



# OPERATIONAL GUIDANCE NOTE

## SUDAN

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#### 1. **Introduction**

- 1.1 This document summarises the general, political and human rights situation in Sudan and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Sudan Country of Origin Information Report at:

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

- 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim  
 API on Humanitarian Protection  
 API on Discretionary Leave  
 API on the European Convention on Human Rights

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

#### **Source documents**

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

## **2. Country assessment**

- 2.1** The President of the Republic of Sudan is Lt. Gen. Omar Hassan al-Bashir, who took power from the previous democratically elected government in a coup on 30 June 1989. Lt. Gen. Omar Hassan al-Bashir abolished the constitution, the previous regime's National Assembly, all political parties and trade unions. President al-Bashir and his party were elected in December 2000, but the elections were uncontested due to a boycott by the main opposition parties.<sup>1</sup>
- 2.2** On 9 January 2005 the 20 year old civil conflict was formally ended when the Government of Sudan and Sudan People's Liberation Movement SPLM signed the Comprehensive Peace Agreement (CPA). The text of the 9 January 2005 agreement stated that the six-month pre-interim period commenced from the date of the CPA's signing. The Interim National Constitution (INC) was signed on 9 July 2005. The parties have now established a Government of National Unity (GNU) comprising members of the National Congress, SPLM and other northern and southern political forces. The Presidency of the GNU, comprising of President Field Marshall Bashir, First Vice President Garang [who was succeeded by Lt. Gen. Salva Kiir Mayardit following Garang's death on 30 July 2005] and Vice President Taha, was sworn in on 9 July, the National Assembly first sat on 1 September and the formation of the Government of National Unity was announced on 20 September 2005.<sup>2</sup>
- 2.3** Despite the progress made on implementing the CPA, conflict continues in the Darfur States. Government forces have been fighting the Sudan Liberation Movement/Army (SLM/A) - formerly the Darfur Liberation Movement/Front - and the Justice and Equality Movement (JEM) in the Darfur States since February 2003. Attacks on civilians continued during 2005. This followed the signature of a humanitarian ceasefire agreement on 8 April 2004 and Security and Humanitarian Protocols on 9 November 2004 in Abuja. However, neither side is fully abiding by their commitments to the earlier agreements and insecurity continues to hamper the delivery of humanitarian assistance.<sup>3</sup>
- 2.4** Meanwhile, though eastern rebels have clashed intermittently with government forces in eastern Sudan since 1996, tension has risen in recent months. In February 2005 it was reported that the Beja Congress (BC) and Rashaida Free Lions (FL) had merged to become the Eastern Front, following their withdrawal from the Cairo talks between the Government and the NDA. Low-level sporadic clashes between the Eastern Front and government forces occurred throughout 2005.<sup>4</sup>
- 2.5** In January 2006, increased tension between the Eastern Front and government forces in and near the town of Hamesh Koreb was reported. Despite, in November 2005, the parties to the conflict having expressed their willingness to participate in Libyan and Eritrean mediated peace talks, the commencement of such proceedings was delayed on four successive occasions. The involvement of Eritrea - a long-time supporter of the BC, at least politically and morally if not militarily, as claimed by the National Congress Party - in the talks, as originally proposed in November 2005, proved to be the main obstacle to the NCP's participation in early February 2006.<sup>5</sup>
- 2.6** In January 2006, Chad and Sudan discussed the possibility of engaging in talks to ease the tension that has grown between the two countries since late-2005. Chad has

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<sup>1</sup> COI Service Sudan Country of Origin Information Report April 2006 (paras 4.01)

<sup>2</sup> COI Service Sudan Country Report (paras 4.02 – 4.03)

<sup>3</sup> COI Service Sudan Country Report (paras 4.05 &

<sup>4</sup> COI Service Sudan Country Report (paras 4.08)

<sup>5</sup> COI Service Sudan Country Report (paras 4.09 – 4.10)

accused Sudan of supporting Chadian rebels operating from Darfur, although Sudan has denied that the rebels are in Sudanese territory. Despite an improvement in Sudan-Chadian relations following an 8 February 2005 agreement in Libya to end support to each other's rebel groups, cross-border raids continued and high-level defections from Chad's army to the Darfur-based Chadian rebels increased the likelihood of the escalation of tension between the countries.<sup>6</sup>

