It believes that the demarcation of the border between north and south, and power-sharing arrangements over the control of resources that have not yet been agreed "risks aggravating" the situation.⁷¹

3.7.2.6 On 24 February 2009 heavy fighting broke out in Malakal, capital of Upper Nile State, between the two constituent parts of the Joint Integrated Unit⁷² (JIU) based in Malakal. The southern Sudan army claimed this had been prompted by the return of a Khartoum backed militia leader, General Gabriel Tang Ginya, who had been held responsible by the south for violence in Malakal in 2006. Following the November 2006 clashes, that left some 200 dead, the President of Southern Sudan described Tang as a criminal and asked Khartoum to hand him over to justice. The recent fighting started when General Tang arrived in Malakal, ostensibly to visit his family, and refused to leave the town. The Southern Sudan

⁶⁵ COI Sudan Report

⁶⁶ FCO country profile 6 November 2007

⁶⁷ BBC News 'Southerners to take Sudan posts' 27 December 2007'

⁶⁸ COI Sudan Report

⁶⁹ FCO Country Profile November 2007

⁷⁰ BBC News: 'UN warned of South Sudan violence' 7.01.09 and "Sudan could face new Darfur war" 22.10.08

⁷¹ BBC News: 'UN warned of South Sudan violence' 7.01.09

⁷² JIUs comprise a 50:50 northern:southern split of forces and were written into the CPA to form the basis of a new national army, should the 2011 referendum result in a vote for unity.

Assembly was informed on 19 March that 57 people had been killed: 26 civilians, 15 SPLA and 16 Sudan Armed Forces (SAF).⁷³

3.7.2.7 In early March 2009 (7-13), inter-tribal fighting broke out, primarily between Lou-Nuer and Murle tribesmen, in the east of Jonglei state, near the Ethiopian border. Accurate reports are hard to come by but this has left at least 400 dead, and could be as many as 700. The SPLA did not at first seek to intervene to stop the fighting but have now said they will take a more active protection role. UNMIS is seeking to respond as well, with more patrolling in the area and greater visibility of events on the ground. The fighting has died down, as at the end of March 2009, but the area remains tense.⁷⁴

3.7.2.8 On 18 March 2009, SPLA war veterans staged demonstrations protesting non-payment of their salaries by blocking roads to southern Sudan in the border towns of Yei and Nimule. The Commander in Chief of the SPLA visited the town of Yei to meet with the disabled soldiers and ordered the immediate payment of salary arrears. By 21 March the situation was reported to be back to normal.⁷⁵

3.7.2.9 Sufficiency of protection. Since the conclusion of the CPA in January 2005 and the establishment of the GoSS 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.

3.7.2.10 Internal relocation. Since the conclusion of the CPA in January 2005, and the establishment of the GoSS 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.

3.7.2.11 Conclusion. Since the peace agreement in January 2005 and the subsequent establishment of the GoSS 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.

3.7.2.12 Case owners 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 case owners 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. Case owners 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. See 2.5 -2.13

3.7.3.2 Caselaw

ECJ Elgafaji 17 February 2009. The ECJ in this case found that Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country

⁷³ Sudan Tribune "S.Southern Assembly hears reports on Malakal fighting" 19.03.08

⁷⁴ Sudan Tribune 'UN Mission urges end to tribal clashes in southern state' 27.03.09

⁷⁵ Sudan Tribune "Calm returns to South Sudan border town after Salva Kiir's visit" 22.03.09

nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

3.7.3.2 Sufficiency of protection. If this category of claimants' fear is of ill treatment or persecution by the state or Janjaweed in Darfur they cannot seek protection from the government.

3.7.3.3 Internal relocation. If this category of claimants' fear is of ill treatment or persecution by the state or Janjaweed in Darfur and they have a high profile in the SLM/A, they are unlikely to be able to relocate to another area of the country as they will probably be known to the national authorities.

3.7.3.4 If they are low or mid level affiliates of the SLM/A and fear the actions of local officials, they may be able to relocate to a part of Sudan where they are not known to the national government or where they would be of no interest to them. If fear is solely of the Janjaweed, relocation should be available to areas of the country in which the Janjaweed are not present.

3.7.3.5 All JEM members or affiliates, at any level of involvement, may be subject to adverse interest by the Sudanese authorities following the JEM attack on Khartoum and internal relocation may not be an option in many cases depending on factors such as, for example, whether the claimant is likely to be known to the authorities.

