



# OPERATIONAL GUIDANCE NOTE

## Republic of the Sudan

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## 1. Introduction

- 1.1** This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Republic of the Sudan (aka North 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. At present there is no justification for an OGN for the Republic of South Sudan.
- 1.2** Case owners **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 case owners 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 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/>

The situation in Sudan is evolving with ongoing security incidents reported in Darfur and violent conflict in the southern states of Sudan. Claims should be considered with the most up-to-date and relevant country of origin information.

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

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

## **2.3 Actors of protection**

- 2.3.1** 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. Effective 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.

- 2.3.2** Several government entities have responsibility for internal security, including the police, the National Intelligence and Security Services (NISS), Ministry of Interior, and Ministry of Defence. The NISS maintains security officers in major towns and cities. The Ministry of Interior controlled the Central Reserve Police (CRP). The

Ministry of Defence's Border Intelligence Force (border guards), a loosely organized force composed largely of former Janjaweed Arab militia, operated in Darfur and elsewhere. The CRP also contains a number of former Janjaweed fighters. In November the CRP attacked the western section of the Zamzam internally displaced persons (IDP) camp in North Darfur, killing one IDP and injuring eight others. Security force impunity was a serious problem. The 2010 National Security Act provides NISS officials with legal protection for acts involving their official duties. Abuses by security forces generally were not investigated. Security force corruption was a problem, and security force members often supplemented their incomes by extorting bribes.<sup>1</sup>

**2.3.3** A new National Security Act passed in December 2009 came into force in February [2011]. The Act maintained the NISS's extensive powers of arrest and detention without judicial oversight for up to four and a half months. The NISS continued to arrest and detain political activists and human rights defenders, hold them incommunicado, torture and ill-treat them, and prosecute them for the peaceful exercise of their rights to freedom of expression, assembly and association. NISS agents remained immune from prosecution and disciplinary measures for human rights violations.<sup>2</sup>

**2.3.4** In May 2012, the U.S. Department of State noted that "government forces and government-aligned groups committed extrajudicial and other unlawful killings; security forces committed torture, beatings, rape, and other cruel and inhumane treatment or punishment; and prison and detention center conditions were harsh and life threatening. Other major abuses included arbitrary arrest and arbitrary, incommunicado, and prolonged pretrial detention; executive interference with the judiciary and denial of due process."<sup>3</sup> Following the independence of South Sudan, Human Rights Watch reported that in Khartoum "government authorities pursued familiar repressive tactics including harassing, arresting, detaining, and torturing perceived opponents of the government; censoring media; and banning political parties".<sup>4</sup> The UK FCO report of April 2012 also highlighted the continued existence of "widespread reports of torture in Sudan, particularly on the part of the security services, and directed at political opponents, activists, suspected rebels and ordinary citizens".<sup>5</sup>

**2.3.5** In accordance with Sharia (Islamic law), the Criminal Act provides for physical punishments, including flogging, amputation, stoning, and crucifixion--the public display of a body after execution. In practice such physical punishment other than flogging was not frequently used. Traditional customary law commonly was applied to convicted defendants. Courts routinely imposed flogging, especially for production of alcohol.<sup>6</sup> The public order police continue to arrest women, young girls and men, on grounds of "indecent" or "immoral" dress or behaviour, and courts carried out numerous flogging sentences during the year.<sup>7</sup>

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<sup>1</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012 Section 1: Role of the Police and Security Apparatus](#)

<sup>2</sup> [Amnesty International, Annual Report 2011: The State of the World's Human Rights, Sudan, May 2011, Arbitrary detentions, torture and other ill-treatment](#),

<sup>3</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Executive Summary](#).

<sup>4</sup> [Human Rights Watch, World Report 2012: Sudan, 22/01/2012](#)

<sup>5</sup> [UK Foreign & Commonwealth 2011: Human Rights & Democracy Report, April 2012, section ix – Human Rights in Countries of Concern: Sudan, Torture](#).

<sup>6</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

<sup>7</sup> [Amnesty International, Annual Report 2011: The State of the World's Human Rights, Sudan, May 2011, Arbitrary detentions, torture and other ill-treatment](#)

- 2.3.6** Rebels in Darfur and the Three Areas [the three border areas of Abyei, Southern Kordofan, and Blue Nile] also committed abuses during the year.<sup>8</sup>
- 2.3.7** Although the Interim National Constitution and the law provide for an independent judiciary, the judiciary was largely subservient to the president or the security forces, particularly in cases of alleged crimes against the state. On occasion courts displayed a degree of independence; however, political interference with the courts was commonplace, and some high-ranking members of the judiciary also held positions in the Ministry of Interior or other ministries in the executive branch. In May 2012, Freedom House stated that “the judiciary is not independent. Lower courts provide some due process safeguards, but the higher courts are subject to political control, and special security and military courts do not apply accepted legal standards”.<sup>9</sup> The U.S. Department of State highlighted that “Except in rare cases, the government took no steps to prosecute or punish officials in the security services and elsewhere in the government who committed abuses. Security force impunity remained a serious problem”.<sup>10</sup> The judiciary was inefficient and subject to corruption. In Darfur judges were often absent from their posts.<sup>11</sup>
- 2.3.8** If the applicant’s fear is of ill treatment / persecution by the state authorities, or by agents acting on behalf of the state, then it is improbable that they can apply to those authorities for protection.
- 2.3.9** If the ill treatment / persecution is at the hands of non state agents then case owners should assess the availability of effective protection on a case by case basis taking into account the specific characteristics of the claimant, the area of operation of the group and evidence of state ability to provide protection against human rights violations by these agents. In general given the corrupt nature of the security services and the judiciary, effective protection is not readily available to Sudanese citizens.
- 2.4 Internal relocation.**
- 2.4.1** Caseowners 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 likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for 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

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<sup>8</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Executive Summary.](#)

<sup>9</sup> [Freedom House, Freedom in the World 2012: Sudan, 18/05/2012.](#)

<sup>10</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Executive Summary.](#)

<sup>11</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012: Section 1, Denial of Fair Public Trial](#)

that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.4.2** 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.
- 2.4.3** The interim national constitution and law provide for freedom of movement, foreign travel, emigration, and repatriation, but the government restricted these rights in practice. The government required citizens to obtain an exit visa if they wished to depart the country. Issuance was usually a formality, and the government did not use the visa requirement to restrict citizens' travel during the year. Unlike in the previous year, the government did not restrict persons from travelling outside of the country to attend conferences. The law prohibits forced exile, and the government did not use it.<sup>12</sup>
- 2.4.4** In Darfur the government and rebels restricted the movement of citizens and UN and humanitarian organization personnel. While movement was generally unhindered for citizens outside conflict areas, foreigners needed government permission for domestic travel outside Khartoum, which was often difficult to obtain. The government delayed issuing humanitarian and diplomatic visas and travel permits for Darfur to foreign NGO staff and denied access to international staff during ongoing violence in the three border areas.<sup>13</sup>
- 2.4.5** For internal relocation consideration should be given to the relevant case law – see section 2.5. In AA (Non Arab Darfurians – relocation) Sudan CG [2009] UKAIT00056—the Tribunal concluded that internal relocation is not an option for non Arab Darfuris. For other categories of claimant such as involuntary returnees, failed asylum seekers or persons of military age, HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062, found that they are not at risk on return to Khartoum.

## **2.5 Country guidance caselaw**

### **[Supreme Court. RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#)**

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot

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<sup>12</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; Section 2: Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons](#)

<sup>13</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; Section 2: Freedom of Movement, Internally Displaced Persons, Protection of Refugees and Stateless Persons](#)

be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

**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.

**AY [Political parties – SCP – risk] Sudan CG [2008] UKAIT 00050**

1. Opposition parties are allowed to function within relatively narrow parameters in Sudan.
2. The Sudanese authorities do not attempt or even seek to take action which could amount to persecution against all political opponents but in the main they seek to control by the use of fear and intimidation. Depending on the particular circumstances of an individual, they may resort to stronger measures, particularly against those actively engaged in building up grass roots democracy, working in support of human rights and involved in open criticism of the regime's core ideology and philosophy.
3. In general it will be difficult for ordinary members and supporters of the SCP or any other political party to establish a claim for asylum. They will need to show that they have been engaged in specific activities likely to bring them to the adverse attention of the authorities such as active and effective local democratic activity or support for particular human rights activities. Whether any individual political activist is at risk will necessarily depend upon his individual circumstances set within the context of the situation as at the date of decision. This will include an assessment of the nature of the activities carried out and how they will be seen by the authorities.
4. The legal status of an opposition party has no significant bearing in itself on whether an individual is likely to be at risk of persecution. Political activities also take place under the guise of cultural associations.

**FM (FGM) Sudan CG [2007] UKAIT00060**

“Significant action is being taken in Sudan, both within government and by NGOs, to combat the practice of female genital mutilation in all its forms. Legal sanctions are, however, unlikely to be applied where a woman has been subjected by her family to FGM”.

“There is in general no real risk of a woman being subjected to FGM at the instigation of persons who are not family members. As a general matter, the risk of FGM being inflicted on an unmarried woman will depend on the attitude of her family, most particularly her parents but including her extended family. A woman who comes from an educated family and/or a family of high social status is as such less likely to experience family pressure to submit to FGM. It is, however, not possible to say that such a background will automatically lead to a finding that she is not at real risk.”

“The risk of FGM from extended family members will depend on a variety of factors, including the age and vulnerability of the woman concerned, the attitude and

whereabouts of her parents and the location and "reach" of the extended family".

"If a woman's parents are opposed to FGM, they will normally be in a position to ensure that she does not marry a man who (or whose family) is in favour of it, regardless of the attitude of other relatives of the woman concerned".

Whilst a case mainly regarding FGM, the Tribunal made some useful comments on the position of women in general in Sudan:

**[...] (4) Nature of Particular Social Group in relation to FGM**

**144.** In the present case, the respondent accepted that, if there were a real risk of the third and fourth appellants being subjected to FGM, the Refugee Convention would be engaged, having regard to the opinions of the House of Lords in *K* and *Fornah*. It is nevertheless necessary to categorise the nature of the particular social group into which the appellants fall. Although the position of women in Sudan appears to have markedly improved in recent years, the evidence as a whole shows that they are the subject of societal discrimination (see paragraphs 119 and 120 above). Such a conclusion also flows from the evidence of Ms Maguire to the Tribunal in *HGMO*, as analysed in paragraph 305 of the determination in that case. The reason why Ms Maguire in effect did not consider that a Sudanese female returnee would be at real risk of persecution on return, was that such a returnee would be regarded by the authorities merely as an adjunct of her husband. If that husband was a person in whom the authorities had a significant adverse interest, then the female returnee would suffer serious harm.

