



# OPERATIONAL GUIDANCE NOTE

## Sudan

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.</b>
<b>2. Country assessment</b> Actors of protection Internal relocation Country case law	<b>2.1 – 2.2</b> 2.3 2.4 2.5
<b>3. Main categories of claims</b> Members or associates of the SPLM/A and civilians from South Sudan Members or associates of Darfuri rebel groups Members of non-Arab ethnic groups from the Darfur States Prison Conditions	<b>3.1 – 3.5</b> 3.6 3.7 3.8 3.9
<b>4. Discretionary Leave</b> Minors claiming in their own right Medical treatment	<b>4.1 – 4.2</b> 4.3 4.4
<b>5. Returns</b>	<b>5.1 – 5.3</b>
<b>6. List of source documents</b>	

## 1. Introduction

- 1.1** This document provides UKBA caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Sudan 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** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 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.

## **2. Country assessment**

**2.1** Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

**2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

**2.3 Actors of protection.** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

**2.3.1** The police, the National Intelligence and Security Services (NISS), the Ministry of Interior and the Ministry of Defence have responsibility for internal security. The NISS maintains security officers in major towns and cities throughout the North and has a presence in the South. The Ministry of Defence's Border Intelligence Force, a loosely organised force composed largely of former janjaweed fighters, also operates in Darfur. Security force impunity is a serious problem. The government continues to arbitrarily arrest and detain people; the 2010 National Security Act provides NISS officials with impunity for acts involving their official duties. Corruption is also a problem.<sup>1</sup>

**2.3.2** It was reported that in 2010, government forces beat and tortured persons in detention, including members of the political opposition, civil society activists and journalists. Sharia law provides for physical punishments including flogging, amputation, stoning and crucifixion. In Darfur and other areas of conflict, government forces, rebel groups and tribal factions committed torture and abuse.<sup>2</sup>

**2.3.3** The judiciary are largely subservient to the president or the security forces, particularly in cases of alleged crimes against the state. On occasion courts display a degree of independence but political interference is commonplace. The judiciary is inefficient and subject to corruption.<sup>3</sup>

**2.4 Internal relocation.** Case owners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is

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<sup>1</sup> USSD 2010 (Section 1d) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>2</sup> USSD 2010 (Section 1d) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>3</sup> USSD 2010 (Section 1d) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.4.1** The interim national constitution provides for freedom of movement, foreign travel, emigration and repatriation but the government restricts these rights in practice. While movement is generally unhindered for citizens outside conflict areas, foreigners need government permission for domestic travel outside of Khartoum, which is often difficult to obtain and sometimes refused.<sup>4</sup>
- 2.4.2** The government requires citizens to obtain an exit visa to depart the country. While the issue of exit visas is not used to restrict travel, the government denied some humanitarian workers exit visas. It restricted persons from travelling outside of the country to attend conferences.<sup>5</sup>
- 2.4.3** In Darfur the government and rebels restricted the movement of the UN, humanitarian organisations and citizens.<sup>6</sup>

## **2.5 Country guidance case law**

### **MA (Operational Guidance – prison conditions – significance) Sudan [2005] UKAIT 00149**

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.

**HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062.** The Tribunal reassessed the situation in Sudan in relation to risk on return to Khartoum. The Tribunal heard evidence from three expert witnesses: Mr Verney, Ms Maguire and Mr Nourain. The following guidance given in paragraphs (2) and (6) of the headnote still holds good:

- Neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum.
- An appellant will be able to succeed on the basis of medical needs only in extreme and exceptional circumstances.

Otherwise, this case law should no longer be relied upon.

### **AA (Non Arab Darfurians – relocation) Sudan CG [2009] UKAIT 00056.**

The Tribunal found that all non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062 is no longer to be followed, save in respect of the guidance summarised at (2) and (6) of the headnote to that case.

## **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

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<sup>4</sup> USSD 2010 (Section 2d) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>5</sup> USSD 2010 (Section 2d) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>6</sup> USSD 2010 (Section 2d) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 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 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **3.5 Credibility**

- 3.5.1** 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 Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 Members or associates of the SPLM/A (incl the Nuba) and civilians from South Sudan**

- 3.6.1** Some applicants will make an asylum and/or human rights claim based on mistreatment at the hands of the Sudanese authorities due to their alleged membership of, or association with the Sudan People's Liberation Movement /Army (SPLM/A) or because they are civilians from South Sudan.
- 3.6.2** **Treatment.** On 9 January 2005 the 22 year civil conflict between the north and the south was formally ended when the Government of Sudan (GoS) and the SPLM/A signed the Comprehensive Peace Agreement (CPA). This agreement included key issues such as self-determination for the South and established a permanent ceasefire. The CPA called for two referenda to be held simultaneously in January 2011; a referendum for southerners to vote for either unity or secession and a referendum to determine whether Abyei will remain

in the North or join the South. The parties established a Government of National Unity (GNU) in September 2005 and a devolved Government of Southern Sudan (GoSS).<sup>7</sup>

*Presidential and parliamentary elections April 2010*

- 3.6.3** Prior to the first national presidential and parliamentary elections in April 2010, relations between the SPLM/A and the ruling National Congress Party (NCP) were reported to be tense. In December 2009, political demonstrations in Khartoum over a range of outstanding issues relating to the implementation of the CPA and the Darfur situation sparked clashes with security services. Over two hundred and fifty arrests were made, including several prominent SPLM/A members which led to the SPLM/A boycotting Parliament.<sup>8</sup> The African Centre for Peace and Justice Studies (ACPJS) reported that "targeting of demonstrators ... appears to have racial, ethnic, professional and political undertones" and that one southern demonstrator, Lewis Awil Weriak, had been severely tortured and held incommunicado raising fears that "he will be used to send a message to other Southerners to not involve themselves in political affairs". The Sudan Media Centre, a website closely linked to the country's security authorities, reported in February that the Sudanese Communist Party, the Popular Congress Party and the northern sector of the SPLM/A had agreed to coordinate efforts in order to tarnish the government's image as a precursor to carrying out concerted demonstrations and sabotage in a number of towns.<sup>9</sup>
- 3.6.4** The elections consolidated power for both the NCP and the Sudan People's Liberation Movement (SPLM) which controls southern Sudan. The NCP won 68% of the votes and the SPLM/A won 22%. The EU Election Observation Mission commended the generally peaceful conduct of the polling process but concluded that the elections fell short of international standards due to political and technical problems. In the south there were reports of SPLM/A soldiers intimidating voters and independent candidates.<sup>10</sup> Human Rights Watch reported that in the months leading up to the elections, the NCP arrested opposition party members in the north and restricted free association and speech.<sup>11</sup>
- 3.6.5** Following the elections there was also a clamp-down on political dissent, with opposition political groups, journalists, students and human rights activists at particular risk. Arbitrary arrest and detention by the National Intelligence Security Services (NISS), military and police continues to be widespread in all areas of Sudan, and is often linked to other serious violations, such as *incommunicado* detention, ill treatment and torture. UNAMIS and UNAMID Human Rights Officers have no access to most places of detention. Although the national security laws were revised in December 2009, limiting the length of time NISS could hold suspects, the legislation retained existing powers of arrest, search and seizure for NISS. The bill was opposed in Parliament by the SPLM/A as well as other political opposition parties.<sup>12</sup>