3.7.3.6 Conclusion. While a nominal peace agreement was signed in May 2006 between the Khartoum government and the SLM/A, JEM was not party to the agreement and fighting between the various rebel factions and the government-backed forces in Darfur continues.⁷⁶ Leading members of the SLM/A, or affiliates considered to be 'intellectual' are likely to be subject to persecution in the Darfur states or Khartoum (further guidance on risk categories is given in *HGMO* below). For such cases, a grant of asylum will be appropriate. There is no evidence, however, that low/mid-level activists or affiliates of the SLM/A, who fear persecution in Darfur, are at risk of adverse attention from the authorities in Khartoum or elsewhere in Sudan. A grant of asylum solely on the basis of SLM/A membership is therefore not likely to be appropriate.

3.7.3.7 Following the JEM attack on Omdurman, those suspected of JEM involvement were subject to arrest, detention and ill-treatment by the authorities in Khartoum. Where applicants can demonstrate membership of or affiliation to JEM and that this would be known to or suspected by the Sudanese authorities, a grant of asylum is likely to be appropriate.

3.7.3.8 Evidence suggests, similarly, that any non-Arab Darfuri, particularly those of Zaghawa ethnicity (JEM are a mainly Zaghawa group), may be of adverse interest to the Sudanese authorities because of imputed political opinion. After the JEM attack on Omdurman, the Sudanese authorities arrested, detained and ill-treated non-Arab Darfuris of Zaghawa

⁷⁶ COI Sudan Report

ethnicity and, while large-scale arbitrary arrests were reported only immediately following the JEM attack, such persons may continue to be of adverse interest to the Sudanese authorities in Khartoum, particularly if they are known to have JEM connections. A grant of asylum may be appropriate in such cases but, protection needs of individuals are likely to vary and individual circumstances should be considered carefully on a case by case basis in assessing whether a grant of asylum in such cases is appropriate (please see 5.4 below regarding suspension of enforced returns).

3.7.3.9 Case owners 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 or JEM and the evidence suggests he/she has been involved in such actions, then case owners 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. Case owners 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 Zaghawa), Fur (aka For or Four) or another of the non-Arab ethnic groups from the Darfur States.

3.8.2 *Treatment.* See 2.5 – 2.13 and 3.7.3.1 – 3.7.3.9 above. Since early 2003, Sudanese government forces and the Janjaweed have been engaged in an armed conflict with the SLM/A and the JEM. 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.⁷⁷

3.8.3 The Landinfo report prepared by the Norwegian Country of Information Centre in November 2008 reports as follows: As a result of Sudan's regional civil wars, Sudan has the world's highest number of internally displaced persons. It is estimated that between 1.2 and 1.5 million of the 8 million people living in greater Khartoum are internally displaced persons (IDPs). Many of those referred to as IDPs see themselves as economic migrants. It is difficult to differentiate between IDPs, migrants and other urban poor in the city slums, and the areas designated as IDP camps by the Sudanese authorities. Living conditions for IDPs, migrants, and others from Darfur appear to be similar to those of the urban poor. The authorities do not differentiate between these groups. The settlement pattern is based more on social class than ethnicity and regional background. The people who go to Khartoum usually already have contacts or family members there. Roughly one third of IDPs from Darfur do not have close family/relatives in the city. Information provided by IOM suggests that 4% are Zaghawa, just over 6% are Massalit and only 3% from Arab tribes.⁷⁸

3.8.4 Four areas have been formally reserved for IDPs on the outskirts of Khartoum: Mayho, Jabal Awliyya, Ummdurman as-Salam and Wad al-Bashir. Neither Ummdurman as-Salam nor the other areas, which some people refer to as camps, are delimited areas. They appear to be permanent residential areas that hardly differ from ordinary residential areas in the slums around the capital, where poor Arabs from the countryside in the north live in conditions that are no better than those for people from the south, east, or Darfur. In addition to the formally reserved areas, there are two large slum areas, Soba Aradi and Hajj

⁷⁷ Human Rights Watch News: 'Q&A What has happened in Darfur?'