**145.** For present purposes, the Tribunal considers that women in Sudan constitute a particular social group and, for the reasons given by the House of Lords in *K* and *Fornah*, the infliction of FGM on a Sudanese woman would be persecution for a Refugee Convention reason.

**[HGMO \(Relocation to Khartoum\) Sudan CG \[2006\] UKAIT 00062.](#)**

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.

**[MG \(Christians, including Coptic Christians\) Sudan CG \[2006\] UKAIT 00047](#)**

Christians in Sudan are not for that reason alone at risk of persecution but some Christians (and in particular members of proselytising evangelical churches or Coptic Christians) may be in a more vulnerable position and in the light of their particular circumstances may be at real risk of persecution on account of their religion.

**[BA \(military service – no risk\) Sudan CG \[2006\] UKAIT 00006](#)**

Country guidance is given in this case on the following issues and in the following terms:

- (i) On the available evidence Sudanese draft evaders and draft deserters do not

face a real risk of imprisonment as a punishment. Instead they are forced to perform military service under close supervision.

(ii) In view of the ending in January 2005 of the north-south civil war, there is no longer a real risk of conscripts or draft evaders or draft deserters being required to fight in the south.

(iii) The recent conflict in Darfur (still ongoing) has been characterised by serious violations of international humanitarian law amounting to crimes under international law. However, on the available evidence it is not reasonably likely that conscripts or draft evaders or draft deserters are being or would be required to fight in Darfur.

(iv) Accordingly, Sudanese who face conscription, or who are draft evaders and draft deserters do not face a real risk on return of persecution or treatment contrary to Article 3.

(v) The case of AM (Sudan Draft Evader) Sudan [2004] UKIAT 00335 is no longer to be followed and, even read historically, was wrongly decided.

(vi) In view of the substantial political realignments in Sudan during the 2002-2005 period, none of the existing Country Guideline cases on Sudan (save for TM (Persecution- Christians – Individual – General) Sudan CG [2002] UKIAT 04849 and AE (Relocation – Darfur – Khartoum an option) Sudan CG [2005] UKAIT 00101) are to be considered any longer to furnish current country guidance and are accordingly to be deleted from the AIT Country Guideline list.

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

The Tribunal concluded that “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”.

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

**3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in the Republic of Sudan. 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 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 'establishing the facts of the claim (material and non-material facts)' in the Asylum Instruction '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 UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches 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 Civilians from South Sudan,**

**3.6.1** Applicants may make an asylum and/or human rights claim based on a fear of ill-treatment amounting to persecution by the Sudanese authorities because they are considered to be civilians from South Sudan and/or sympathetic to the Government of South Sudan.

**3.6.2 Treatment:** 2011 saw Sudan's division into two countries: the Republics of Sudan and South Sudan. In January, polling took place in an internationally monitored and recognised referendum, with over three million South Sudanese voting overwhelmingly for independence, which followed on 9 July. The government of Sudan honoured the outcome of the referendum in January and was the first to recognise South Sudan as a separate state.<sup>14</sup>

**3.6.3** Under Sudanese law, which was amended following South Sudan's independence, Sudanese people automatically lose citizenship when they acquire "de jure or de facto" the "nationality of South Sudan." The law does not state how someone can acquire this nationality de facto or how authorities should determine whether they have acquired it. There are signs that Sudanese authorities have already begun to strip people of their citizenship, in violation of international law. In some cases they have refused to issue the new Sudanese national number to people because of

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<sup>14</sup> [UK Foreign & Commonwealth \(FCO\) Office: Human Rights & Democracy 2011 FCO Office Report: Human Rights in Countries of Concern: Sudan. 30/04/2012](#)

their southern roots. The number is a required proof of identity for all Sudanese citizens.<sup>15</sup>

- 3.6.4** The South Sudan Nationality Act, which was adopted in June 2011 creates four grounds on which a person can claim to be a citizen “An individual will be considered a South Sudanese national if such person meets any of the following requirements: (a) Any parents, grandparents or great grandparents on the male or female line were born in South Sudan, (b) Such person belongs to one of the indigenous tribal communities of South Sudan, (c) Such person, at the time this bill came into force, has been domiciled in South Sudan since 1.1.1956 [the date of independence], or (d) Such person has acquired and maintained the status of a South Sudanese national by an uninterrupted domicile”.<sup>16</sup>
- 3.6.5** The Open Society Initiative stated that “As part of the process of separation of the two states, people of South Sudanese origin who are habitually resident (in some cases for many decades) in what remains the Republic of Sudan are being stripped of their Sudanese nationality and livelihoods, irrespective of the relative strength of their connections to either state, and their views on which state they would wish to belong to”.<sup>17</sup>
- 3.6.6** Early in 2012, Sudanese authorities announced that southerners [in North Sudan] should either return to South Sudan or that they would be treated as foreigners and should adjust their legal status by 8 April, at the end of a nine-month transition period following South Sudan’s independence. On 12 February, Sudan and South Sudan re-affirmed the deadline in an agreement on modalities for returning people to South Sudan, but did not address the status of southerners wishing to remain citizens of Sudan. Although large numbers of southerners returned to South Sudan before and after the country gained its independence on 9 July 2011, an estimated 500,000 to 700,000 people of southern origin still live in Sudan. Many fled the long civil war in the south and have lived in Sudan for decades, or were born there and have few ties to South Sudan.<sup>18</sup>
- 3.6.7** The Open Society Initiative noted that these South Sudanese have “no recognised legal status in Sudan, exposing them to risk of arrest and detention on immigration charges, and the threat of expulsion to South Sudan. It is likely that some of those treated as South Sudanese nationals by the Sudanese authorities will in fact find themselves without the recognised nationality of either state, leaving them stateless”. People of South Sudanese origin who have been living in Sudan for decades have also lost the rights and entitlements linked to their Sudanese nationality, such as jobs in the public and private sector and their rights to property, which is only protected for Sudanese nationals under the constitution. Those most likely to be adversely affected by the changes in the nationality law include people of southern ethnicity resident in the north; people with one parent from South Sudan or with more complex mixed ancestry; members of cross-border ethnic groups or pastoralist communities; members of historical migrant communities; and people separated from their families by the war.<sup>19</sup>

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<sup>15</sup> [Human Rights Watch, Sudan: Don't Strip Citizenship Arbitrarily, 2 March 2012.](#)

<sup>16</sup> [Open Society Blog, Citizenship and State Succession in the Sudans, 19/12/2011.](#)

<sup>17</sup> [Open Society Initiative, The Right to a Nationality and the Secession of South Sudan: a commentary on the impact of the new laws, 16/04/2012.](#)

<sup>18</sup> [Human Rights Watch, Sudan: Don't Strip Citizenship Arbitrarily, 2 March 2012.](#)

<sup>19</sup> [Open Society Initiative, The Right to a Nationality and the Secession of South Sudan: Open Society Initiative, The Right to a Nationality and the Secession of South Sudan: a commentary on the impact of the new laws, 16/04/2012.](#)

- 3.6.8** Although Khartoum extended until 8 May [12] the registration deadline for South Sudanese, the process lacks clarity in the absence of an effective public information campaign. On 7 April, a dozen South Sudanese government officials arrived in Khartoum to start issuing emergency travel documents, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA). South Sudan's embassy in Khartoum also plans to issue national certificates and passports, OCHA said. Aside from the issue of paperwork, moving people to South Sudan is a huge challenge because of their vast numbers, the lack of sufficient transportation, borderland conflict and weak capacity in South Sudan to move the returnees to their homelands and provide them with basic services. In March, Khartoum and Juba drafted a deal that would grant extensive freedoms - including residency and work permits - to each other's citizens, but the intervening escalation of conflict has put this arrangement on hold.<sup>20</sup>
- 3.6.9** On 21 April 2012, a 300-strong mob attacked a Presbyterian Church compound in Khartoum's Al-Jiraif District, torching parts of the premises. The ransacking of the church compound illustrates the increasing hostility faced by some of the hundreds of thousands of residents of the Sudanese capital whose origins lie in what is now the independent state of South Sudan. The church's priest stated that the mosques were inflaming people against southerners and Christians over the last two weeks and that the imam of the next door mosque had incited people to destroy the church, saying the land it was on belonged to Muslims. The priest believed the imam's words were linked to a government deadline that all South Sudanese in Sudan should register as foreigners or head back to South Sudan. He further added that hostile rhetoric had escalated two weeks earlier, as Sudan and South Sudan's armies began to fight over the disputed borderland Heglig oilfield. (see section 3.8 on Civilians fleeing the insecurity and violence in the southern states of Sudan, below).<sup>21</sup>
- 3.6.10** The current human rights and humanitarian situation in the Republic of South Sudan may also discourage many from seeking protection there. At the end of 2011 the Head of the UN peacekeeping mission in South Sudan (UNMISS) said that South Sudan faces "challenges in protecting civilians and brokering peaceful co-existence among feuding tribes".<sup>22</sup> Similarly, the U.S. Congressional Research Service highlighted that South Sudan "lacks the infrastructure and institutions necessary for governance and delivery of basic services".<sup>23</sup> <sup>24</sup> In April, Reuters reported that "Some southerners have even returned after failing to find work in South Sudan, one of the world's least developed nations".<sup>25</sup> The UN independent expert on the situation of human rights in the Sudan stressed that the government of South Sudan needed to address many outstanding human rights issues, including "ending the pervasive culture of impunity and violence in the region... the general lack of trained security forces and law enforcement authorities, the persistence of inter-communal violence and the weakness of State structures that underpins the persistent human rights abuses."<sup>26</sup> In March 2012, the report of the

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<sup>20</sup> [Integrated Regional Information Networks \(IRIN\), Sudan-South Sudan: South Sudanese in Khartoum increasingly fearful, 23 April 2012,](#)

<sup>21</sup> [Integrated Regional Information Networks \(IRIN\), Sudan-South Sudan: South Sudanese in Khartoum increasingly fearful, 23/04/12,](#)

<sup>22</sup> [UN News Service, South Sudan shows progress in State-building, but faces security challenges – UN, 02/11/2011.](#)

<sup>23</sup> [Congressional Research Service, The Republic of South Sudan: Opportunities and Challenges for Africa's Newest Country, 16/09/2011, Introduction.](#)

<sup>24</sup> [Integrated Regional Information Networks \(IRIN\), Sudan-South Sudan: South Sudanese in Khartoum increasingly fearful, 23 April 2012,](#)

<sup>25</sup> [Reuters, S.Sudanese face uncertain future in north next week, 06/04/2012.](#)

<sup>26</sup> [UN General Assembly, Report of the independent expert on the situation of human rights in the Sudan, Mohamed](#)

Secretary-General on South Sudan underlined the serious challenges the government faces to “guarantee respect for human rights for its citizens [...] particularly in the context of increased inter-communal conflict”.<sup>27</sup>

**3.6.11 Conclusion:** Citizens of and those individuals eligible for citizenship of the Republic of South Sudan may be able to find protection there. However, given the new statehood, the evolving entry and registration requirements, as well as the ongoing violence and humanitarian situation, case owners should carefully the individual characteristics of the claimant and the current conditions in South Sudan.