*Southern Sudan referendum January 2011*

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<sup>7</sup> COI Report: April 2010

[http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>8</sup> African Centre for Justice and Peace Studies (ACJPS) December 2009 to May 2010

[http://acjps.org/Publications/HRM/Sudan%20Human%20Rights%20Monitor\\_Issue%205\\_FINAL.pdf](http://acjps.org/Publications/HRM/Sudan%20Human%20Rights%20Monitor_Issue%205_FINAL.pdf)

<sup>9</sup> Sudan Tribune 15 February 2011 "Sudan warns of opposition 'plot' ahead of pro-detainees protest today"

<http://www.sudantribune.com/Sudan-warns-of-opposition-plot.37995>

<sup>10</sup> FCO Annual Human Rights Report 2010 <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessable-hrd-report-2010>

<sup>11</sup> Human Rights Watch World Report 2011 <http://www.hrw.org/en/world-report-2011/sudan>

<sup>12</sup> COI Report, Sudan April 2010 paragraph 10.2

[http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

- 3.6.6** Southern Sudan voted overwhelmingly for independence in final results of the referendum announced on 7 February 2011. The UN Panel appointed to monitor the referendum believed that the outcome reflected the free will of the people of southern Sudan and that the process as a whole was free, fair and credible. UN Secretary General Ban Ki-moon urged the sides to reach lasting post-referendum agreements on issues such as border security, citizenship, wealth-sharing, frontier demarcation and popular consultations in the states of South Kordofan and Blue Nile – and Abyei.<sup>13</sup>
- 3.6.7** The NCP and SPLM/A met 1-6 March in Addis Ababa to discuss post-referendum arrangements. The SPLM/A alleged that the NCP had been equipping militia groups in southern Sudan to destabilise the government ahead of secession in July. Negotiations between the SPLM/A and NCP were suspended briefly but a joint position paper on security arrangements and a commitment to continue negotiations was unanimously agreed by both defence ministries towards the end of March.<sup>14</sup>
- 3.6.8** In February 2011, Amnesty International raised its concern about “many instances” where the National Intelligence and Security Service has targeted southerners” in the north.<sup>15</sup> In March 2011, Waging Peace reported targeting of southerners residing in the north.<sup>16</sup>
- 3.6.9** On 9 July 2011 the Republic of South Sudan was officially established, becoming Africa’s 54<sup>th</sup> state, following formal recognition by President Bashir and the Republic of Sudan. However despite South Sudan now being an independent sovereign state, a number of outstanding issues still remain for the north and south to resolve, for example border demarcation, oil revenues, debt relief and citizenship, many of which, observers fear, may cause future tensions between the two sides.<sup>17</sup>
- 3.6.10** On the same date, 9 July 2011 the mandate for the UN Mission in Sudan formally ended, replaced by a mission based in South Sudan, called the UN Mission in South Sudan (UNMISS). Human Rights monitors have raised concerns that this development could further limit the opportunity for human rights monitoring to take place in north Sudan, particularly in the conflict regions of Blue Nile and South Kordofan.<sup>18</sup>

*Blue Nile/South Kordofan*

- 3.6.11** The 2005 CPA includes a protocol on the resolution of disputes in the Blue Nile and South Kordofan, both of which lie on the un-demarcated and volatile north-south border. The protocol provides for popular consultations in the two states to address the CPA, redress any shortfalls in its implementation and decide how governance arrangements with Khartoum should be re-organised as a final settlement. These states were previously war zones, with many of their people (including the Nuba ethnic group) siding with the south during the years of conflict. The consultation process does not entail any right to self-determination to the two areas which will remain in north Sudan. Blue Nile consultations have started but have not yet begun in South Kordofan due to disagreements between the

<sup>13</sup> UN News Centre (COI response); EU election observation mission; Carter Center observation mission; UN Mission in Sudan

<sup>14</sup> Sudan Tribune 27 March 2007 “North and south Sudanese defense ministers agree upon key security” <http://www.sudantribune.com/North-and-south-Sudanese-defense,38400>

<sup>15</sup> Amnesty International, Media Briefing, Sudan: Human rights violations surrounding the South Sudan referendum 7.01.11 [http://www.peacewomen.org/assets/file/Resources/NGO/hr\\_hrviolationsduringsouthsudanref\\_jan2011.pdf](http://www.peacewomen.org/assets/file/Resources/NGO/hr_hrviolationsduringsouthsudanref_jan2011.pdf)

<sup>16</sup> Waging Peace “The Human Rights Situation in North Sudan: Regression to Repression” March 2011 [http://www.wagingpeace.info/index.php?option=com\\_content&view=article&id=361:the-human-rights-situation-in-north-sudan-regression-to-repression&catid=11:sudan-briefings&Itemid=27](http://www.wagingpeace.info/index.php?option=com_content&view=article&id=361:the-human-rights-situation-in-north-sudan-regression-to-repression&catid=11:sudan-briefings&Itemid=27)

<sup>17</sup> <http://af.reuters.com/article/sudanNews/idAFL6E7I30F920110704?feedType=RSS&feedName=sudanNews&sp=true>  
<http://talkofsudan.com/sudan/item/9013-north-sudan-gives-seal-of-recognition-to-south-s-independence>  
<http://www.irinnews.org/report.aspx?ReportId=93178>  
<http://www.refintl.org/policy/letter/letter-UNSC-members-security-council-must-monitor-human-rights-southern-kordofan>

<sup>18</sup> <http://www.un.org/en/peacekeeping/missions/unmis/mandate.shtml>  
<http://www.un.org/apps/news/story.asp?NewsID=38982&Cr=south+sudan&Cr1>  
<http://www.un.org/apps/news/story.asp?NewsID=39008&Cr=south+sudan&Cr1=>

SPLM/A and the NCP over results of the population census and delimitations of geographical constituencies.<sup>19</sup>