⁷⁸ Landinfo report November 2008, Norwegian Country of Information Centre

Ysif, and other slums, where poor people from different backgrounds live, referred to as 'low-income high-density areas'.⁷⁹

- 3.8.5** The authorities actively endeavour to prevent permanent structures being built in both the official and unofficial camps because this would make it more difficult to close the camps if the areas they are situated in were to be used for other purposes. There was an improvement in housing standards in a 2006 survey. Living conditions of the IDPs largely overlap the living conditions of the rest of the city's poor. People need ID papers to gain access to public services including education. However people are often able to gain access to health services without such documents. Health and educational services are limited in the city's poor areas and the scarcity of public services in the slums also applies to infrastructure such as water supply, sewage systems and electricity. All public transport is privately run and expenses are high. Unemployment is high, more than 80% work outside the formal labour market. People primarily work in the agricultural sector, small-scale commerce and the building industry, but the earning opportunities for many women with children are so poor that they start illegal activities such as brewing beer. Despite the high level of unemployment many decide to stay on in Khartoum. Although the opportunities are poor, people see them as being considerably better than in the rest of the country.⁸⁰
- 3.8.6** The authorities have no great interest in exerting pressure on these sections of the population to return to their places of origin, regardless of whether they come from Darfur or other parts of the country. These groups constitute an important reserve army of labour- not least in relation to all the construction activity in Khartoum. The general economic and social situation, not only for IDPs in the Khartoum area but also for the rest of the city's poor, can be characterised as bad. IDPs from Darfur largely live under the same conditions as displaced persons from the rest of the country and poor migrants in general.⁸¹
- 3.8.7** People from Darfur have the same access to public services as everyone else in Khartoum. They are not discriminated against in relation to schooling etc but the level of public services is lower in the slums around Khartoum, where people from Darfur largely live. There is no difference in access to public services between IDPs from Darfur or other places and other poor migrants. The police generally view the poor and marginalised groups as being a problem and a security threat. Marginalised persons who come from areas where there are ongoing conflicts, experience more problems than people who come from peaceful areas. Skin colour has a major bearing on social standing in Sudan. Due to large-scale immigration to Khartoum from all regions of the country, it is difficult to identify people as, for example, Darfurians and harass them on the basis of a specific geographical/ethnic background.⁸²
- 3.8.8** Large scale forced relocation and the demolition of IDP residential areas of which there were a number of examples prior to 2004 have not occurred since May 2005. The local authorities have drawn up a set of rules 'Guiding principles for relocation' based on previous forced locations. However these rules have hardly been used. Forced relocations that occur today are very limited and rare.⁸³
- 3.8.9** Prior to the JEM attack in May, security in Khartoum was generally regarded as good. Slums do experience security problems because of crime but the centre of Khartoum is very safe. People generally dispense their own justice in the slum areas. The personal safety of people from Darfur living in Khartoum was generally better than it is in Darfur. While people who are politically active and leaders are more liable to experience problems with the authorities, it is ordinary crime that can create difficulties for most people.

⁷⁹ Landinfo report November 2008, Norwegian Country of Information Centre

⁸⁰ Landinfo report November 2008, Norwegian Country of Information Centre

⁸¹ Landinfo report November 2008, Norwegian Country of Information Centre

⁸² Landinfo report November 2008, Norwegian Country of Information Centre

⁸³ Landinfo report November 2008, Norwegian Country of Information Centre

Darfurians without ID docs were especially liable to be harassed by the police. The problem of ID documents applied to the whole poor population of the city, not just IDPs.⁸⁴