### **3.7 Members or associates of the SPLM/N**

**3.7.1** Applicants may make an asylum and/or human rights claim based on a fear of ill-treatment amounting to persecution by the Sudanese authorities because they are of their alleged membership of/or association with the Sudan People’s Liberation Movement Army – North (SPLM/N). This section needs to be read with section 3.8 for the background material on the conflict in the Southern States.

**3.7.2 Treatment:** The US State Department in its Human Rights 2011 report on Sudan states that “In June violence erupted in Southern Kordofan following the opposition SPLM-N refusal to accept the results of a closely contested election for state governor and government efforts to disarm elements of the SPLM-N’s forces. Both SAF and SPLM-N forces were accused of targeting civilians and employing violence indiscriminately. In September in Blue Nile State violence between the SAF and SPLM-N flared. SPLM-N declarations of intent to overthrow the national government and accusations the SPLM-N was receiving material support from the government of South Sudan led to the dismissal of the pro-SPLM-N governor and the imposition of a national ban on the SPLM.”<sup>28</sup>

**3.7.3** In 2012, Human Rights Watch noted that the National Intelligence and Security Service targeted opposition party members, activists and other perceived opponents and arrested ethnic Nuba suspected to be Sudan People’s Liberation Movement (SPLM) supporters, and more than “100 suspected party members of SPLM-North”.<sup>29</sup> In September 2011, the Sudanese government banned 17 political parties including the SPLM-North “citing their southern links”.<sup>30</sup> In 2011, the UN High Commissioner for Human Rights received allegations of “a series of extrajudicial killings targeted at people who were affiliated with the SPLA-N and SPLM, most of whom allegedly were from the Nuba communities”, as well as several reports of alleged abductions or disappearance of people suspected of being supporters and affiliates of the SPLM/A.<sup>31</sup>

**3.7.4** In 2011, Amnesty International documented the detention of Abbas Al-Awad,

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[Chande Othman, 22/08/2011](#), paragraph 43.

<sup>27</sup> [UN Security Council, Report of the Secretary-General on South Sudan, 07/03/2012](#), paragraphs 58, 59, 61 and 62.

<sup>28</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; section 1g, Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

<sup>29</sup> [Human Rights Watch, World Report 2012: Sudan, 22/01/2012](#), Arrest and Detention of Perceived Opponents.

<sup>30</sup> [Human Rights Watch, World Report 2012: Sudan, 22/01/2012](#), Arrest and Detention of Perceived Opponents.

<sup>31</sup> [UN Office of the High Commissioner for Human Rights, Thirteenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan: Preliminary report on violations of international human rights and humanitarian law in Southern Kordofan from 5 to 30 June 2011, August 2011](#), ALLEDGED VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW and Enforced disappearances, arbitrary arrests and illegal detentions.

Izdihar Jumma<sup>32</sup> and Bushra Gamar Hussein Rahma – all of whom were activists and members of the SPLM-N.<sup>33</sup> In March 2012, Amnesty reported that another member of the SPLM-N was taken from her home in Khartoum and is currently being detained incommunicado and is at risk of torture.<sup>34</sup>

**3.7.5** According to the Sudan Tribune of 19 April the SPLM-N has joined with JEM and the two main factions of Sudan Liberation Movement led by Abdel-Wahid Mohamed Nur (SLM-AW) and Minni Minnawi (SLM-MM) to form the Sudan Revolutionary Front (SRF).<sup>35</sup> [see section 3.9.3].

**3.7.6 Conclusion:** Members, associates and those perceived by the Government of the Republic of Sudan to be supporting the SPLM-N; are at risk of persecution in Sudan. These people may be able to find protection in the Republic of South Sudan should they be eligible for citizenship. However, given the new statehood, the evolving entry and registration requirements, as well as the ongoing violence and humanitarian situation, case owners should carefully consider the individual characteristics of the claimant and the current conditions in South Sudan.

**3.7.7** If it is accepted that an applicant was actively involved in serious human rights abuses as part of the SPLM-N, some of which might amount to war crimes or crimes against humanity, then case owners should consider whether any of the exclusion clauses are applicable. Such cases should always be referred to a Senior Caseworker. Guidance on Article 1F can be found in the Asylum Instruction on: Exclusion – Articles 1F and 33(2) of the Refugee Convention.

### **3.8 Civilians fleeing the insecurity and violence in the southern states of Sudan, including Blue Nile, Southern Kordofan and Abyei**

**3.8.1** Applicants may make an asylum and/or human rights claim based on a fear of ill-treatment amounting to persecution by the Sudanese authorities because of the insecurity and violence in the southern states of Sudan, including Blue Nile, Southern Kordofan and Abyei. This section should be read in conjunction with section 3.7.

**3.8.2 Treatment:** The six year transitional period from the signing of the Comprehensive Peace Agreement (CPA) in 2005 to independence was supposed to provide time to resolve a series of key issues. However, that has not been the case. There remain disputes over the borderline between the two countries and how that border will be managed. But the crucial area of continuing disagreement is over oil. Most oil lies in South Sudan (although some reservoirs do cross the international boundary) but the pipeline and refineries that turn oil into currency are in North Sudan).<sup>36</sup> In an interview on Friday 3 February, President Bashir stated that Sudan was now closer to war than to peace with South Sudan. The declaration follows on the collapse of the recent round of negotiations between the two countries over oil transit fees. Khartoum had started to confiscate a share of the South Sudanese oil flowing through the northern pipeline and then seized shipments of the oil in Port Sudan in lieu of transit fees still to be agreed upon between the two countries. In response,

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<sup>32</sup> [Amnesty International, Government crackdown on activists and political opponent, 11/11/2011.](#)

<sup>33</sup> [Amnesty International, ACTIVIST REMAINS IN DETENTION WITHOUT TRIAL, 12/10/2011.](#)

<sup>34</sup> [Amnesty International, SUDANESE ACTIVIST AND TEACHER DETAINED, 16/03/2012.](#)

<sup>35</sup> [Sudan Tribune, JEM rebels clash with Sudanese Army near S. Kordofan oil fields, 19/04/12.](#)

<sup>36</sup> [The World Today, South Sudan: Labour Pains, Volume 67, Number 7, August 2011.](#)

South Sudan halted its oil production altogether.<sup>37</sup>

**3.8.3** Sudan lost some three-quarters of its oil supplies when South Sudan became independent. Since then, the oil rich borderland area of Heglig has accounted for about half of Sudan's daily output of 115,000 barrels. During the negotiations that led to the 2005 CPA it was agreed that Heglig (known as Panthou by southerners, who claim it had always been in Unity State) would be included in Abyei, one of the three border areas (along with Southern Kordofan and Blue Nile) whose north-or-south status was not fully resolved by the accord. Despite this lack of resolution, Abyei has been occupied by Sudanese troops since May 2011 and has not had the CPA-mandated referendum to determine its future. Heglig lies between Abyei and the Nuba Mountains of Sudan's Southern Kordofan state where, since June 2011, government forces have been battling insurgents (SPLA-N) with links to the former rebels now in power in Juba.<sup>38</sup>

### **Blue Nile – security situation**

**3.8.4** In September in Blue Nile State violence between the SAF and SPLM-N flared..<sup>39</sup> On the night of September 1 [2011], fighting started in Damazin, the capital of Blue Nile, between the Sudanese armed forces and SPLA remnants who were there under the terms of the peace agreement. Witnesses from Damazin told Human Rights Watch [HRW] that government soldiers used tanks and heavy weapons to destroy civilian property, including residential homes and the Malik Agar cultural center. Soldiers and national security forces then rounded up suspected members of SPLM-North, arresting people in their homes and in the streets, and looted extensively. In the following days, hundreds of men in Damazin, Roseris, and other towns were taken to military barracks, national security offices, and other places of detention. Many were held for weeks or months without charge. Former detainees told HRW they were beaten, made to sleep in crowded rooms, deprived of sleep, food and water, and witnessed executions of other detainees while in detention. Lawyers following the detentions estimate that more than 200 people are still being detained or are missing. The Sudan attorney general's office announced in March that it had completed investigations of 132 detainees and accused them of crimes against the state and espionage. Authorities have refused to provide information to the lawyers about prosecutions, access to the detainees, a full list of their names and whereabouts, or the exact charges against all of them.<sup>40</sup>

**3.8.5** On September 2, President al-Bashir announced a state of emergency in Blue Nile and dismissed the state's SPLM-North governor, Malik Agar, replacing him with a military commander. The next day authorities announced that SPLM-North was banned, seized their offices, and arrested party leaders and members across Sudan. Witnesses interviewed by Human Rights Watch in Blue Nile, which the government has largely shut off from the outside world, described indiscriminate bombings in civilian areas, killings, and other serious abuses by Sudanese armed forces since armed conflict commenced. Little information has emerged about events in Blue Nile. Sudan has not granted journalists, independent monitors, or aid groups access to Blue Nile state or to neighboring Southern Kordofan. Since the United Nations mandate for a peacekeeping operation in the region expired in July 2011, there have been no UN monitors on the ground to document the initial impact