- 2.7** In 2004, 2005 and 2006, the abuse of individuals and groups, and the severe restriction of fundamental freedoms, were reported in detail by various international governments and agencies, and both international and national human rights groups such as the United States Department of State (USSD), United Nations (UN), Human Rights Watch (HRW), Amnesty International (AI), the Sudan Organisation Against Torture (SOAT) and the Sudan Human Rights Organisation-Cairo (SHRO-Cairo).<sup>7</sup>
- 2.8** The government's human rights record remained poor in 2005, and there were numerous serious problems, including evidence of mass murder in Darfur, for which the government and the *janjaweed* militias continued to bear responsibility. While the creation in October 2005 of a southern government that is transparent and accountable and enforces human rights looked highly ambitious, the early willingness to let people choose their representatives is a good sign. They already enjoy more human rights than do their northern fellow citizens, in that the presence of security forces in the southern garrison towns is lessened and there has been more free speech, free press and free assembly in the south than for decades. The national army, however, has not withdrawn from the south but under the peace agreement it has two years to complete this process.<sup>8</sup>
- 2.9** The following human rights problems were reported in 2005: abridgement of citizens' rights to change their government; evidence of war crimes; extra-judicial and other unlawful killings by members of the security forces and government-allied militias acting with impunity; killings of civilians in conflict; abductions; torture, beatings, and rape by security forces; harsh and life-threatening prison conditions; arbitrary arrest and detention, including incommunicado detention of suspected government opponents, and prolonged pretrial detention; executive interference in the judiciary and denial of fair trial in civilian and military courts; forced military conscription of underage men; obstructions to humanitarian assistance in Darfur; infringement of citizens' privacy rights; severe restrictions on freedom of speech, press, assembly, association, religion, and movement within the country; harassment and detention of internally displaced persons (IDPs); harassment of human rights organisations; violence and discrimination against women and female genital mutilation (FGM); abuse of children, particularly in Darfur; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers' rights; forced labour, including forced child labour, by security forces and associated militias and widespread child labour.<sup>9</sup>
- 2.10** In Darfur, government and government-supported militia (*janjaweed*) continued to commit serious abuses during 2005, killing hundreds of civilians, razing villages of African tribes, and committing acts of torture and violence against women. On 25 January 2005, the UN International Commission of Inquiry on Darfur concluded that, while the government did not pursue a genocidal policy directly or through the militias under its control, there were violations of humanitarian and international law that could be considered war crimes. The World Health Organisation (WHO) reported that, as a

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<sup>6</sup> COI Service Sudan Country Report (para 4.12)

<sup>7</sup> COI Service Sudan Country Report (para 6.02)

<sup>8</sup> US State Department (USSD) Human Rights Report 2005 (Introduction) & Human Rights Watch World Report 2005

<sup>9</sup> USSD 2005 (Introduction) & HRW 2005

result of the conflict, at least 70,000 civilians had died, more than 1.9 million civilians were internally displaced, and an estimated 210 thousand refugees fled to neighbouring Chad since the start of the Darfur conflict. Despite the presence in Darfur of the African Union-led international monitoring force (African Mission in Sudan or AMIS), security remained a major problem, and reports of violence continued at the end of 2005.<sup>10</sup>

- 2.11** Anti-government insurgent groups and associated militia forces were reported to have committed numerous, serious abuses in 2005. The SPLM Army (SPLM/A) in the south, the Sudan Liberation Army (SLA), and the JEM in Darfur committed killings, beatings, abductions, rape, robbery, destruction of property, and forcible conscription. They restricted freedom of movement of populations under their control and access of relief workers and supplies, and kidnapped and killed non-governmental organisation (NGO) workers.<sup>11</sup>

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

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

[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

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<sup>10</sup> USSD 2005 (Introduction) & HRW 2005