- 3.8.10** The authorities' reaction to political opponents from Darfur does not differ significantly from the abuse and reactions meted out to other political opponents. The Sudanese authorities focus on people who are politically active and high-profile opponents of the regime i.e. human rights activists, journalists, students etc. irrespective of their ethnicity or regional background. The security service has a dedicated tribal branch that monitors intellectual and politically active Darfurians and opponents of the regime from other parts of the country. The arrests that are made are highly targeted and torture is commonplace in Sudanese prisons and detention centres.⁸⁵
- 3.8.11** Sources confirmed that Darfurians had been arrested in recent years, for example, on suspicion of collaboration with rebel groups, although there were relatively few reports of arrests and persecution of people from Darfur living in Khartoum until the JEM attack. Almost all the reported arrests and/or other persecution have involved people who are either high-profile human rights activists or opponents of the regime. Arrests and other types of persecution of people from Darfur living in Khartoum do not seem to occur on the grounds of their regional or ethnic background alone. It cannot be ruled out that persecution and arrests take place but are not reported. However, given the international presence in Khartoum and the fact that several national human rights organisations operate relatively freely in the capital, the scope of such abuse is unlikely to be extensive. Nor is there anything to indicate that there is a general under-reporting of cases of persecution of persons from Darfur who are staying in Khartoum.⁸⁶
- 3.8.12 *Sufficiency of protection.*** If this category of claimant's fear is of ill treatment or persecution by the state or 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, they cannot seek protection from the government.
- 3.8.13 *Internal relocation.*** Such claimants are also unlikely to be able to relocate internally as they will probably be known to the national government.
- 3.8.14** Ordinary non-Arab Darfuris are not generally at risk of persecution outside the Darfur States and it would not be unduly harsh for them to relocate to a safe area within Sudan. Freedom of movement outside conflict areas is generally unhindered. However, individual circumstances may suggest it would not be feasible to relocate internally, particularly to Khartoum. After the JEM attack on Omdurman, the Sudanese authorities arrested, detained and ill-treated non-Arab Darfuris of Zaghawa ethnicity and, while large-scale arbitrary arrests were reported only for a relatively brief period after the JEM attack, such persons may continue to be of adverse interest to the Sudanese authorities in Khartoum, particularly if they are known to have JEM connections.
- 3.8.15** Following the recent issue of the ICC arrest warrant against President Bashir, the Sudanese authorities have expelled 13 international NGOs from Sudan, mostly from Darfur. President Bashir has also said that he intends to replace all international NGOs with local organisations by the end of the year. Other members of the government have subsequently modified this to an intention to gradually "Sudanize" delivery of aid and clarified that there were no plans to expel all foreign aid groups. Ahmed Haroun, Sudan's state minister for humanitarian affairs, said the president had meant he wanted foreign aid groups to stay

⁸⁴ Landinfo report November 2008, Norwegian Country of Information Centre

⁸⁵ Landinfo report November 2008, Norwegian Country of Information Centre

⁸⁶ Landinfo report November 2008, Norwegian Country of Information Centre

and train their Sudanese counterparts so they could take over the delivery of aid and gradually phase out international NGOs.⁸⁷ Four of the expelled NGOs served some 1.1 million people.⁸⁸ At least five of the NGOs asked to leave have been UNHCR implementing partners carrying out important humanitarian programmes in Darfur, Blue Nile State and Khartoum State.⁸⁹ The UN humanitarian affairs coordinator has said that most critical needs are being filled for now but that by the beginning of May, as the hunger gap approaches, and unless the World Food Programme has found partners able to take on distribution, people will not receive their rations. The UN assessment also warned that major water shortages could develop within two to four weeks if fuel, incentives and spare parts are not continuously provided. Since the expulsions, Sudanese groups have been filling the gaps, denying that there is any problem in distribution of aid. But the head of humanitarian aid for the UN said the Sudanese government had not done enough, and that it had agreed that gaps existed. He also said that capacity does not exist on the ground at the moment.⁹⁰ For applicants whose only option would be to live in an IDP camp on return to Khartoum, case owners should check the latest position on NGOs in Khartoum before considering whether internal relocation would be unduly harsh.

3.8.16 Other returnees may have previously lived in Khartoum or have family/friends able to provide accommodation and support. In such cases, depending on the individual circumstances of the claimant, internal relocation may be possible.

3.8.17 A further consideration is that all returnees from the UK are entitled to return voluntarily to Khartoum at any stage of the asylum process and take advantage of the VARRP financial package and reintegration provision offered by IOM. IOM has assisted many voluntary returnees from the UK over recent years to reintegrate and start small businesses to generate self-supporting income. Such persons are less likely to reside in an IDP camp.

3.8.18 When considering the viability or otherwise of internal relocation, case owners will need to bear in mind the guidance set out in *Januzi* and clarified in *AH* (details below), that all relevant circumstances should be taken into account (including age, gender, experience, health, skills and family ties etc.) in assessing whether it would be reasonable for a particular individual to relocate. Case owners should also refer to the Asylum Instruction on Internal Relocation.

3.8.19 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).

⁸⁷ Thomson Reuters Foundation: 'Sudan minister says no to mass aid expulsion' 17.03.09

⁸⁸ BBC News 'Joint Darfur aid warning issued' 24.03.09/Joint Government of Sudan - United Nations assessment on the situation created by the departure of NGOs in Darfur 24.03.09

⁸⁹ UNHCR – March 2009 Update

⁹⁰ BBC News 'Joint Darfur aid warning issued' 24.03.09/Joint Government of Sudan - United Nations assessment on the situation created by the departure of NGOs in Darfur 24.03.09

- (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).
- (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).