<sup>37</sup> [Sudan Tribune, The Sudans: government by war, 05/02/2012.](#)

<sup>38</sup> [Integrated Regional Information Networks \( IRIN\), Sudan: South Sudan- Heglig and the border, 13/14/2012.](#)

<sup>39</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; section 1g, Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

<sup>40</sup> [HRW Sudan, Blue Nile civilians describe attacks, abuses 23/04/12:](#)

of the fighting on civilians in Blue Nile, where conflict spread in September. The research in Blue Nile indicates that Sudan's bombing campaign has killed, maimed, and injured scores of civilians since September and destroyed civilian property including markets, homes, schools, farms, and aid group offices. Human Rights Watch reported in April 2012, that civilians were bearing the brunt of abuses in Sudan's border conflict in Blue Nile state, Witnesses described "indiscriminate bombings in civilian areas, killings, and other serious abuses by Sudanese armed forces since armed conflict broke out there in September 2011."<sup>41</sup> Human Rights Watch and Sudan-based human rights activists also "confirmed the detention by national security personnel in Damazin, Blue Nile, on September 2 of Abdelmoniem Rahma, a well-known Sudanese writer, artist, activist, and former adviser on cultural affairs to the governor of Blue Nile State. Rahma remained in detention without charge at year's end [2011]".<sup>42</sup> *See below for details on the humanitarian situation.*

### **Southern Kordofan – security situation**

- 3.8.6** In June [2011] violence erupted in Southern Kordofan. Both SAF and SPLM-N forces were accused of targeting civilians and employing violence indiscriminately.<sup>43</sup> Ahmed Haroun, the new state governor, is wanted by the International Criminal Court for war crimes and crimes against humanity committed in Darfur. The fighting quickly spread to Kadugli, Tolodi, Dilling, and other towns and villages, and extensive artillery shelling and aerial bombardment of civilian areas by SAF forces have resulted in several civilian deaths and destruction of property. Government soldiers and militia forces have also been engaged in widespread abuses including extrajudicial killings, arrests, and looting and destruction of civilian property such as private homes and churches.<sup>44</sup>
- 3.8.7** Human Rights Watch investigated airstrikes in El Buram, Um Durein, and Heiban localities. Witness accounts and physical evidence seen including bomb fragments, unexploded ordnance, and craters, indicate that the government forces have dropped bombs from Antonov planes, fired missiles from fighter jets, shelled, and launched rockets into civilian areas. Rolling out unguided munitions manually from Antonov planes, is inherently indiscriminate as attacks cannot be directed accurately at a military objective. Witnesses in three areas described almost-daily aerial bombardment by government forces, the destruction of grain and water sources that are critical to their survival, arbitrary detentions, and sexual violence against women. Thousands of Nuba civilians are hiding from bombs, shelling, and missiles in mountain caves, afraid to return home.<sup>45</sup>
- 3.8.8** The New York Times in an article dated 18 February 2012 reported: "A Great humanitarian catastrophe and vicious ethnic cleansing is unfolding here in the remote and impoverished region where Sudan and South Sudan come together. ... For some in the Nuba Mountains, living in thatch huts far from electricity or paved roads, the sharpest acquaintance they are making with 21st-century technology is to be bombed by Sudanese aircraft. ... Bombings, ground attacks and sexual violence — part of Sudan's scorched-earth counterinsurgency strategy — have

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<sup>41</sup> [Human Rights Watch, Sudan: Blue Nile Civilians Describe Attacks, Abuses, 23/04/2012.](#)

<sup>42</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1, d, Arrest Procedures and Treatment While in Detention.](#)

<sup>43</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; section 1g, Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

<sup>44</sup> [HRW: UN/ AU Urge end to Sudan's abuses in Southern Kordofan,](#)

<sup>45</sup> [Human Rights Watch, Sudan: Crisis Conditions in Southern Kordofan, 04/05/2012.](#)

driven hundreds of thousands of people from their homes in South Kordofan, the Sudanese state where the Nuba Mountains are located. In some ways, the brutality here feels like an echo of what Sudan did in Darfur, only now it is Nubans who are targets. ... 'They said that they want to finish off the black people; they said they want to kill them all,' recalled Elizabeth Kafi, a 22-year-old Nuban who said she was kidnapped in December [2011] by Sudanese uniformed soldiers. She and others say that the mostly Arab Sudanese soldiers scorn Nubans partly for their darker skin, partly because some are Christian, but mostly because many Nubans back an armed uprising against decades of Sudanese misrule. As in Darfur, the Sudanese soldiers often call their darker-skinned victims their 'slaves.' Ahmed Haroun, a Sudanese official wanted by the International Criminal Court for committing crimes against humanity in Darfur, is now the governor of South Kordofan, and he seems to be employing similar tactics here.<sup>46</sup>

**3.8.9** The Guardian in an article of 21 March 2012 asked "Is Sudan committing another genocide – against the Nuba people". It reported "Burned out of house and home, plagued by hunger, cut off from aid and relentlessly hunted from the air – this is what it means to be a Nuba civilian in Sudan today. The crimes against humanity in the Nuba stem from Khartoum's declared vision of a Sudan that does not offer equality for its non-Arab and non-Islamic citizens. Sudan's most marginalised ethnic African communities pay the price of such hateful intolerance and extreme repression."<sup>47</sup>

**3.8.10** Time World reported in April 2012 that "In the past two months, Nuba fighters from the Sudan People's Liberation Army–North (SPLA–N) have notched a string of strategic victories, capturing the border town of Jau, the former northern administrative center of Trogi, and pushing back government troops in pitched battles involving thousands of fighters at Korongo, Tess and El Dar. Rebel commanders talk of killing hundreds, even thousands, of Sudanese troops, leaving the plains strewn with bodies — a boast given credence by the number of graves of government soldiers that now mark the sites of recent battles; soldiers control 80% of the Nuba Mountains, the tribe's ancestral homeland. In effect, just the two largest cities remain in government hands — Talodi and Kalugli."<sup>48</sup>

### **The humanitarian situation in Blue Nile and Southern Kordofan**

**3.8.11** When fighting broke out in June [2011] the government of Sudan denied international humanitarian organizations access to the [Kordofan] state, and international staff of NGOs operating there were expelled, making monitoring and verification of human rights abuses difficult.<sup>49</sup> The conflict (ground fighting and aerial bombardments from the Government) has displaced an estimated number of over 300,000 people in Southern Kordofan (increased after March military offensives) and of 300,000 in Blue Nile State (including over 100,000 refugees in South Sudan and Ethiopia). The humanitarian situation is affected by the lack of access of the international agencies from the North and their unwillingness to operate from the South in order not to compromise their political relations with Khartoum. With the rainy season approaching and a missed farming season, the risk of starvation for

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<sup>46</sup> [New York Times: In Sudan, Seeing echos of Darfur, 18 February 2012](#)

<sup>47</sup> [The Guardian, 21/03/2012: Is Sudan committing another genocide – against the Nuba people](#)

<sup>48</sup> [Time World In Sudan's Nuba Mountains, Rebels Make Gains — and Talk of Marching on Khartoum, 9 April 2012](#)

<sup>49</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; section 1g, Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

hundreds of thousands of citizens is real.<sup>50</sup>

**3.8.12** More than 350,000 people are estimated to be internally displaced within Southern Kordofan, according to Sudanese civil society and humanitarian groups. At least 25,000 have fled to refugee settlements in South Sudan. According to the United Nations refugee agency (UNHCR), an average of over 200 refugees arrived in the Yida refugee camp daily during April, and there has been a marked increase in cases of malnutrition among recent refugee arrivals.<sup>51</sup> The destruction of towns across the Nuba Mountains and ongoing indiscriminate bombing, have resulted in a worsening humanitarian situation. Civilians, many of them displaced from their homes and living in mountain caves, urgently need food aid, access to potable water, and healthcare.<sup>52</sup>

**3.8.13** At the end of April 2012, UNHCR reported that “Recent fighting near the border between Sudan and South Sudan has displaced some 35,000 people in areas around Heglig, Talodi and other parts of Sudan’s South Kordofan province”.<sup>53</sup> The latest UN Office for the Coordination of Humanitarian Affairs (OCHA) humanitarian update noted that “Fighting between the SAF and the SPLM-N continued to affect civilians in South Kordofan and Blue Nile. Tens of thousands of people were internally displaced and the number of refugees in Ethiopia and South Sudan rose from an estimated 109,000 to some 130,000 during the first quarter of 2012. A small number of UN international staff members were able to return to Kadugli, the capital of South Kordofan. With fighting continuing and limited access for humanitarian assistance, there remain serious concerns about food insecurity, particularly in SPLM-N areas”.<sup>54</sup>

**3.8.14** Since June and September, respectively, the government blocked access to Southern Kordofan and Blue Nile for international aid organizations. For example, in August a joint UN/Sudanese government mission to assess the humanitarian situation and provide critical food aid to displaced people arrived in Kadugli, but the Southern Kordofan governor told the group to return to Khartoum before it could carry out its mission. Since that time no international organizations have been permitted to return to Southern Kordofan. International aid organizations were similarly restricted from providing aid in Blue Nile State. Continued denial of access for international humanitarian staff impeded reporting and verification of events<sup>55</sup>.

**3.8.15** Time World reported in April “If the Nuba rebels are pushing Khartoum’s forces out of South Kordofan, that should allow for an influx of humanitarian relief, which will be desperately needed in the coming months, since Khartoum’s bombings have prevented many villagers from farming”.<sup>56</sup>

### **Abyei – security situation**

**3.8.16** Both North and South Sudan claim Abyei, a central fertile territory on their shared (disputed) border, used by both the Ngok Dinka tribe, associated with the south

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<sup>50</sup> [Sudan Tribune, The selective implementation of the Sudan CPA and today’s crisis along the North/South border, 04/05/12](#)

<sup>51</sup> [Human Rights Watch, Sudan: Crisis Conditions in Southern Kordofan, 4 May 2012.](#)

<sup>52</sup> [Human Rights Watch, Sudan: Crisis Conditions in Southern Kordofan, 4 May 2012](#)

<sup>53</sup> [UNHCR, Recent fighting near Sudan-South Sudan border displaces 35,000, 24/04/2012.](#)

<sup>54</sup> [OCHA, Sudan Humanitarian Update: 1st Quarter 2012, 23/04/2012,](#) South Kordofan and Blue Nile.