- 3.6.12** The Nuba are a mix of over 50 different peoples, mainly settled farmers, who live in the scattered upland areas. They include Christians, Muslims and followers of traditional beliefs. In ethnic terms, the Nuba usually identify more closely with the "African" southerners than their northern Arab neighbours. They have aligned with the south due to perceived injustices, discriminatory practices and marginalization by the Khartoum government. Many sided with the SPLM/A during the civil war. As many as 40,000 Nuba soldiers are estimated to remain inside the SPLM/A. However, most of these are thought to be deployed inside the south.<sup>20</sup>
- 3.6.13** In May 2011, the SPLM/A rejected the result of the May 2011 South Kordofan governorship elections declaring that the vote was rigged. Ahmed Haroun of the National Congress Party, who was indicted by the ICC for alleged war crimes committed in Darfur while he was minister there, was declared the winner of the poll in South Kordofan state. He defeated senior SPLM official Abdelazia as-Hilu.<sup>21</sup> On 13 April, a militia killed at least 17 people and burned over 350 houses. The SPLM/A claimed that Ahmed Haroun was mobilising militias to attack its supporters. Equally the NCP accused the SPLM of mobilising forces to intimidate the NCP.<sup>22</sup>
- 3.6.14** On 28 May, soon after the occupation of Abyei by the Sudan Armed Forces (SAF), the Khartoum government issued an ultimatum that by 1 June, all SPLM/A forces in Southern Kordofan and Blue Nile states must leave and head south beyond the 1956 border. Heavy fighting broke out in Southern Kordofan on 5 June between the SAF and the SPLM/A, supported by the Nubans. A leaked UNMIS report in June 2011 found that: "...although both sides to the conflict have engaged in acts against civilians in the conflict...the conduct of the SAF has been especially egregious", and further explained that: "Instead of distinguishing between civilians and combatants and accordingly directing their military operations only against military targets, the SAF and allied paramilitary forces have targeted members and supporters of the SPLM/A, most of whom are Nubans and other dark skinned people."<sup>23</sup>
- 3.6.15** The SAF launched multiple indiscriminate aerial bombardments in the Nuba mountains in areas which include civilians. There are reports of the killing of civilians in the state capital, Kadugli which is predominantly Nuban, and surrounding villages, and accusations of ethnic cleansing. More than 73,000 people have fled. Eyewitnesses who fled Kadugli described people shot in the street, mass arrests and the looting and burning of buildings, including aid agency offices and church buildings. They claim they were targeted for their ethnicity.<sup>24</sup>

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<sup>19</sup> Sudan Tribune 24 January 2011 "Popular consultation in Blue Nile State reveals calls for autonomy"  
<http://www.sudantribune.com/Popular-consultation-in-Blue-Nile,37735>  
<http://www.sudantribune.com/Sudanese-parliament-endorse,39592>

<sup>20</sup> UNMIS report on the human rights situation during the violence in southern Kordofan, June 2011  
<http://www.sudantribune.com/UNMIS-report-on-the-human-rights,39570>  
<http://reliefweb.int/node/421962>

<sup>21</sup> BBC News "Sudan: SPLM rejects South Kordofan win for Ahmed Haroun" 16 May 2011  
<http://www.bbc.co.uk/news/world-africa-13408877>

<sup>22</sup> ICG crisis watch database Sudan May 2011 <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan.aspx>

<sup>23</sup> UNMIS report on the human rights situation during the violence in southern Kordofan, June 2011  
<http://www.sudantribune.com/UNMIS-report-on-the-human-rights,39570>  
<http://reliefweb.int/node/421962>

<sup>24</sup> <http://reliefweb.int/node/421962>

- 3.6.16** Reported human rights violations include: aerial bombardments resulting in destruction of property, forced displacement, significant loss of civilian lives, including of women, children and the elderly; abductions; house-to-house searches; arbitrary arrests and detentions; targeted killings; summary executions; reports of mass graves; systematic destruction of dwellings and attacks on churches.<sup>25</sup>
- 3.6.17** Pervasive NISS checkpoints have resulted in abuses against Nuba people or suspected SPLM supporters and have hampered the provision of much needed humanitarian aid. Checkpoints have been reported on the main roads between Kadugli, Dilling, El Obeid and Khartoum. Amnesty International received eye-witness accounts of security officials with lists of people's names at each checkpoint. People on the lists are believed to be members of the political arm of the SPLM/A or of Nuba descent. Further reports have been received that even those not on lists but who are believed to be Nuba are interrogated and harassed or ill-treated by security forces.<sup>26</sup>
- 3.6.18** Opposition forces inside the Nuba are led by former deputy governor Abdulaziz Al-Hilu, a soldier and guerrilla commander. Hilu is number two in the Northern branch of the SPLM/A. He pulled out of the governorship election in May alleging vote-rigging by the NCP.<sup>27</sup>
- 3.6.19** On 29 June it was reported that an agreement, mediated by the African Union in Ethiopia, had been agreed stipulating that northerners from South Kordofan and Blue Nile who fought for the SPLM/A would be integrated into the national army or demobilised. The agreement committed the sides to agreeing a ceasefire.<sup>28</sup> However subsequent reports confirmed further heavy bombing and gunfire in South Kordofan showing that a ceasefire was still not in place.<sup>29</sup> Additionally it was also reported that difficulties in movement and access by human rights observers, notably the draw down by UNMIS, further frustrated reporting on the ground.
- 3.6.20** On 5 August, the Sudan Tribune reported that over 5,000 refugees had arrived in South Sudan's Unity State after being displaced by fighting over the previous month. Most of the 70,000 estimated to have been displaced had moved north but some had moved south into the newly independent South Sudan. A joint committee of international NGO's and the Unity State government had agreed to offer immediate permanent settlement to refugees from South Kordofan in Parieng County. The commissioner has indicated that Yida would be an appropriate place to resettle refugees coming from South Kordofan.<sup>30</sup>

#### *Abyei*

- 3.6.21** Both north and south Sudan claim Abyei, a central fertile territory on their shared border used by both the Dinka Ngok tribe, associated with the south, and Arab Misseriya nomads, associated with the north. Abyei was promised its own referendum in the CPA. Lack of progress on preparations for the Abyei referendum has led to sporadic violence and rising tensions in the area. Preparations have stalled due to disagreement over voter eligibility.<sup>31</sup> The surge of violence has forced thousands to flee and left dozens dead. The

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<sup>25</sup> UNMIS Report on the human rights situation during the violence in southern Kordofan, June 2011