<sup>11</sup> USSD 2005 (Introduction) & HRW 2005

### 3.6 Members of the Beja Congress

- 3.6.1** Some applicants will make an asylum and/or human rights claim based on alleged mistreatment at the hands of the authorities on account of their association with, or membership of, the Beja Congress (BC).
- 3.6.2** *Treatment.* The BC was originally created in 1958 to draw attention to the political and economic grievances of the Beja tribes from the Port Sudan region. Following the 1989 coup after which all political parties were dissolved, the BC turned to armed struggle and waged several military confrontations with al-Bashir's regime. In August 2004, the BC which claims to control large parts of the east, continued to observe a self-imposed ceasefire and would attack only if provoked. The BC's ceasefire had been in effect since November 2003, as the rebels awaited the final result of the north-south peace talks.<sup>12</sup>
- 3.6.3** The Beja Congress refused to attend the January 2005 Government of Sudan-National Democratic Alliance (NDA) peace talks in Cairo that resulted in a preliminary peace agreement between the two sides. In January 2005, leading members of the Beja tribe presented a list of demands to the Government authorities in Port Sudan, an action followed by the demonstration of thousands of Beja. In February 2005 the BC and the Free Lions, also a member of the NDA, had merged to become the Eastern Front. The two groups had withdrawn from the National Democratic Alliance in 2004. However, it is not clear whether a full split had occurred, or if such a split was permanent.<sup>13</sup>
- 3.6.4** Demonstrations in January 2005 by the Beja tribes and BC members in Port Sudan resulted in several deaths and many arrests. There was also an increase in armed Government action against the BC and reported attacks on individual Bejans/BC associates in April 2005. In June 2005, the Government and the NDA signed a reconciliation deal allowing the NDA into a power-sharing administration. However, the Eastern Front (comprising the Beja Congress, Free Lion and the JEM), formed later in 2005, has effectively split from the NDA and does not consider itself bound by the June 2005 agreement. All those detained following the January 2005 demonstrations had been released by the end of June 2005 and there have been no reports of significant confrontations since.<sup>14</sup>
- 3.6.5** Since the Port Sudan massacre in January 2005, the government has been spending a lot of money in the East. In February 2005, it dispatched a committee, led by the former minister for roads and bridges and now governor of Red Sea State, Mohamed Tahir Aila, to promise development aid. At an April 2005 meeting in Kassala attended by most of the tribal, religious and political leaders and sponsored by the National Congress Party, Minister of Finance al-Zubeir Ahmed al-Hassan pledged \$88 million over three years. However, there were reports in 2005 of the authorities undermining the position of the Beja Congress and sowing distrust between the Beja and non-Beja communities, and between the different Beja tribes themselves. Government agents and media have allegedly intimidated the Tigre-speaking Beja that the Beja Congress is solely a TuBedawiye-speaking organisation that will not represent their interests.<sup>15</sup>
- 3.6.6** *Sufficiency of protection.* As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

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<sup>12</sup> COI Service Sudan Country Report (paras 6.55 – 6.58 & Annex B)

<sup>13</sup> COI Service Sudan Country Report (paras 6.55 – 6.58 & Annex B)

<sup>14</sup> COI Service Sudan Country Report (paras 6.55 – 6.58 & Annex B)

<sup>15</sup> COI Service Sudan Country Report (paras 6.113 – 6.114)

**3.6.7 *Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

**3.6.8 *Conclusion.*** Active members of the BC may come to the adverse attention of the authorities and the aftermath of the demonstrations in January 2005 has heightened this threat. If it is accepted that the claimant has had significant political involvement in the BC, for example as a senior official, demonstration organiser or high profile activist and has previously come to the adverse attention of the authorities, then a grant of asylum is likely to be appropriate. Applicants who claim to have been detained then promptly released on one or more occasions, or who describe low-level activities and have not previously come to the attention of the authorities do not risk the severity of mistreatment which high profile activists may face and would not therefore merit a grant of asylum.