<sup>55</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012; section 1g, Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

<sup>56</sup> [Time World In Sudan’s Nuba Mountains, Rebels Make Gains — and Talk of Marching on Khartoum, 9 April 2012](#)

and Arab Misseriya nomads, associated with the north. Preparations for the Abyei referendum [promised in the CPA] remained stalled. The North and the South did not reach agreement on voter eligibility criteria for the CPA-mandated referendum on whether Abyei remains part of Northern Sudan or joins the South. The North stated that the Misseriya, who migrate through Abyei from the North, should be eligible to participate, while the South rejected their inclusion.<sup>57</sup>

**3.8.17** Just weeks ahead of Southern Sudan's formal separation from the rest of the country, the northern-based Sudanese army on May 21, 2011, effectively took control of the disputed border territory. The action violated the 2005 Comprehensive Peace Agreement and other agreements between the ruling National Congress Party (NCP) and the southern ruling Sudan People's Liberation Movement (SPLM). The assault on the town of Abyei followed a series of skirmishes between southern and northern armed forces, including an alleged attack on May 19 by southern armed forces on northern troops traveling with a UN convoy near Abyei. The Sudanese army responded with an aggressive military offensive on the town of Abyei and surrounding villages, deploying more than 25 tanks and shelling and bombing civilian areas in Abyei and other towns. In the following days, tens of thousands of people, including the elderly and unaccompanied children, fled Abyei, Agok, and surrounding towns, and more than 60 sought medical care from nearby humanitarian organizations. With the town of Abyei largely abandoned, soldiers and militia - drawn from the semi-nomadic Misseriya community appear to have gone on a rampage of destruction and looting in the town.<sup>58</sup> Sudan's occupation prompted more than 100,000 Ngok Dinka, the region's main permanent residents, to flee southwards.<sup>59</sup> Today few people live in Abyei. In the aftermath of the SAF occupation, the displaced headed to the southern part of the area at the border with South Sudan, in Agok mainly.<sup>60</sup>

**3.8.18** On June 27 [2011], the UN Security Council unanimously adopted Resolution 1990, establishing the UN Interim Status Force in Abyei (UNISFA) and mandating the deployment of 4,200 Ethiopian peacekeepers. By year's end UNISFA had fully deployed, with 3,653 troops on the ground. Ethiopian peacekeepers were carrying out the force's primary task of protecting the civilian population and establishing a safe and secure environment. Access to the Abyei area by international organizations and observers was not a problem following the deployment of UNISFA forces. The UN reported arbitrary killings, disappearances, displacement, and detentions in Abyei, although these reports dramatically decreased after the deployment of UNISFA.<sup>61</sup>

**3.8.19** The BBC reported on 30 May that Sudan has pulled its troops out of the disputed border region of Abyei, according to the UN late on Tuesday evening (29 May). The pullout comes as negotiators from Sudan and South Sudan meet in Ethiopia to begin talks over several disputes. However a source told the BBC that the number of police in the area has been increased to about 200, raising fears that some Sudanese soldiers may have simply changed into police uniforms in order to stay.<sup>62</sup>

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<sup>57</sup> [U.S. Department of State, 2010 Human Rights Report, Sudan, 08/04/10, section 3 Elections and Political Participation.](#)

<sup>58</sup> [HRW Sudan: Stop Abyei abuses 26/05/11](#)

<sup>59</sup> [Integrated Regional Information Networks \(IRIN\), Sudan-South Sudan: Abyei displaced struggle to survive in impoverished villages, 10/04/12:](#)

<sup>60</sup> [Sudan Tribune, The selective implementation of the Sudan CPA and today's crisis along the North/South border, 04/05/12](#)

<sup>61</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1g: Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

<sup>62</sup> [BBC News 30 May 2012: Abyei crisis: UN confirms Sudan troop pullout:](#)

## **Abyei – humanitarian situation**

- 3.8.20** The latest UN Office for the Coordination of Humanitarian Affairs (OCHA) humanitarian update noted that “The overwhelming majority of more than 100,000 people who fled Abyei and surrounding villages in 2011 remain displaced and are reluctant to return due to the presence of SAF, the risk of landmines and the lack of food assistance and livelihood opportunities”.<sup>63</sup>
- 3.8.21** Access to the Abyei area by international organizations and observers was not a problem following the deployment of UNISFA forces.<sup>64</sup> UNISFA is charged with monitoring the situation on the ground and is authorized to use force in protecting civilians and humanitarian workers.<sup>65</sup>
- 3.8.22 Conclusion:** The situation in Abyei remains volatile, however a degree of stability has been restored with the introduction of UN peacekeepers and access is now available to international organisations. The situation in Southern Kordofan and Blue Nile remains tense with ongoing conflict in these states and information is limited due to the Sudanese authorities’ refusal to grant access to journalists, independent monitors, or aid groups. It is important therefore when considering an application from an individual from all three states that up to date country information is considered.
- 3.8.23** Where the fear is of ill-treatment/persecution by the state authorities then individuals cannot apply to these same authorities for protection. In Abyei the UN peacekeepers primary task is protection of the civilian population and of humanitarian workers and therefore an applicant would need to demonstrate why they could not avail themselves of this protection. This is not the case in Southern Kordofan or Blue Nile States. Whilst internal relocation may be an option for some groups, given the fluid situation in Sudan, case owners should 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 claimant, internal relocation may be viable. When internal relocation is not an option then a grant of protection is likely.

## **3.9 Members or associates of Darfuri rebel groups**

- 3.9.1** Some applicants may make an asylum and/or 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). [See notes 3.7.5 and 3.9.3 re newly formed SRF]
- 3.9.2 Treatment.** Sudan and the former rebel Liberation and Justice Movement (LJM) signed the Doha Document for Peace in Darfur (DDPD) last July [2011] but the other group participating in the talks, the Justice and Equality Movement (JEM), rejected the framework deal. ... JEM, two factions of the rebel Sudan Liberation Movement (SLM) led by Abdel Wahid al-Nur (SLM-AW) and Minni Minniawi (SLM-MM) and the Sudan People's Liberation Movement-North (SPLM-N) signed last November an alliance pact agreeing that a comprehensive solution for Sudan's

<sup>63</sup> [OCHA, Sudan Humanitarian Update: 1st Quarter 2012, 23/04/2012](#), Abyei.

<sup>64</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012](#)

<sup>65</sup> [UN News Service, Ban welcomes withdrawal of Sudanese troops from border flashpoint area, 30 May 2012](#)

problems requires toppling the regime of President Omer al-Bashir<sup>66</sup>

- 3.9.3** JEM and the two main factions of Sudan Liberation Movement led by Abdel-Wahid Mohamed Nur (SLM-AW) and Minni Minnawi (SLM-MM) are part of Sudan Revolutionary Front (SRF) formed last November (2011) with the Sudan People's Liberation Movement - North (SPLM-N) which fights Khartoum in South Kordofan and Blue Nile.<sup>67</sup>
- 3.9.4** In the first half of 2011 a wave of fighting which involved ethnically-targeted attacks by government forces and newly-formed government-backed militias, including indiscriminate aerial bombardments and the clearing and burning of villages in eastern Darfur. North and West Darfur also saw more sporadic aerial bombardments of civilian areas. The SAF has continued to conduct aerial bombardments and direct-fire airstrikes on both military and civilian targets in all states of Darfur during 2011. A number of aerial bombings have deliberately targeted civilian settlements, including attacks on villages in areas under government control perceived by the government to be harbouring Dafuri armed opposition groups. The area surrounded by the towns and villages of Khor Abeshe, Dar-es-Salam, Tabit, Abu Zerega and Shangel Tobaya, in North Darfur - south of El Fasher and straddling the South Darfur border - experienced the most intense violence witnessed by the whole region during 2011. Deaths and injuries were caused by indiscriminate attacks and in some cases also by deliberate attacks on civilian settlements.<sup>68</sup>
- 3.9.5** The fighting, which followed a break between the government and Minni Minawi, the only major Sudan Liberation Army (SLA) rebel leader to have signed the 2006 Darfur Peace Agreement, displaced more than 70,000 people, largely from ethnic Zaghawa and Fur communities with perceived links to rebel groups.. Much of Darfur remained off limits to the African Union/UN Mission in Darfur and aid groups, curtailing the peacekeepers' ability to protect civilians or monitor the human rights situation. The vast majority of Darfur's displaced population, estimated at 2.5 million people, remained in camps in Darfur and Chad. Security forces carried out violent search-and-cordon operations, arresting dozens of camp residents. Government forces were also responsible for sexual violence against displaced women and girls. A peace agreement signed in July 2011 by the Sudanese government and one rebel group, the Liberation and Justice Movement, did not stop sporadic fighting or address ongoing human rights abuses and impunity. The authorities relied on emergency and national security laws to detain perceived opponents for long periods without judicial review, often subjecting them to ill-treatment or torture while in detention".<sup>69</sup> According to the UN Office for the Coordination of Humanitarian Affairs "Sporadic clashes between the SAF and armed movements as well as cases of inter-tribal violence were reported in parts of Darfur during the first quarter of 2012".<sup>70</sup>
- 3.9.6** Sudan's president launched [Feb 2012] a body intended to kick-start development in the war-torn western region of Darfur. The new Darfur Regional Authority aims to share power and wealth, compensate those affected by the nine-year war and help the return of displaced people. It was formed as part of a peace deal to end the war.

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<sup>66</sup> [Sudan Tribune, UNAMID boss to visit S. Sudan & Uganda over peace in Darfur, 13 February 2012](#)

<sup>67</sup> [Sudan Tribune, JEM rebels clash with Sudanese Army near S. Kordofan oil fields, 19/04/12,](#)

<sup>68</sup> [Amnesty International, Sudan: No end to violence in Darfur: Arms supplies continue despite ongoing human rights violations, 09/02/2012, Attacks and Reprisals against civilians,](#)

<sup>69</sup> [Human Rights Watch, World Report 2012: Sudan, 22/01/2012,](#) Ongoing Conflict in Darfur.