<http://www.sudantribune.com/UNMIS-report-on-the-human-rights,39570>

<http://www.sudantribune.com/Expiry-of-UN-mandate-limits,39571>

<sup>26</sup> <http://reliefweb.int/node/421962>

<sup>27</sup> <http://reliefweb.int/node/421962>

<sup>28</sup> BBC News Africa "Sudan deal with South Kordofan and Blue Nile rebels" 29 June 2011

<http://www.bbc.co.uk/news/world-africa-13952553>

<sup>29</sup> BBC News Africa "Sudan's South Kordofan hit by new wave of bombings!" 13 July 2011

<sup>30</sup> Sudan Tribune "Over 5,000 refugees from South Kordofan arrive in Unity State for settlement" 5 August 2011

<http://reliefweb.int/node/439415>

<sup>31</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>



confrontations have also highlighted the tension associated with the onset of the migration season in which Misseriya tribesmen traverse the borders into Abyei, which is mainly populated by the south-linked Dinka Ngok people, to search for pasture for their cattle.<sup>32</sup>

**3.6.22** In May 2011, reports emerged of a military build-up by both north and south in Abyei.<sup>33</sup> Following clashes between northern and southern forces, the northern Sudanese army are reported to have taken control of Abyei in response to an attack of southern forces on a UN peacekeeping convoy escorting northern troops out of Abyei. Observers warn the escalating situation risks igniting a new north-south civil war.<sup>34</sup> Peacekeepers of the UN Mission in Sudan (UNMIS) have been refused access to areas of conflict in Abyei and their movement restricted.<sup>35</sup>

**3.6.23** On 20 June 2011, the Government of Sudan (GoS) and the SPLM/A signed an Agreement on Temporary Arrangements for the Administration and Security of Abyei Area, under the facilitation of the AU High-Level Implementation Panel (AUHIP) on Sudan, chaired by former President Thabo Mbeki of South Africa.<sup>36</sup> Potential difficulties in implementation have been suggested.<sup>37</sup> Since this date there have also been accounts of continued civil unrest in the region. On 24 June 2011 U.N. Deputy High Commissioner for Human Rights, Kyung-wha Kang, told reporters in an interview that there was a need for an independent human rights investigation into violations committed following the violence in Abyei.<sup>38</sup>

**3.6.24** *Actors of protection.* See 2.3

**3.6.25** *Internal relocation.* See 2.4

**3.6.26** *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). There were reports of increasing political repression by the GoS prior to and following the presidential and parliamentary elections in 2010. In the period leading up to and after the referendum in January 2011, there have been reports of clashes between northern Sudan's government forces and supported militia and members and affiliates of the SPLM/A as well as the targeting of southerners in the north. Recent events in South Kordofan and the Abyei region are of particular concern.

**3.6.27** Where this category of applicants' fear is of ill-treatment/persecution by the Republic of Sudan state authorities, they cannot generally apply to these authorities for protection and a grant of asylum may be appropriate in individual cases. However, internal relocation may be an option. Given the fluidity of the situation in Sudan, it is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made and according to the individual profile of the

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<sup>32</sup> Sudan Tribune 5 March 2011 "Amnesty criticises Sudan's record in bringing justice to Darfur"  
<http://news.africafreedirectory.com/news/amnesty-criticizes-sudans-record-on-bringing-justice-to-darfur>

<sup>33</sup> ICG crisis watch database May 2011 <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan.aspx>

<sup>34</sup> BBC News 20 and 22 May 2011 <http://www.bbc.co.uk/news/world-africa-13502845>  
<http://www.bbc.co.uk/news/world-africa-13408877>  
<http://www.bbc.co.uk/news/world-africa-13351773>  
<http://www.bbc.co.uk/news/world-africa-13230498>  
<http://www.bbc.co.uk/news/world-africa-12723872>  
<http://www.bbc.co.uk/news/world-13525795>

<sup>35</sup> Sudan Tribune "UN rights expert to Sudan warns against fallout to Abyei tension, raises multiple concerns" 14.03.11  
[http://www.sudantribune.com/spip.php?iframe&page=imprimable&id\\_article=38288](http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=38288)

<sup>36</sup> <http://reliefweb.int/node/421375>

<sup>37</sup> <http://www.sudantribune.com/Abyei-s-Agreement-falls-short.39300>

<sup>38</sup> <http://af.reuters.com/article/sudanNews/idAFLDE75N0K820110624?feedType=RSS&feedName=sudanNews&sp=true>

claimant, internal relocation may be viable. Citizens of South Sudan who fear mistreatment in the north will need to demonstrate why they would be unable to avail themselves of the protection of the authorities in South Sudan.

**3.6.28** Case owners should note that members of the 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 Members or associates of Darfuri rebel groups**

**3.7.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Sudanese authorities due to their membership of, or association with, Darfuri rebel groups, particularly the Sudan Liberation Movement/Army (SLM/A) or the Justice and Equality Movement (JEM).

#### **3.7.2 Treatment.**

##### *Doha peace talks*

**3.7.3** The Darfur Peace Agreement (DPA) was signed in 2006 by the government and the SLM/A faction led by Minni Minnawi but was undermined by the absence of other parties. JEM rejected the deal.<sup>39</sup> The mediation process has seen very little progress since the Joint Chief Mediator brokered two peace ceasefire agreements between the Government and JEM and the Liberation and Justice Movement (LJM) in February and March 2010 respectively. In spite of the signing of these agreements, JEM withdrew from the mediation process in May 2010. The Government, however, resumed talks with the LJM in June and both parties committed to achieving rapid progress and the inclusion of civil society in the talks.<sup>40</sup> The SLM/A Minni Minnawi faction formally pulled out of the Darfur Peace Agreement in February 2011.<sup>41</sup> In July 2011, the SLM/A (led by Abdel Wahid Al-Nur) reaffirmed its intention to join the peace process.<sup>42</sup>

**3.7.4** The Government has unveiled a new strategy for achieving peace in Darfur that will allow a wider spectrum of the Darfur society to participate in the political process. The plan seeks to achieve peace through expediting the process of returning IDPs to their homelands and providing support through developmental projects in their areas of origin.<sup>43</sup> Rebel groups are critical of the proposals.<sup>44</sup>

**3.7.5** In March 2011, the government announced it would hold a referendum on whether to unify the three states of Darfur into one region. The plan to establish two more states in Darfur

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<sup>39</sup> International Crisis Group: The current situation <http://www.crisisgroup.org/en/key-issues/crisis-in-darfur.aspx>

<sup>40</sup> OHCHR report of the independent expert on the situation of human rights in the Sudan 14.09.10 [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.CRP.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.CRP.1_en.pdf)