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 Dafur) 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 [*SSHD v AH (Sudan) & Ors* 2007 UKHL 49] 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'

3.8.20 Conclusion. 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. A grant of asylum in such cases is therefore likely to be appropriate.

3.8.21 After the JEM attack on Omdurman, the Sudanese authorities arrested, detained and ill-treated non-Arab Darfuris of Zaghawa ethnicity and, while large-scale arbitrary arrests were reported only for a relatively brief period after the JEM attack, such persons may continue to be of adverse interest to the Sudanese authorities in Khartoum, particularly if they are known to have JEM connections. A grant of asylum may be appropriate in such cases and individual circumstances should be considered carefully on a case by case basis in assessing whether a grant of asylum in such cases is appropriate.

- 3.8.22** Ordinary non-Arab Darfuris of other ethnicities are not generally subject to persecution outside of Darfur and most will be able to relocate safely to another area of Sudan. However protection needs are likely to vary and all factors must be carefully considered in each case, applying the guidelines set out in *Januzi* and *AH* (including, for example, age, gender, experience, health, skills and family ties etc.) in assessing whether it would be reasonable for a particular individual to relocate. Case owners should also refer to the Asylum Instruction on Internal Relocation for further guidance.
- 3.8.23** Some international NGOs have been expelled from Sudan and President Bashir has stated that he would replace all international NGOs with local organisations within the year. However, Sudanese ministers have subsequently claimed that there were no plans to expel all foreign aid groups – rather, it was envisaged that the international NGOs would gradually adopt more of a background training role. Concern has been expressed that conditions in the IDP camps in Khartoum may deteriorate in the coming months (see 3.8.15) For applicants whose only option would be to live in an IDP camp on return to Khartoum, case owners should check the latest position on NGOs in Khartoum.
- 3.8.24** Case owners should consider what accommodation options may be available to claimants other than living in an IDP camp, for example, whether friends or family would be able to provide accommodation. Further, all returnees from the UK are entitled to return voluntarily to Khartoum at any stage of the asylum process and take advantage of the VARRP financial package and reintegration provision offered by IOM. IOM has assisted many voluntary returnees from the UK over recent years to reintegrate and start small businesses to generate self-supporting income. Such persons are less likely to reside in an IDP camp and, as such, would be unlikely to need international protection.
- 3.8.25** Those who have the option to avail themselves of the assistance available through the VARRP package but choose not to do so will not qualify for a grant of asylum on the basis that internal relocation would be unduly harsh. They are not outside their country of nationality owing to a well-founded fear of persecution, but because they choose not to return there voluntarily. The level of harshness they would face on return is, therefore, of their own choosing and not one which engages the UK's obligations under the Refugee Convention.
- 3.8.26** 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.
- 3.8.27** A state of civil instability and/or where law and order has sometimes broken down, as has happened in Darfur, does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason. An applicant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability/insecurity.
- 3.8.28** Where those seeking protection in the United Kingdom fall outside the scope of the Refugee Convention, they may seek humanitarian protection under Immigration Rule 339C which implemented the provisions with respect to subsidiary protection in articles 2(e) and 15 of the EU Qualification Directive.
- 3.8.29** On 17 February 2009 the European Court of Justice (ECJ) issued a judgment in the case of *Elgafaji v NL* (Case C-465/07) which clarifies the test for whether Article 15c of the EU Qualification Directive applies in particular cases. The ECJ found that Article 15c provides protection that is supplementary to that provided by Article 3 of ECHR if in a country or part of a country that is in a state of internal or international armed conflict, indiscriminate violence: *“reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region,*

would, solely on account of his presence in the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive”.

- 3.8.30** The ECJ emphasised that, in order for someone to qualify for protection on the basis of indiscriminate violence, the level of violence would need to be so high that anyone, irrespective of his or her personal circumstances, returned to the country or part of a country in question, would be at risk “solely on account of his presence in the territory of that country or region”. The ECJ recognised that such a high level of indiscriminate violence will be ‘exceptional’ and that the judgement whether levels of indiscriminate violence in a particular country or part of a country reach such a high level is one for the authorities and the courts of members states.
- 3.8.31** It is accepted that non-Arab Darfuris have a well-founded fear of persecution in Darfur and it is also accepted that they would be at risk of serious harm as defined by 339C of the Immigration Rules if returned there. However, most Darfuri residents will be able to relocate from Darfur to other areas in Sudan. If asylum is refused on the basis that it is reasonable for the claimant to internally relocate within Sudan to escape persecution, case owners will need to go on to decide whether to grant humanitarian protection.
- 3.8.32** The factors which need to be taken into account in deciding whether internal relocation would be reasonable in the context of the asylum claim will be identical to those to be considered in relation to internal relocation to avoid serious harm as defined in 339C. Thus, if an asylum claim is refused on the grounds that internal relocation is a reasonable way to avoid the harm feared, a claim for humanitarian protection will fail for the same reasons.