<sup>70</sup> [OCHA, Sudan Humanitarian Update: 1st Quarter 2012, 23/04/2012,](#) Darfur.

The President announced the release of all prisoners from the Liberty and Justice Movement (LJM), which signed last year's Doha agreement. ... But the gesture was not extended to the three major rebel movements which rejected the deal.<sup>71</sup>

- 3.9.7** With regards to the specific treatment of JEM members and supporters, the leader of JEM, Khalil Ibrahim, was allegedly killed in an air strike in December 2011<sup>72</sup>, although the Sudanese army stated that he was wounded and subsequently died “in a clash with government forces” in North Kordofan.<sup>73</sup> Amnesty International reported that at least seven prisoners, who are part of a group of ten people allegedly affiliated with JEM, who were accused of carjacking in May 2010, had their death sentences upheld by the Special Criminal Court in North Darfur in November 2011.<sup>74</sup>
- 3.9.8** In February 2012, Amnesty International reported on a number of aerial bombings “deliberately target[ing] civilian settlements, including attacks on villages in areas under government control perceived by the government to be harbouring Darfuri armed opposition groups”.<sup>75</sup> In January 2012, the UN Secretary-General noted that “Government forces, especially SAF [Sudanese Armed Forces] and their alleged proxies, have targeted female displaced persons [in Darfur] who are perceived to be supporters” of JEM.<sup>76</sup> The UK FCO report also highlighted the existence of “widespread reports of torture in Sudan, particularly on the part of the security services, and directed at” amongst others “suspected rebels”.<sup>77</sup> Previously, Human Rights Watch found that “The patterns of attack show that the Darfur conflict continues to play on ethnic divisions, with government forces targeting the communities associated with rebels”.<sup>78</sup>
- 3.9.9** The UN independent expert on Sudan has commented on “continuous breaches of human rights and international humanitarian law by the parties to the conflict” (in Darfur) and reminds “to protect civilians (in Southern Kordofan) from violence and to refrain from any actions that could put the lives of civilians in danger, holding those who violate international humanitarian and human rights laws accountable.”<sup>79</sup> Amnesty International in their report of February [2012] recommended the armed opposition groups “take concrete steps to ensure fighters respect international humanitarian law and in particular refrain from all attacks on civilians or civilian objects; also to remove anyone suspected of violations of international humanitarian law from positions where they can continue to commit abuses”.<sup>80</sup>

## International Justice

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<sup>71</sup> [BBC News: Sudan: Darfur Regional Authority Launched, 8 February 2012](#)

<sup>72</sup> [BBC News, Sudan: Brother of Darfur rebels' late leader takes over, 26/01/2012.](#)

<sup>73</sup> [Miraya FM, Darfur rebels united in fight against Khartoum, 27/12/2011.](#)

<sup>74</sup> [Amnesty International, Death Sentences and Executions 2011, 27/03/2012.](#)

<sup>75</sup> [Amnesty International, SUDAN: NO END TO VIOLENCE IN DARFUR: ARMS SUPPLIES CONTINUE DESPITE ONGOING HUMAN RIGHTS VIOLATIONS, 09/02/2012.](#)

<sup>76</sup> [UN General Assembly/Security Council, Conflict-related sexual violence: Report of the Secretary-General: Sudan excerpt, 13/01/2012, paragraph 53.](#)

<sup>77</sup> [UK Foreign & Commonwealth 2011: Human Rights & Democracy Report, April 2012, section ix – Human Rights in Countries of Concern: Sudan, Torture.](#)

<sup>78</sup> [Human Rights Watch, Darfur in the Shadows: The Sudanese Government's Ongoing Attacks on Civilians and Human Rights, June 2011, II. Renewed Fighting and Attacks on Civilians.](#)

<sup>79</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, 22/08/11, Para 59 and 85.](#)

<sup>80</sup> [Amnesty International, Annual Report 2011: The State of the World's Human Rights, Sudan, 13/05/2011, International Justice](#)  
[udanese Government's Ongoing Attacks on Civilians and Human Rights, June 2011, II. Renewed Fighting and Attacks on Civilians.](#)

**3.9.10** On 8 February [2011], the International Criminal Court (ICC) decided not to confirm the charges against Bahar Idriss Abu Garda, leader of the United Resistance Front, a Darfur-based armed group. Bahar Idriss Abu Garda had been summoned in relation to three war crimes in an attack on Haskanita in 2007 against peacekeepers from the African Union Mission in Sudan (AMIS). He appeared voluntarily before the ICC on 18 May 2009. The pre-trial chamber rejected the ICC Prosecutor's appeal on 23 April 2010 and again refused to confirm the charges. On 17 June, Abdallah Banda Abbaker Nourain, Commander in Chief of the JEM Collective Leadership, and Saleh Mohammed Jerbo Jamus, former Chief of Staff of the Sudan Liberation Army-Unity who then joined the JEM, appeared before the ICC. The hearing to confirm the charges against them took place on 8 December.<sup>81</sup>

**3.9.11** In 12 July, the ICC issued an additional arrest warrant against President Al Bashir for genocide. The pre-trial chamber found there were reasonable grounds to believe that President Al Bashir was responsible for three counts of genocide against the Fur, Massalit and Zaghawa ethnic communities. The Assembly of the AU reaffirmed in July its decision not to co-operate with the ICC in relation to the arrest and surrender of President Al Bashir.<sup>82</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.9.12 Conclusion:** 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.

**3.9.13** Issues of ethnicity and identity have become increasingly blurred (see 3.10.4 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

**3.9.14** If it is accepted that an applicant was actively involved in serious human rights abuses as part of one of the Darfuri rebel groups, some of which might amount to war crimes or crimes against humanity, then case owners should consider whether any of the exclusion clauses are applicable. Such cases should always be referred to a Senior Caseworker. Guidance on Article 1F can be found in the Asylum Instruction on: Exclusion – Articles 1F and 33(2) of the Refugee Convention.

### **3.10 Members of non Arab ethnic groups from the Darfur states**

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<sup>81</sup> [Amnesty International, Annual Report 2011: The State of the World's Human Rights, Sudan, 13/05/2011, International Justice,](#)

<sup>82</sup> [Amnesty International, Annual Report 2011: The State of the World's Human Rights, Sudan, 13/05/2011, International Justice,](#)

**3.10.1** Applicants may seek asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the North 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.

**3.10.2 *Treatment.*** In Darfur, there are 65 tribes with their identified hierarchies and social fabrics. However, the ethnic backgrounds to the Darfurians constitute two main distinct groups – the Arabs tribes (Taisha, Salamat, Beni Halba, Kabbabish, Beni Hussein, Tarjam, Hawazma, Messeria, Ziadia, Kawahla and Rezigat). While the non-Arab tribes are (Fur, Zaghawa, Masaliet, Dinka, Meidob, Berti, Birgid, Bidiat, Gola, Kbaka, Gimir, Mararit, Mima and Falata). Twenty percent (20%) of the population are in fact related ethnically to Chad and the Republic of Central Africa.<sup>83</sup>

**3.10.3** The largest ethnic group within Darfur are the Fur people, who consist mainly of settled subsistence farmers and traditional cultivators. Other non-Arab, '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>84</sup>

**3.10.4** The Report of the international commission of inquiry on Darfur to the United Nations Secretary-General January 2005 observed that: In recent years the perception of differences has heightened and has extended to distinctions that were earlier not the predominant basis for identity. The rift between tribes, and the political polarization around the rebel opposition to the central authorities, has extended itself to issues of identity. Those tribes in Darfur who support rebels have increasingly come to be identified as 'African' and those supporting the government as the 'Arabs'. A good example to illustrate this is that of the Gimmer, a pro-government African tribe and how it is seen by the African tribes opposed to the government as having been 'Arabized'. Clearly, not all 'African' tribes support the rebels and not all 'Arab' tribes support the Government. Some 'Arab' tribes appear to be either neutral or even support the rebels". The various tribes that have been the object of attacks and killings (chiefly the Fur, Massalit and Zaghawa tribes) do not appear to make up ethnic groups distinct from the ethnic group to which persons or militias that attack them belong. They speak the same language (Arabic) and embrace the same religion (Muslim). In addition, also due to the high measure of intermarriage, they can hardly be distinguished in their outward physical appearance from the members of tribes that allegedly attacked them. Furthermore, inter-marriage and coexistence in both social and economic terms, have over the years tended to blur the distinction between the groups. Apparently, the sedentary and nomadic character of the groups constitutes one of the main distinctions between them. It is also notable that members of the African tribes speak their own dialect in addition to Arabic, while members of Arab tribes only speak Arabic.<sup>85</sup>

**3.10.5** The conflict started when the Sudan Liberation Army (SLA) and Justice and Equality Movement (JEM) began attacking government targets in early 2003,

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<sup>83</sup> [Peace Research Institute Oslo \(PIRO\) Small Arms Survey in Darfur and Investigation of the Child Soldier, 2000](#)

<sup>84</sup> [European Sudanese Public Affairs Council, Darfur in Perspective, January 2006](#)

<sup>85</sup> [Report of the international commission of inquiry on Darfur to the United Nations Secretary-General, 25 January 2005.](#)

accusing Khartoum of oppressing black Africans in favour of Arabs. Darfur, which means land of the Fur, has faced many years of tension over land and grazing rights between the mostly nomadic Arabs, and farmers from the Fur, Massaleet and Zaghawa communities.<sup>86</sup> These people had long been politically and economically marginalized, and the National Islamic Front regime had refused to control violent Arab militia raids of African villages in Darfur. Khartoum switched from a military strategy of direct confrontation to a policy of systematically destroying the African tribal groups perceived as the civilian base of support for the insurgents. The primary instrument in this new policy is the Janjaweed, a loosely organized Arab militia force of perhaps 20,000 men, primarily on horse and camel. Janjaweed assaults, typically conducted in concert with Khartoum's regular military forces (including helicopter gunships and Antonov bombers), have been comprehensively destructive of both human life and livelihood: men and boys killed en masse, women and girls raped or abducted, and all means of agricultural production destroyed.<sup>87</sup>