<sup>41</sup> Sudan Tribune 25 January 2011 "SLM rebels say more time needed before joining Darfur peace process"; 30 March 2011 <http://reliefweb.int/node/381871>  
All Voices 29 March 2011 "UNSC advised to impose tougher arms embargo on Sudan, Chad over Darfur" <http://www.allvoices.com/news/8625054-UNSC-advised-to-impose-tougher-arms-embargo-on-sudan-chad-over-darfur>

<sup>42</sup> <http://ambafrance-us.org/spip.php?article1747>

<sup>43</sup> OHCHR report of the independent expert on the situation of human rights in the Sudan 14.09.10 [http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.CRP.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.CRP.1_en.pdf)

<sup>44</sup> [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/node-369084.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-369084.pdf)

would not disrupt plans for the referendum. LJM and JEM oppose the government intention to hold a referendum before July because the widespread insecurity would prevent a free and fair vote.<sup>45</sup>

#### *ICC arrest warrant*

- 3.7.6** In July 2010 the ICC pre-trial chamber issued a second arrest warrant against President Bashir for three counts of genocide. This warrant was in addition to the March 2009 ICC arrest warrant issued for Bashir for five counts of crimes against humanity and two counts of war crimes. Both arrest warrants remain outstanding. In his semi-annual report in December, the prosecutor reported to the UN Security Council that crimes continue in Darfur, and that the Government of Sudan remained uncooperative with UN Security Council Resolution 1593 and with execution of the arrest warrants against Ahmad Muhammad Haroun, the governor of South Kordofan and Ali Kushayb, a janjaweed militia commander.<sup>46</sup>
- 3.7.7** There were no developments in 2010 regarding the recommendations of the AU High-Level Panel on Darfur's 2009 report, including its recommendation to create a hybrid court of Sudanese and international judges to prosecute the most serious crimes committed in Darfur and a truth and reconciliation commission. Discussions with the government on implementing the panel's suggestions remained stalled due to the government's objections to perceived interference in the country's sovereignty.<sup>47</sup>

#### *JEM attack on Omdurman – aftermath*

- 3.7.8** On 10 May 2008, JEM launched an assault on Omdurman, Khartoum. 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.<sup>48</sup> Following the fighting, large numbers of non-Arab Darfurians living in Khartoum were detained. Reports suggested the Government detained anyone identified as Zaghawa. There were allegations of torture, mistreatment and inhumane detention conditions.<sup>49</sup>
- 3.7.9** The USSD reported in 2011 that there were no further developments in the cases of the up to 2,500 Darfuris detained by the NISS following the attack. Most had been released by the end of 2008. According to a July 2010 Amnesty International report, there may be approximately 200 persons whose whereabouts remain unknown. In January 2011, anti-terrorism courts tried and convicted two additional persons in connection with the attack, bringing the total number of death sentences in the trials to 106. In trials involving these cases, authorities did not permit defendants access to lawyers before trial, held them incommunicado for up to four months, and reportedly tortured defendants.<sup>50</sup> The African Centre for Justice and Peace Studies (ACJPS) reported the case of a group of nine individuals, including four minors, alleged to be affiliated with JEM who were sentenced to death in Nyala, South Darfur in October 2010. According to ACJPS, this case highlighted the potential ethnic and political undertones of the application of the death penalty.<sup>51</sup>

<sup>45</sup> Reuters "Darfur referendum set for July 1" <http://af.reuters.com/article/topNews/idAFJJOE73O04C20110425>

<sup>46</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>47</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>48</sup> IRIN news "Rights groups decry Khartoum crackdown 26 May 2008" <http://www.irinnews.org/Report.aspx?ReportId=78402>

<sup>49</sup> COI Report, Sudan April 2010 (Jem and the aftermath of the Omdurman attack of May 2008) [http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>50</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>51</sup> [African Centre for Justice and Peace Studies \(ACJPS\)](http://www.acjps.org/), *Widening the Scope: The Expanding Use of Capital Punishment in Law and Practice in Sudan*, 08/12/2010, Introduction.

**3.7.10** On 24 February 2010, following the signing of a ceasefire agreement with the JEM, the government released 50 of the prisoners sentenced to death in these trials. Reportedly, some persons acquitted by these trials were not released, and authorities rearrested other persons who had been released.<sup>52</sup>

*Security situation in Darfur*

**3.7.11** Over the course of the last year, and particularly since the end of 2010, an intensification of fighting between government forces and the various armed movements, including the SLM/A and the JEM, has been reported by numerous sources.<sup>53</sup> The clashes between Government forces and JEM re-occurred against the backdrop of JEM's expulsion from Chad following the rapprochement between the Governments of Chad and Sudan at the beginning of 2010, and the consequent relocation of JEM inside Darfur.<sup>54</sup> Over 70,000 people have been displaced since December 2010.<sup>55</sup>

**3.7.12** In September 2010, the UN Independent Expert on the situation of human rights in the Sudan expressed concern over arbitrary arrests and detentions in Darfur, mostly by the NISS and Military Intelligence. The report also noted that:

“UNAMID documented more than 30 cases of arbitrary arrests in the months of May and June alone. Most victims were arrested due to their political affiliations or their alleged links with the armed movements. The Government continued to hold detainees for long periods without charging them with a crime and denied them the right to challenge the basis of their detention in a court of law.”<sup>56</sup>

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<sup>52</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>53</sup> [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the independent expert on the situation of human rights in the Sudan, 14/09/2010](#), Introduction, Darfur, para. 19.

Office of the United Nations High Commissioner for Human Rights (OHCHR), Statement of the independent expert on the situation of human rights in the Sudan, 18/03/2011

<http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?CID=SD>

Waging Peace “Update on the humanitarian and security situation in Darfur “ March 2011

[http://www.wagingpeace.info/index.php?option=com\\_content&view=article&id=362:march-2011-update-on-the-humanitarian-and-security-situation-in-darfur-&catid=11:sudan-briefings&Itemid=27](http://www.wagingpeace.info/index.php?option=com_content&view=article&id=362:march-2011-update-on-the-humanitarian-and-security-situation-in-darfur-&catid=11:sudan-briefings&Itemid=27)

“Warplanes fly over Kutum, heavy activity at El Fasher airport”; 11 March 2011 <http://www.radiodabanga.org/node/7993>

“Sudan government bombs east of Jebel Marra”; 19 March 2011 <http://www.radiodabanga.org/node/11541>

“Darfur rebels: 750 families flee Jebel Marra in fighting Thursday” <http://bnaidarfur.org/2011/03/19/darfur-idps-plead-for-similar-unsc-stance-on-darfur-as-libya/>

Reuters Arica 21 January 2011 “Sudan army, Darfur rebel clash kills 21”; 25 January 2011

<http://www.reuters.com/article/2011/01/21/us-sudan-darfur-idUSTRE70K5I20110121>

“Darfur rebels, Sudan army in second clash in week”; 25 February 2011 <http://www.reuters.com/article/2011/01/25/us-sudan-darfur-idUSTRE70O3DY20110125>

“Sudan army attacks Darfur rebel stronghold”; 10 March 2011

<http://af.reuters.com/article/topNews/idAFJOE71O0FK20110225>

“Sudan army, Darfur rebel clash kills 17: military”. <http://uk.reuters.com/article/2011/03/10/uk-sudan-darfur-idUKTRE7291EY20110310>

Sudan Tribune 26 February 2011 “Sudanese army attack rebel positions in Darfur”.