**3.6.8** Caseworkers should note that members of the BC have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the BC and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

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

Some applicants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to their alleged membership of, or association with, one of the main armed opposition groups. These are: the Sudan People's Liberation Movement/Army (SPLM/A) which dominates large parts of Eatoria, Bahr el-Ghazal and Upper Nile regions in the South and the Sudan Liberation Movement Army (SLM/A) – formerly the Darfur Liberation Movement/Front – and the Justice and Equality Movement (JEM) which operate in the three Darfur regions of western Sudan. Any ethnic dimension to these categories will usually involve members of the Nuba group being associated with the SPLM/A or members of one of the non-Arab ethnic groups in Darfur being associated with the SLM/A or JEM.<sup>16</sup>

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

**3.7.1.1 *Treatment.*** The Nuba people have experienced abductions followed by slavery in the past, but the ceasefire, which has been in effect since January 2002, was in part instigated to address the problem of abductions. Their native Nuba Mountains are in central Sudan and not in the southern war zone where most of the civil war fighting has taken place. The SPLM/A have been based in the Nuba Mountains and some Nuba people have joined the SPLM/A to fight against government forces.<sup>17</sup>

**3.7.1.2** The end of the 21- year civil conflict between the Government and the SPLM/A was formally enshrined in January 2005 when representatives of the Government and the SPLM/A signed a Comprehensive Peace Agreement (CPA). The parties have also established a Government of National Unity (GNU) comprising members of the National Congress, SPLM and other northern and southern political forces. The Presidency of the GNU was sworn in on 9 July 2005, the National Assembly first sat on 1 September 2005 and the formation of the GNU was announced on 20 September 2005. In accordance

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<sup>16</sup> COI Service Sudan Country Report (Annex B)

<sup>17</sup> COI Service Sudan Country Report (paras 6.132 – 6.136)

with the CPA, a Government of Southern Sudan (GSS) was announced in October 2005 which gives a large degree of autonomy to the south and the chance to vote for full independence in six years' time.<sup>18</sup>

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

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

**3.7.1.5 Conclusion.** Since the peace agreement in January 2005 and the subsequent establishment of the GSS in October 2005, affiliates of the SPLM/A who had previously suffered ill treatment by the authorities prior to January 2005 are not now at risk of the same treatment. There have been no reports since of government-sponsored attacks on, or ill treatment of, SPLM/A members and associated ethnic groups such as the Nuba. Claimants who claim to have suffered persecution on the basis of their affiliation at any level to the SPLM/A or associated membership of the Nuba will not now have a well-founded claim for asylum.

**3.7.1.6** Caseworkers should note that members of SPLM/A have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the SPLM/A and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

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

**3.7.2.1 Treatment.** The SLM/A and JEM are armed opposition groups in the western Darfur states who are made up of, and represent, non Arab ethnic Sudanese groups in those regions. These groups' focus is an armed resistance campaign against government-sponsored Arab militias. The Government of Sudan, SLM and JEM are currently engaged in African Union (AU) led peace talks and signed a Declaration of Principles, which sets out the parameters for a final settlement to the conflict, on 5 July 2005. This followed the signature of a humanitarian ceasefire agreement on 8 April 2004 and Security and Humanitarian Protocols on 9 November 2004 in Abuja. In August 2005, the United Nations Secretary General reported that generally the ceasefire had been holding, but noted that renewed fighting between the Government and the SLM/A in July 2005 threatened to complicate further peace talks.<sup>19</sup>

**3.7.2.2** However, during 2004 and 2005, there were numerous reports of allegations that government forces, including allied militias, were guilty of committing violations of the cease fire and in September 2005, it was reported that neither side is abiding fully by their commitments to the earlier agreements. According to reports, the Government was responsible for the arrest, detention and disappearance of persons suspected of

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<sup>18</sup> COI Service Sudan Country Report (paras 4.02 – 4.03)

<sup>19</sup> COI Service Sudan Country Report (paras 4.04 – 4.07, 6.215 – 6.238 & Annex B)

supporting rebels in the Darfur region in 2005. In parallel to SLM/A and JEM attacks, the Government increased its clampdown on local leaders, used military tribunals to try those accused of insurrection and ramped-up military operations.<sup>20</sup>