**3.10.6** Some eight years into the conflict in Darfur, the political dynamics have changed considerably and the overall violence associated with the insurgency and counter insurgency has abated considerably. Nonetheless, the human rights situation remains a cause of concern, with continuing fighting and breaches of human rights and international humanitarian law by the parties to the conflict. Hundreds of thousands of civilians continue to suffer the effects of the armed conflict through direct attacks, displacement and limited access to humanitarian assistance.<sup>88</sup> More than 100,000 people in Darfur have left the sprawling camps where they had taken refuge for nearly a decade and headed home to their villages over the past year, the biggest return of displaced people since the war began in 2003 and a sign that one of the world's most infamous conflicts may have decisively cooled. Whilst the many thousands going home are only a small fraction of Darfur's total displaced population, they are doing so voluntarily, United Nations officials say, offering one of the most concrete signs of hope this war-weary region has seen in years.<sup>89</sup>

**3.10.7** While a comprehensive solution to the conflict has proven elusive, there have been some encouraging developments. Political progress has been made with the signing of the Doha Darfur Peace Document between the Government and some of the armed opposition groups and improved relations between Chad and the Sudan, including joint border patrolling, have contributed to improving the overall security environment in West Darfur. However, continued fighting between the Sudanese Armed Forces (SAF) and armed opposition groups in other areas underscores the need for the protection of civilians as Darfur continues to be characterized by large-scale displacement. While figures have fluctuated throughout the year due to seasonal movement patterns and other factors, up to 1.9 million people are estimated to remain displaced throughout Darfur, and rely on humanitarian agencies for the provision of basic services.<sup>90</sup> The government's expulsion of 13 international humanitarian NGOs and closure of three local NGOs in 2009 continued to negatively impact the delivery of humanitarian services.<sup>91</sup>

**3.10.8** The most recent UN Report of the Secretary-General on the African Union-United

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<sup>86</sup> [BBC News, Sudan: Darfur conflict, 23/02/10](#), .

<sup>87</sup> [Sudan Tribune, Genocide in Darfur- How the Horror began, 3/09/2005](#).

<sup>88</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, 22/08/2011, Para 49](#).

<sup>89</sup> [New York Times, A taste of hope sends refugees back to Darfur, 26/02/2012](#),

<sup>90</sup> [Office of the UN Commissioner for Human Rights \(OHCHR\): OHCHR in Sudan 2012:](#)

<sup>91</sup> [U.S. Department of State, 2010 Human Rights Report, Sudan, 08/04/2010, section 2 Internally Displaced Persons,](#)

Nations Hybrid Operation in Darfur published in April 2012 reported that “Clashes between Government and movement forces occurred sporadically during the reporting period, particularly in Northern and Central Darfur. The security situation for IDPs and vulnerable groups, as well as for humanitarian and United Nations personnel, remained of concern” and further highlighted that “The human rights situation in Darfur deteriorated during the reporting period. Incidents recorded by UNAMID mainly involved cases of arbitrary arrest and detention, sexual and gender-based violence and violations of the right to physical integrity”.<sup>92</sup> The U.S. Department of State reported in its latest annual human rights report that during 2011 “Lack of access and fear of government retribution reduced reporting on human rights violations, especially sexual and gender-based violence, and humanitarian situations during the year”.<sup>93</sup>

**3.10.9** The fight over land and resources between Darfurians remains the root cause of the conflict ... the substantial growth of the population of Darfur over recent decades and the unresolved land rights claims of nomadic Darfurians continue to be pressing issues. One approach agreed upon by some of the actors is the provision in paragraph 197 of the Darfur Peace Agreement [DPA] for resolving land and property disputes with the help of ‘property claims committees’. Not considered to be an ideal solution to this thorny issue, this provision has so far not been implemented. The failure of the Government of the Sudan and other Darfur Peace Agreement signatories to actively seek and implement solutions to the problems of land and resource claims is one major impediment to the success of the political process.<sup>94</sup>

**3.10.10** The state of emergency in Darfur and the application of the NSS Act 2010 and the Emergency and Public Safety Protection Act 1997 continue to curtail fundamental rights and freedoms. Human rights violations, mainly by the NSS and Sudanese Military Intelligence, continued to be committed with impunity. Perceived critics of the Government were routinely arrested and kept in prolonged detention without judicial oversight, and sometimes subjected to torture or ill-treatment.<sup>95</sup>

**3.10.11** Between late October and early November 2010, a group of human rights activists from Darfur affiliated with a radio station (Radio Dabanga) were arrested and held incommunicado by the NSS. The detainees were not charged, provided with counsel or given the opportunity to challenge the lawfulness of their detention. Nine of the activists were released between 13 and 21 January 2011, while five remained in custody. One of the released activists told human rights monitors that he had been beaten by NSS agents during interrogation sessions. On 13 February [2011], four of the released activists were re-arrested. Six of them are currently standing trial for various offences under the Criminal Act 1991, three of which carry the death penalty.<sup>96</sup>

**3.10.12** UNHCR reported in 2008 that “Darfurians in Khartoum are at heightened risk of arbitrary arrest if they are suspected of links with Darfur rebel groups or

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<sup>92</sup> [UN Security Council, Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur, 17/04/2012](#), paragraphs 18 and 40.

<sup>93</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1, g. Use of Excessive Force and Other Abuses in Internal Conflicts.](#)

<sup>94</sup> [UN Report of the Panel of Experts established pursuant to resolution 1591 \(2005\) concerning the Sudan, 29/10/2009, para 349.](#)

<sup>95</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, 22/08/2011, Para 54.](#)

<sup>96</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, 22/08/2011, Para 18.](#)

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>97</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

**3.10.13 Conclusion:** The expulsion of international NGOs in 2009, together with continued repression of human rights defenders, has reduced the ability of the local human rights community to monitor and report on human rights violations. Despite this, there continue to be reports of arrests and detention of Darfurians and they remain a group which will be at heightened risk of arbitrary arrest by the security forces.

**3.10.14** The Tribunal established in AA (Non Arab Darfurians – relocation) Sudan CG [2009] UKAIT 00056, [see section 2.5 above] 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 fall into this category will qualify for asylum.

### **3.11 Members of opposition groups and perceived government critics, including students, journalists and human rights defenders**

**3.11.1 Treatment:** The U.S. Department of State reported in May 2012 on the harassment, intimidation, violence, arbitrary arrest, detention and torture of journalists, opposition members, students and individuals who criticized the government publicly or privately.<sup>98</sup> The report particularly highlighted the detention without charge, torture and incommunicado detention of political opponents.<sup>99</sup> The International Federation for Human Rights and World Organisation Against Torture documented attacks, repression and harassment of: human rights activists, humanitarian workers in Darfur, human rights defenders, women’s rights defenders, doctors denouncing poor working conditions and journalists reporting on human rights violations”.<sup>100</sup> In a report in August 2011, the UN independent expert on the situation of human rights in the Sudan identified a number of human rights issues, including in particular “the right to liberty and security of person and the right to freedom of expression, and the effective administration of justice”.<sup>101</sup> Waging Peace identified the National Intelligence and Security Service as primarily targeting “journalists, political dissidents, human rights defenders, activists and members of ethnic minorities; in January and February of 2011, it also turned its efforts to

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<sup>97</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, \(page 20\) 28/11/2008, section D, 1, Arrests of Darfurians in Khartoum.](#)

<sup>98</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1, e, Political Prisoners and Detainees.](#)

<sup>99</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1, d, Arbitrary Arrest or Detention, e. Denial of Fair Public Trial, Section 2, a, Status of Freedom of Speech and Press, Academic Freedom and Cultural Events and b, Freedom of Assembly.](#)

<sup>100</sup> [International Federation for Human rights \(FIDH\)/World Organisation Against Torture \(OMCT\), Steadfast in Protest: Annual Report 2011, October 2011, Sudan.](#)

<sup>101</sup> [UN General Assembly, Report of the independent expert on the situation of human rights in the Sudan, Mohamed Chande Othman, 22/08/2011, paragraphs 16 and 17.](#)

student activists”.<sup>102</sup>

**3.11.2** Agence France-Presse states that Sudan “witnessed a crackdown on political and press freedom after South Sudan formally split from the north” in July 2011.<sup>103</sup> In November 2011, Amnesty International noted its alarm at “the recent wave of arbitrary arrests of activists, trade unionists and perceived or known members of opposition parties and peaceful demonstrators in Sudan. In October alone, over 100 people were arrested in and around Khartoum, the capital. Many of those arrested have stated that they were subjected to torture or other ill-treatment in detention”.<sup>104</sup> Similarly, in September 2011, HRW asked the Sudanese government to “end their clampdown on opposition party members and critics of the government” after arresting “more than 100 real or perceived opponents of the government”.<sup>105</sup> HRW again reports in January 2012 that the arrest of activists and opposition figures has “increased in recent weeks”, with security forces arresting “more than 250 people at demonstrations, news conferences, political party meetings, and private homes between September and December 2011”.<sup>106</sup> In May 2012, Amnesty International highlighted that “Journalists, writers and others who voice their opinions have faced arrests, torture and other ill-treatment by members of the National Intelligence and Security Service and other security agents in Sudan. Many have faced criminal charges and have had their equipment confiscated, preventing them from carrying out their media work”.<sup>107</sup>

**3.11.3** In 2012, Freedom House noted that “Student associations are closely monitored for signs of antigovernment activities. In one incident, 36 students from Shendi University, north of Khartoum, were arrested in April 2011 after they organized a strike. Some were tortured in custody, and several were charged with rioting. Protests by students at Kassala University were violently broken up by the authorities in October, leaving at least five people injured and one dead”.<sup>108</sup> Throughout 2011, peaceful protests were dispersed with violence across the country, often “at universities where students gathered to protest a range of government policies and price hikes”.<sup>109</sup> The report of the UN independent expert on the situation of human rights in the Sudan similarly reported that these demonstrations were “quelled by the Sudanese police and the security forces” with more than 70 people being arrested, some of them injured in the process, with an “unknown number [...] held in custody long after the riots. According to United Nations reports, some of the detainees were subjected to torture and other forms of ill-treatment while in custody”.<sup>110</sup>

**3.11.4 Conclusion:** The Supreme Court held in *RT (Zimbabwe)* that the rationale of the decision in *HJ (Iran)* extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution

**3.11.5** The country evidence does not show that, as a general matter, those with no

<sup>102</sup> [Waging Peace, The Sudanese National Intelligence and Security Service, 04/08/2011.](#)

<sup>103</sup> [Agence France-Presse, Opposition paper shut down again in Sudan, 03/01/2012.](#)

<sup>104</sup> [Amnesty International, Government crackdown on activists and political opponent, 11/11/2011.](#)

<sup>105</sup> [Human Rights Watch, Political Repression Intensifies: Release Detainees, Uphold Freedom of Speech, 21/09/2011.](#)

<sup>106</sup> [Human Rights Watch, End Violence Against Peaceful Protesters, 03/01/2012.](#)

<sup>107</sup> [Amnesty International, Silencing dissent: Restrictions on freedom of opinion and expression persist in Sudan, 03/05/2012.](#)

<sup>108</sup> [Freedom House, Freedom in the World 2012: Sudan, 18/05/2012.](#)

<sup>109</sup> [Human Rights Watch, World Report 2012: Sudan, 22/01/2012,](#) Crackdown on Protesters.