<http://www.sudantribune.com/Sudanese-army-attack-rebel,38109>

<sup>54</sup> [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the independent expert on the situation of human rights in the Sudan, 14/09/2010](#), Introduction, Darfur, para. 19.

<sup>55</sup> Sudan Tribune 7 June 2011 “Darfur's violence displaces 70,000 in six months” <http://www.sudantribune.com/Darfur-s-violence-displaces-70-000,39137>

<sup>56</sup> [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the independent expert on the situation of human rights in the Sudan, 14/09/2010](#), Introduction, Darfur, para. 19.

**3.7.13 Actors of protection. See 2.3**

**3.7.14 Internal relocation. See 2.4**

**3.7.15 Caselaw. See 2.5**

**3.7.16 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions. The Tribunal found in AA (Non Arab Darfurians – relocation) Sudan CG [2009] UKAIT 00056, that all non-Arab Darfuris, regardless of their political or other affiliations, are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. Therefore claimants who do not fall within the exclusion clauses are likely to qualify for asylum.

**3.7.17** Issues of ethnicity and identity have become increasingly blurred (see 3.8.4 – 3.8.7 below), and can be subjective. Some commentators have observed that those tribes in Darfur who support rebel groups have come to be identified primarily as ‘African’ and those supporting the Khartoum authorities as ‘Arab’. In general, those perceived to be sympathetic towards or supportive of the insurgents will be non-Arab Darfuris, but there will be rare exceptions in which Arab groups are supportive of the rebels and, conversely, non-Arabs supportive of the government. Case owners should carefully consider the allegiances in each case and hence perceived ethnic identity on the individual facts in light of the relevant COI material.

**3.7.18** 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, 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 ethnic groups from the Darfur States**

**3.8.1** Many applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Sudanese authorities, or of government-sponsored militias due to their membership of the Massaleit (aka Massalit), Zaghawa (aka Zaghewa), Fur (aka For or Four) or the other ethnic groups from the Darfur States.

**3.8.2 Treatment** Over the course of the last year, and particularly since the end of 2010, an intensification of fighting in Darfur between government forces and the various armed movements, including the SLM/A and the JEM, has been reported by numerous sources.<sup>57</sup>

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<sup>57</sup> [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the independent expert on the situation of human rights in the Sudan, 14/09/2010](#), Introduction, Darfur, para. 19.

“Warplanes fly over Kutum, heavy activity at El Fasher airport”; 11 March 2011 <http://www.radiodabanga.org/node/7993>

“Sudan government bombs east of Jebel Marra”; 19 March 2011 <http://www.radiodabanga.org/node/11541>

“Darfur rebels: 750 families flee Jebel Marra in fighting Thursday” <http://bnaidarfur.org/2011/03/19/darfur-idps-plead-for-similar-UNSC-stance-on-darfur-as-libya/>

Reuters Arica 21 January 2011 “Sudan army, Darfur rebel clash kills 21”; 25 January 2011 <http://www.reuters.com/article/2011/01/21/us-sudan-darfur-idUSTRE70K5IZ20110121>

“Darfur rebels, Sudan army in second clash in week”; 25 February 2011 <http://www.reuters.com/article/2011/01/25/us-sudan-darfur-idUSTRE70O3DY20110125>

“Sudan army attacks Darfur rebel stronghold”; 10 March 2011 <http://af.reuters.com/article/topNews/idAFJ0E71O0FK20110225>

“Sudan army, Darfur rebel clash kills 17: military”. <http://uk.reuters.com/article/2011/03/10/uk-sudan-darfur-idUKTRE7291EY20110310>

The UN independent expert on the situation of human rights in Sudan noted that the human rights situation in Darfur remains “of serious concern particularly as it affects civilians and internally displaced persons” and their “situation is deplorable”<sup>58</sup>; and expressed concern over arbitrary arrests and detentions in Darfur, mostly by the NISS, due to political affiliations or alleged links with the armed movements.<sup>59</sup> While estimates vary, approximately 1.9 million people have been displaced in Darfur and 270,000 refugees have fled to Chad since 2003. IDPs in Darfur continue to face significant humanitarian needs and experience abuse.<sup>60</sup>

### *Ethnicity*

- 3.8.3** The largest ethnic group within Darfur are the Fur people, approximately 36% of the total population, who consist mainly of settled subsistence farmers and traditional cultivators. Other non-Arab or ‘African’ groups include the Zaghawa nomads, the Meidob, Massaleit, Dajo, Berti, Kanein, Mima, Bargo, Barno, Gimir, Tama, Mararit, Fellata, Jebel, Sambat and Tunjur. The mainly pastoralist Arab tribes in Darfur include Habania, Beni Hussein, Zeiyadiya, Beni Helba, Ateefat, Humur, Khuzam, Khawabeer, Beni Jarrar, Mahameed, Djawama, Rezeigat, and the Ma’aliyah.<sup>61</sup>
- 3.8.4** The crisis in Darfur dates from February 2003. Newly emerged rebel groups claimed that the Government of Sudan had systematically discriminated against Muslim African ethnic groups in Darfur since the 1990s. The resulting conflict primarily involved three African ethnic groups, the Fur, Zaghawa and the Massaleit, against nomadic Arab ethnic groups.<sup>62</sup> Arab militia groups widely known as the ‘Janjaweed’ have looted and burned villages, raped and murdered ethnic Africans, primarily targeting members of the Fur, Zaghawa and Massaleit tribes.<sup>63</sup>
- 3.8.5** Issues of ethnicity and identity in Darfur are complex and frequently blurred. Traditional disputes over land and resources which occur between various tribes and regardless of ethnicity, have been further complicated by the political polarization of tribes between rebel opposition and the Sudanese authorities. Several commentators have observed that those tribes in Darfur who support rebel groups have come to be identified primarily as ‘African’ and those supporting the Khartoum authorities as ‘Arab’. The ICI report 2005 observed that the Gimir tribe, a pro-government African tribe is now perceived by African tribes opposed to the authorities as having been ‘Arabicised’. Thus whilst human rights abuses in Darfur are generally accepted as having been perpetrated against non-Arab groups,