- 3.7.2.3** There were reports that the Government's security forces tortured such persons. It was also alleged that some of the numerous persons arrested in 2004 and 2005 for suspected support of the rebels in Darfur were tried, convicted and sentenced to death under Special Courts and an indeterminate number of Darfurians remained in detention throughout 2005. Amnesty International (AI) and the Sudan Organisation Against Torture (SOAT) recorded in 2004 and 2005, that Darfuris residing in Khartoum and other areas of north Sudan were arrested and detained, apparently on suspicion of being members of/supporting the SLM/A and JEM in Darfur. The vast majority of the cases reported by AI and SOAT involved students, educated persons or influential members of a tribe or community, such as Sheiks and Omdas. There were no reports to suggest that members of the SLM/A or JEM, other than those in prominent positions, were at risk of being arrested or detained in Khartoum in 2005.<sup>21</sup>
- 3.7.2.4** Later in 2005, the Beja Congress, Free Lions and the JEM formed the Eastern Front. This new alliance has effectively split from the NDA and does not consider itself bound by the June 2005 agreement. This development has not had any tangible impact on the treatment of these groups by the authorities however.<sup>22</sup>
- 3.7.2.5 Sufficiency of protection.** If this category of claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to their high profile status in the SLM/A or JEM, they cannot apply to these agents or any other state authority for protection.
- 3.7.2.6** If this category of the claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to their low or mid level affiliation to the SLM/A or JEM, they cannot apply to these agents for protection. However, the Janjaweed operate exclusively in Darfur and there is no evidence that they operate in any other part of Sudan.<sup>23</sup> As low-mid level affiliates may return to a part of Sudan where these persecutory agents are not present, the availability of adequate protection from the authorities in other regions is irrelevant.
- 3.7.2.7 Internal relocation.** If this category of claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to their high profile status in the SLM/A or JEM, they cannot relocate to another part of the country to escape this threat.
- 3.7.2.8** Low-mid level affiliates are not at risk of persecution outside the Darfur States<sup>24</sup> and it is considered that it is not unduly harsh to expect them to relocate to an area within Sudan in which they will be safe. Freedom of movement outside the war zones is generally unhindered. Failed asylum seekers are returned to Khartoum therefore they may remain there or safely relocate to another area.
- 3.7.2.9 Conclusion.** There is a strong likelihood that leading members and prominent figures in the SLM/A or JEM, those with significant involvement in these organisations and affiliated persons considered by the authorities to be 'intellectual' will be subject to treatment amounting to persecution in Khartoum or the Darfur states. Therefore, for these categories, a grant of asylum will be appropriate. There is no evidence to suggest

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<sup>20</sup> COI Service Sudan Country Report (paras 4.05, 6.53 – 6.54, 6.212 – 6.226 & Annex B)

<sup>21</sup> COI Service Sudan Country Report (paras 6.53 – 6.54, 6.212 – 6.226 & Annex B)

<sup>22</sup> COI Service Sudan Country Report (paras 4.08, 6.199 – 6.211 & Annex B)

<sup>23</sup> COI Service Sudan Country Report (paras 6.215 – 6.238)

<sup>24</sup> COI Service Sudan Country Report (paras 6.215 – 6.238)

that low or mid-level activists or affiliates, who allege ill treatment amounting to persecution in the Darfur region, and fear similar threats in the future, are likely to come to the adverse attention of the authorities in Khartoum. The grant of asylum in such cases would therefore not be appropriate.

**3.7.2.10** Caseworkers should note that members of the SLM/A and JEM have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the SLM/A and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

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

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

**3.8.2** *Treatment.* There have been credible reports that Arab militia groups have attacked these ethnic minorities, reportedly with government support. Villages have been damaged, livestock has been stolen or slaughtered and people from these ethnic minorities have been attacked and in some cases murdered, as reported by Human Rights Watch, Amnesty International and the UN Secretary General in 2004, 2005 and 2006. Although the attacks seem to mainly target the aforementioned groups, there have been reports of other non-Arab African groups, such as the Dajo, Tunjur and Tama, being subjected to similar abuses.<sup>25</sup>