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 throughout the country remained harsh and overcrowded in 2008. Almost all prisons lacked basic facilities such as toilets and showers. Health care was primitive; prisoners usually relied on family or friends for food. Officials continued to arbitrarily deny visits to prisoners. The government routinely mistreated persons in custody. There were credible reports that security forces held detainees incommunicado; beat them; deprived them of food, water, and toilets; and forced them to sleep on cold floors. Prisoners died from lack of health care and poor prison conditions. Juveniles often were held with adults in the north.⁹¹
- 3.9.4** Government authorities detained 109 children in connection with the May 10 JEM attack. Most of the children were sent to a detention facility for children after having been initially held with adults for several days. UN officials described the conditions in the separate facility as good. However, some children were not sent to the separate facility and remained detained with adults. Ninety-nine of the children were pardoned and released;

⁹¹ USSD country report Sudan 2008

four were tried, acquitted and released; five had ongoing trials and remained detained; and one, who was given a death sentence, was going through an appeal process.⁹²

- 3.9.5** Unlike 2007, the government allowed some restricted visits to prisons by human rights observers in the north. The International Committee of the Red Cross (ICRC) had limited access to government prisons during the year; however, released prisoners reported that officials hid high-profile detainees during visits.⁹³
- 3.9.6** Prisons in Southern Sudan provided inmates with at least one meal per day. The Prisons Directorate of Southern Sudan (SSPD) provided separate quarters for male and female prisoners and usually housed juveniles in separate cells. Prison labor was used for the construction of private residences for SPLM officials.⁹⁴
- 3.9.7** Pretrial detainees were generally held in jails separate from convicted prisoners in the south. Detention centers in Southern Sudan were under the control of local tribal or state authorities, and were uniformly substandard. Some were holes dug in the ground around a tree, with detainees shackled to the tree. Sanitary and medical facilities were uniformly inadequate. The SSPD permitted monitoring of prison conditions by the ICRC and other observers.⁹⁵
- 3.9.8** SLA/Minni Minawi continued to operate detention centers in North Darfur, including in Dar al Salaam, Zam Zam, and Shagil Tobaya. UNAMID reported that detainees were held in poor conditions. The SLA and other rebel groups allowed the ICRC access to some detainees during the year.⁹⁶
- 3.9.9 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 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**.

- 3.9.10 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

⁹² USSD country report Sudan 2008

⁹³ USSD country report Sudan 2008

⁹⁴ USSD country report Sudan 2008

⁹⁵ USSD country report Sudan 2008

⁹⁶ USSD country report Sudan 2008

facilities in Sudan are likely to reach the Article 3 threshold. Where case owners 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 case owners 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.⁹⁷
- 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

⁹⁷ COI Sudan Report (Medical issues)

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.⁹⁸

- 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 report 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.⁹⁹
- 4.4.5** 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.¹⁰⁰
- 4.4.6** 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.¹⁰¹ 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

⁹⁸ COI Sudan Report (Medical issues)

⁹⁹ COI Sudan Report (Medical issues)

¹⁰⁰ COI Sudan Report (Medical issues)

¹⁰¹ UNHCR Position paper on Darfuri asylum seekers from Sudan February 2006

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 were carefully investigated. No evidence was found to establish that unsuccessful non-Arab Darfuri asylum seekers were as such at real risk of mistreatment by the Sudanese authorities in Khartoum upon their return there from the UK. The House of Lords determined in October 2007 that people facing persecution in Darfur could reasonably relocate to Khartoum.
- 5.4** On 9 July UK Border Agency announced that it will defer enforcing the return of non-arab Darfuri asylum seekers to Sudan pending the outcome of a country guidance case to consider the issue of safety on return to Khartoum. The case is currently waiting to be re-listed by the Asylum and Immigration Tribunal (AIT) and is expected to be heard within the next few months.
- 5.5** Sudanese nationals may return voluntarily to any region of Sudan at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org

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