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Sudan Tribune 26 February 2011 “Sudanese army attack rebel positions in Darfur”.  
<http://www.sudantribune.com/Sudanese-army-attack-rebel,38109>

Waging Peace “Update on the humanitarian and security situation in Darfur “ March 2011  
[http://www.wagingpeace.info/index.php?option=com\\_content&view=article&id=362:march-2011-update-on-the-humanitarian-and-security-situation-in-darfur-&catid=11:sudan-briefings&Itemid=27](http://www.wagingpeace.info/index.php?option=com_content&view=article&id=362:march-2011-update-on-the-humanitarian-and-security-situation-in-darfur-&catid=11:sudan-briefings&Itemid=27)

Office of the United Nations High Commissioner for Human Rights (OHCHR), Statement of the independent expert on the situation of human rights in the Sudan, 18/03/2011  
<http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?CID=SD>

<sup>58</sup> Office of the United Nations high Commissioner for Human Rights (OHCHR), Statement of the independent expert on the situation of human rights in the Sudan, 18.03.11  
<http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?CID=SD>

<sup>59</sup> [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the independent expert on the situation of human rights in the Sudan, 14/09/2010](http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?CID=SD)

<sup>60</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>61</sup> COI Report Sudan April 2010 (Ethnic Demography 22.07)  
[http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>62</sup> COI Report Sudan April 2010 (Recent History – Overview)  
[http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>63</sup> Times online 23.09.07 <http://www.timesonline.co.uk/tol/news/world/africa/article2489206.ece>

predominantly the Fur, Zagahawa and Massaleit, case owners should also be aware that exceptions can occur and 'Arabness' and 'Africaness' can be subjective definitions which say more about tribal and political identity than ethnicity.<sup>64</sup>

**3.8.6** Considering the complexities of ethnic affiliations in Darfur, the UN Panel of Experts stated:

"...the only distinction made will be between Darfurians who have joined 'counter-insurgency forces' or 'Government of Sudan auxiliary forces' and Darfurians who are part of anti-Government 'rebel movements' or 'armed groups'."<sup>65</sup>

It should also be recognised that conflict over land and resources remains one of the central causes of conflict in Darfur, as various tribes compete over scarce resources. Increasing desertification is likely to exacerbate this situation. This is connected to, but also distinct from, the rebel and government polarised ethno-political conflict commonly associated with 'Arabs' and 'Africans'.<sup>66</sup>

*Expulsion of NGOs*

**3.8.7** On 4 March 2009 the ICC announced the issue of an arrest warrant against President Bashir for war crimes and crimes against humanity in Darfur. Immediately following the issue of the arrest warrant, Sudan expelled 13 foreign NGOs and dissolved three local organisations.<sup>67</sup> In July 2010 the ICC issued a second arrest warrant against President Bashir for three counts of genocide.<sup>68</sup> In the same month the government expelled two International Organization for Migration staff members from the country. Both arrest warrants remain outstanding.<sup>69</sup>

**3.8.8** A wave of kidnappings of foreign aid workers coincided with the issuing of the first arrest warrant for the president. By June 2009, the number of international and national aid workers in Darfur had dropped from 17,700 to 12,658.<sup>70</sup> A UN humanitarian coordinator for Darfur confirmed that local Sudanese NGOs have taken on a lot of the aid work previously carried out by international NGOs before the expulsions.<sup>71</sup> However, USSD reported that in 2010, the expulsions continued to negatively impact on the delivery of humanitarian services.<sup>72</sup>

**3.8.9** In 2010, government forces frequently harassed NGOs that received international assistance and publicly accused humanitarian workers of being "spies", "Western agents", and "workers for Israel". In August 2010, the NISS arrested a UNAMID (United Nations/African Union Mission in Sudan) official for allegedly making comments related to national security. UNAMID personnel were denied access to the detainee. Kidnappings and

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<sup>64</sup> COI Report Sudan April 2010 (Ethnic Distinctions arising from the recent conflict 22.24) [http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>65</sup> UN Report of the Panel of Experts 29 October 2009 [ReliefWeb » Document » Report of the Panel of Experts established pursuant to resolution 1591 \(2005\) concerning the Sudan \(S/2009/562\)](http://reliefweb.int/document/2009/562/report-of-the-panel-of-experts-established-pursuant-to-resolution-1591-2005-concerning-the-sudan-s/2009/562)

<sup>66</sup> COI Report Sudan April 2010 (Sections 8 and 22) [http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>67</sup> Sudan Tribune 'Sudan expels 10 aid NGOs and dissolves 2 local groups' 5.03.09 <http://www.sudantribune.com/Sudan-expels-10-aid-NGOs-and,30382>

<sup>68</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>69</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>70</sup> COI Report Sudan April 2010 (Section 29) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>71</sup> [Darfur one year after NGOs expelled | Radio Netherlands Worldwide](http://www.radio4freedom.com/news/2010/07/2010-07-20-darfur-one-year-after-ngos-expelled/)

<sup>72</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

attacks on humanitarian workers increased during 2010 and instability has forced many international aid organisations to reduce their operations in Darfur.<sup>73</sup>