<sup>110</sup> [UN General Assembly, Report of the independent expert on the situation of human rights in the Sudan, Mohamed Chande Othman, 22/08/2011,](#) paragraph 7.

political opinion would be put in situations where they are required to demonstrate loyalty to the government.

**3.11.6** Members of opposition groups and perceived government critics, including students, journalists and human rights defenders are subjected to harassment, intimidation, arbitrary arrest, incommunicado detention, and are at risk of ill treatment and persecution. Each case should be considered on its individual merits, but claimants who fall into this category and can show that they have come to the adverse attention of the authorities, or are reasonably likely to do so, are likely to qualify for asylum.

### **3.12 Prison conditions**

**3.12.1** Applicants may claim that they cannot return to Republic of the Sudan (aka North Sudan) due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in North Sudan are so poor as to amount to torture or inhuman treatment or punishment.

**3.12.2** 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 asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.12.3 Consideration:** Prison conditions throughout the country remained harsh, overcrowded, and life threatening. Health care often was below standard. Prisoners sometimes relied on family or friends for food. Officials continued to deny visits to prisoners arbitrarily. The government mistreated some persons in custody. Security forces held some political and non political 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.<sup>111</sup>

**3.12.4** The UN report of the independent expert on the situation of human rights in the Sudan highlighted “Cases of arbitrary arrest and detention by the National Security Service (NSS)” and “allegations of incommunicado detention, torture and other forms of ill-treatment of detainees by the NSS”.<sup>112</sup> In May 2012, Freedom House also noted that the NISS is accused of “systematically detaining and torturing opponents of the government, including Darfuri activists, journalists, and students”.<sup>113</sup> In April 2012, Human Rights Watch reported specifically on the detention of hundreds of men from towns in Blue Nile state, many of whom were “held for weeks or months without charge”. Former detainees said they were “beaten, made to sleep in crowded rooms, deprived of sleep, food and water, and witnessed executions of other detainees while in detention”.<sup>114</sup>

**3.12.5** Men and women were not held together; in Khartoum, 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. The main prison in

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<sup>111</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1: Prison and Detention Centre Conditions](#)

<sup>112</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, 22/08/2011, paragraph 17.](#)

<sup>113</sup> [Freedom House, Freedom in the World 2012: Sudan, 18/05/2012.](#)

<sup>114</sup> [Human Rights Watch, Sudan: Blue Nile Civilians Describe Attacks, Abuses, 23/04/2012.](#)

Khartoum, Kober Prison, contained separate sections for political prisoners, those convicted of financial crimes, and an unknown number of JEM detainees.<sup>115</sup>

- 3.12.6** Amnesty International said that the Sudanese government was responsible for the death and ill-treatment of a prisoner who died from tuberculosis in police custody last week [October 09]. Ahmed Suleiman Sulman died on 21 October at the police hospital to which he was taken from Kober prison in Khartoum two days before his death. His body was still in shackles and showed evidence of torture. He had also been suffering from a lung infection for a long time but was refused access to a specialised doctor by the prison despite requests by his lawyer. Adam Suleiman Sulman was one of 103 men sentenced to death by the special counter-terrorism courts established following an attack by the Justice and Equality Movement (JEM), an armed opposition group, on Omdurman, near Khartoum, on 10 May 2009. Amnesty International has serious concerns regarding the conditions in which prisoners are kept in Kober, and has received numerous accounts of ill-treatment and poor hygiene conditions.<sup>116</sup>
- 3.12.7** The death penalty is applicable in Sudan for a number of crimes, some of which are of a religious or political nature. There are no official numbers of convictions or executions. In November [2011], seven Darfuris were sentenced to death for armed robbery. Sudan's Interim National Constitution prohibits torture. But there are widespread reports of torture in Sudan, particularly on the part of the security services, and directed at political opponents, activists, suspected rebels and ordinary citizens. With no independent access or human rights monitoring, it remains difficult to corroborate these claims.<sup>117</sup>
- 3.12.8** The government allowed some restricted visits to prisons by human rights observers, although it continued to deny unrestricted access. The International Committee of the Red Cross did not have access to government prisons during the year. The Ministry of Justice occasionally granted UNAMID (United Nations – African Union Mission in Darfur) access to government prisons in the Darfur area during the year.<sup>118</sup>
- 3.12.9 Conclusion:** Prison conditions throughout Republic of the Sudan are severe. Taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, widespread abuse of inmates, including likely use of torture and extremely poor health facilities and sanitary conditions, prisons and detention facilities in North Sudan are likely to reach the Article 3 threshold. Consequently in accordance with [MA \(Operational Guidance – prison conditions – significance\) Sudan \[2005\] UKAIT 00149](#) (see section 5: caselaw) a grant of leave will generally be appropriate (however see exclusion in 3.9.9) where it is accepted that the appellant has demonstrated a real risk of imprisonment on return to Sudan”.
- 3.12.10** Where case owners believe that an individual is likely to face imprisonment on return to the Republic of 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

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<sup>115</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1: Prison and Detention Centre Conditions](#)

<sup>116</sup> Amnesty International: Press Release 28/10/09 Sudan Death Row Prisoner bore marks of torture. <http://www.amnesty.org/en/for-media/press-releases/sudan-death-row-prisoner-bore-marks-torture-20091028>

<sup>117</sup> [UK Foreign & Commonwealth 2011: Human Rights & Democracy Report, 30/04/2012, section ix – Human Rights in Countries of Concern: Sudan.](#)

<sup>118</sup> [U.S. Department of State, Country Reports on Human Rights Practices for 2011: Sudan, 24/05/2012, Section 1: Prison and Detention Centre Conditions](#)

caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Republic of the 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 Republic of the Sudan (aka North 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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Republic of the Sudan. 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 Republic of the Sudan (aka North 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** The World Health Organisation (WHO) in its country focus on Sudan in May 2011 stated that one consequence of the conflict in Sudan is that health system has been severely disrupted and faces many challenges. Sudan's geography and ecology is another important factor shaping the health, nutrition and population situation. The vast distances, and poor roads and transport facilities affect coverage as well as increase the cost of health services. Climatic factors contribute to health related emergencies including drought and flooding and ecological factors expose the population to major infectious and parasitic diseases, including a host of neglected tropical diseases, mostly prevalent in southern states. Overall, health indicators in Sudan are poor, but in North Sudan, these are better than most Sub-Saharan African countries.<sup>119</sup>

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<sup>119</sup> [WHO, Country Cooperation Strategy at a glance. Last updated: May 2011](#)

- 4.4.3** In 1996 the World Health Organization estimated that there were only 9 doctors per 100,000 people, most of them in regions other than the South. Substantial percentages of the population lack access to safe water and sanitary facilities. Malnutrition is widespread outside the central Nile corridor because of population displacement from war and from recurrent droughts; these same factors together with a scarcity of medicines make diseases difficult to control. Child immunization against most major childhood diseases, however, had risen to approximately 60 percent by the late 1990s from very low rates in earlier decades. Spending on health care is quite low—only 1 percent of gross domestic product (GDP) in 1998 (latest data).<sup>120</sup> In the 2010 Report on the Global AIDS Epidemic the UNAIDS/WHO Working Group estimated that around 250,000 adults aged 15 or over in Sudan were living with HIV; the prevalence percentage was estimated at around 1.1% of the adult population.<sup>121</sup>
- 4.4.4** Médecins Sans Frontières MSF (Doctors Without Borders) has been working in Sudan since 1978. From January to April 2011, MSF admitted 6,422 patients and performed 140,519 outpatient consultations.<sup>122</sup> As a general rule, GP facilities in Khartoum are adequate but the hospitals are not suitable for elective problems and only suitable for stabilisation of serious medical problems prior to evacuation.<sup>123</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. Where a case owner considers that the circumstances of the individual applicant 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** There is no policy which precludes the enforced return to Republic of Sudan (aka North Sudan) of failed asylum seekers who have no legal basis of stay in the United Kingdom. In dealing with individual North Sudanese cases consideration may also be given as to whether the individual might qualify for entry to the Republic of South Sudan taking into account the latest country information on entry and residence requirements, as well as the current humanitarian and security situation. See also sections 3.6. “Civilians from South Sudan”; it is important case owners seek the most up to date country information on nationality entitlement.
- 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.
- 5.3** Republic of Sudan nationals may return voluntarily to any region of North Sudan at any time (and to South Sudan if they meet an entry criteria) in one of three ways:  
(a) leaving the UK by themselves, where the applicant makes their own

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<sup>120</sup> [US Library of Congress Country Profile Sudan December 2004:](#)

<sup>121</sup> [Global Report UNAIDS Report on the global AIDS epidemic 2010:](#)

<sup>122</sup> [Medecins Sans Frontieres: Focus on Sudan Activities 2011:](#)

<sup>123</sup> [UK Foreign & Commonwealth Office Travel advice: Sub Saharan Africa: Sudan: 01/05/2012](#)

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.

- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in North or South 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. Nationals of Republic of Sudan wishing to avail themselves of this opportunity for assisted return to North or South Sudan should be put in contact with Refugee Action 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  
Strategy & Intelligence  
UK Border Agency  
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