#### *Khartoum*

- 3.8.10** A UNHCR report published in November 2008 stated that the National Intelligence and Security Services (NISS) use arbitrary arrest against political dissidents in Khartoum. NISS detention can involve ill-treatment, torture and unofficial places of detention. Darfurians in Khartoum are at heightened risk of arbitrary arrest if they are suspected of links with Darfur rebel groups or movements. Of particular concern is the view that, “Darfurians may raise the suspicion of the security forces by the mere fact of travelling from other parts of Sudan to Darfur, by having travelled abroad, or by having been in contact with individuals and organisations abroad.”<sup>74</sup>
- 3.8.11** In 2010, the USSD reports continued arbitrary arrest and detention; incommunicado detention of suspected government opponents; restrictions on freedom of speech, the press, assembly and association; discrimination and violence against ethnic minorities; obstruction of the delivery of humanitarian assistance and the expulsion of individuals working for humanitarian NGOs.<sup>75</sup> Following anti-government protests in 2010/2011, there are reports of a government crackdown on opponents, human rights activists, students and journalists.<sup>76</sup> The African Centre for Peace and Justice Studies (ACPJS) reported that “targeting of demonstrators also appears to have racial, ethnic, professional and political undertones”<sup>77</sup>
- 3.8.12** *Actors of protection.* See 2.3
- 3.8.13** *Internal relocation.* See 2.4
- 3.8.14** *Caselaw.* See 2.5
- 3.8.15** *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). The expulsion of international NGOs in 2009 and recent expulsions of individuals working for NGOs, together with continued press censorship and repression of human rights defenders, has reduced the ability of the local human rights community to monitor and report on human rights violations. Although there continue to be reports of arrests and detention of Darfurians, there is no evidence of systematic or widespread persecution outside of Darfur of ordinary Darfurians, on account of their ethnicity or place of origin alone and it is reasonable to assume other risk factors would be present to attract such attention. However, restrictions in Sudan mean it continues to be difficult to obtain reliable information.
- 3.8.16** The Tribunal established in AA (Non Arab Darfurians – relocation) Sudan CG [2009] UKAIT 00056, that all non-Arab Darfuris, regardless of their political or other affiliations, are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in

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<sup>73</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>74</sup> Tenth periodic report of the UNHCR on the situation of human rights in the Sudan: Arbitrary arrest and detention committed by national security, military and police 28.11.08

[http://www.unhcr.org/refworld/publisher\\_OHCHR,,SDN,4933b0c62,0.html](http://www.unhcr.org/refworld/publisher_OHCHR,,SDN,4933b0c62,0.html)

<sup>75</sup> USSD 2010 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>76</sup> Waging Peace “The Human Rights Situation in North Sudan: Regression to Repression”, March 2011  
[http://www.wagingpeace.info/index.php?option=com\\_content&view=article&id=361:the-human-rights-situation-in-north-sudan-regression-to-repression&catid=11:sudan-briefings&Itemid=27](http://www.wagingpeace.info/index.php?option=com_content&view=article&id=361:the-human-rights-situation-in-north-sudan-regression-to-repression&catid=11:sudan-briefings&Itemid=27)

<sup>77</sup> African Centre for Justice and Peace Studies (ACJPS) December 2009 to May 2010  
[http://acjps.org/Publications/HRM/Sudan%20Human%20Rights%20Monitor\\_Issue%205\\_FINAL.pdf](http://acjps.org/Publications/HRM/Sudan%20Human%20Rights%20Monitor_Issue%205_FINAL.pdf)



Sudan. Therefore claimants who would be obliged to internally relocate are likely to qualify for asylum.

### **3.9 Prison conditions**

**3.9.1** Applicants 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 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** **Consideration.** Prison conditions throughout the country remained harsh and overcrowded in 2010. Health care was below standard; prisoners sometimes 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 did not occupy adult prisons or jails but sometimes were held with adults elsewhere in the North. Political prisoners were held in special sections of prisons.<sup>78</sup>

**3.9.4** 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.<sup>79</sup>

### **3.9.5 Caselaw See 2.5**

**3.9.6** **Conclusion.** Prison conditions throughout Sudan are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, widespread abuse of inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in Sudan are likely to reach the Article 3 threshold. Where 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.

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<sup>78</sup> USSD 2010 (Section 1c) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

<sup>79</sup> USSD 2010 (Section 1c) <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm>

**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 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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned 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** Applicants may claim they cannot return to Sudan due to a lack of specific medical treatment. See the Immigration Directorate Instruction on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** The expulsion of 13 international NGOs (INGOs) operating in the western Sudan region of Darfur has left gaps in health coverage, according to the UN World Health Organization (WHO) as 12 of them provided health and nutrition services to about 1.1 million people. Through mobile clinics, hospitals and primary healthcare (PHC) facilities, the organisations had been providing essential services ranging from referrals for complicated and life-threatening cases to surveillance of epidemics, states the WHO March-April health bulletin. In North Darfur, reproductive healthcare services have been interrupted after the closure of a PHC facility; the activities of other health facilities, serving at least 200,000 people, have also been curtailed. In West Darfur, only 63 of 145 medical staff are providing services at 18 health facilities. In South Darfur, one rural hospital in Muhajariya and some other health facilities are closed. Five of six therapeutic feeding centres are also shut.<sup>80</sup>

**4.4.3** Southern Sudan is lacking in basic infrastructure as a result of the prolonged civil war, and according to the UN, the capacity of the Government in the region should be built up so it can take over health-care, education and other services. Health care is a particular concern, with southern Sudan experiencing some of the worst child and maternal health indicators in the world, due in part to exceptionally low immunization rates. One in seven women, for instance, dies as a result of causes related to childbirth.<sup>81</sup>

**4.4.4** The International Committee of the Red Cross (ICRC) reported in May 2008 that it had provided medical aid for victims of fighting in Khartoum following the JEM attack in May. A WHO report published in June 2008 stated that key agencies would be making the first high-level international visit to Abyei to plan for the reconstruction of health facilities and other vital infrastructure in the town. It added that the main health risks faced by the displaced people of Sudan are malnutrition and lack of access to safe drinking water. WHO and its partners signed an agreement in January 2009 to produce a National Health Account to improve the health of women and children in Sudan. Sudan is the country most severely affected with HIV/AIDS in North Africa and the Middle East with an estimated

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<sup>80</sup> Integrated Regional Information Networks (IRIN), *Sudan: NGO expulsions leave significant healthcare gaps in Darfur*, 4 May 2009, <http://www.unhcr.org/refworld/country,,,SDN,456d621e2,4a07ef93c,0.html>

<sup>81</sup> UN News Centre Southern Sudan needs more help to rebuild education, roads, health care – UN aid chief November 2008 <http://www.un.org/apps/news/story.asp?NewsID=29112&Cr=holmes&Cr1=sudan>

500,000 people living with the disease. It is believed that the country is in the early stages of a generalised HIV/AIDS epidemic.<sup>82</sup>

**4.4.5** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Case owners should contact COI Service for details of availability of treatments where necessary. Where a case owner considers that the circumstances of the individual applicant 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** There is no policy which precludes the enforced return to Sudan of failed asylum seekers who have no legal basis of stay in the United Kingdom.

**5.2** 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.

**5.3** Sudanese nationals may return voluntarily to any region of Sudan at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action and co-funded by the European Refugee Fund. Refugee Action will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Sudan. 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. Details can be found on Refugee Action's web site at: [www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

**Country Specific Litigation Team  
Appeals and Litigation Directorate  
24 August 2011**

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<sup>82</sup> COI country report 16 April 2010

[http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)