**3.8.3** Fighting between government troops and the SLM/A and JEM reportedly continued during 2004 and 2005, as did attacks on civilians by government-aligned militia and the rebel groups. Many of the human rights reports published in 2005 expressed extreme concern at the serious and numerous killings and human rights abuses and atrocities being carried out against the population in Darfur by militia apparently acting systematically, with government support and impunity. National and international human rights organisations, the UN and the US all concurred that very serious human rights abuses continued to occur in Darfur during 2004, 2005 and 2006.<sup>26</sup>

**3.8.4** Members of non-Arab ethnic groups from the Darfur States are not known to be collectively at risk of persecution solely on the basis of their ethnicity in other parts of north Sudan, such as Khartoum. Between late 2004 and mid-2005, it was reported that the Government demolished large parts of three main camps for internally displaced persons (IDPs) in the Khartoum region. The Government claimed the demolitions were part of an area-replanning programme. These camps were home to refugees from neighbouring countries as well as IDPs from all regions of Sudan, including Darfur. The Government's demolition of these camps, the main reception facility and point of refuge in Khartoum for Darfuris did not deliberately target ethnic Darfuris, but applied to all refugees and IDPs who were resident there. Nevertheless, the basic living conditions in Khartoum for former residents of the camps are extremely poor with access to any basic services being very limited.<sup>27</sup>

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<sup>25</sup> COI Service Sudan Country Report (paras 6.118 – 6.126 & 6.212 – 6.226)

<sup>26</sup> COI Service Sudan Country Report (paras 6.118 – 6.126 & 6.212 – 6.226)

<sup>27</sup> COI Service Sudan Country Report (paras 6.118 – 6.126, 6.212 – 6.226 & 6.253 – 6.261)

- 3.8.5 Sufficiency of protection.** If this category of claimant's fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to them being leading members, high profile human rights activists or 'intellectuals' of non-Arab ethnic Darfuri tribal origin, they cannot apply to these or any other state agents for protection.
- 3.8.6** If this category of claimants' fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to them being ordinary non-Arab ethnic Darfuris, they cannot apply to these agents for protection. However, the Janjaweed operate exclusively in Darfur and there is no evidence that they operate in any other part of Sudan.<sup>28</sup> As ordinary non-Arab ethnic Darfuris may return to a part of Sudan where these persecutory agents are not present, the availability of adequate protection from the authorities in other regions is irrelevant.
- 3.8.7 Internal relocation.** If this category of claimants' fear is of ill treatment or persecution by state-sponsored agents (Janjaweed) in Darfur due to them being leading members, high profile human rights activists or 'intellectuals' of non-Arab ethnic Darfuri origin, they cannot relocate to another part of the country to escape this threat.
- 3.8.8** Ordinary non-Arab ethnic Darfuris are not at risk of persecution outside the Darfur States<sup>29</sup> and it is considered that it is not unduly harsh to expect them to relocate to an area within Sudan in which they will be safe. Freedom of movement outside the war zones is generally unhindered. Failed asylum seekers are returned to Khartoum therefore they may remain there or safely relocate to another area.
- 3.8.9 Caselaw.**

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

**AE (Sudan) [2005] UKAIT 00101 (CG case) promulgated 3 May 2005.** Relocation from Darfur to Khartoum an option. In a case where the appellant was of Massaleit origin, the AIT summarised: "The available evidence does not show that every Darfurian faces a real risk of persecution or ill treatment contrary to Article 3 in Khartoum. Further internal relocation to the Khartoum area is an option for those fleeing from Darfur. Each case must be considered on its specific facts but what is said here on relocation is intended to give authoritative guidance on the issue." Included in the consideration of IAT decisions on internal relocation in Sudan in this case was: AA Sudan [2004] UKIAT 00167, AB Sudan CG [2004] UKIAT 00260 and MM Sudan [2005] UKIAT 00069. Included in the objective evidence considered in this case was: the UNHCR position on return of ethnic Darfurians to Khartoum (May 2004); the CIPU reports of April and October 2004; Global IDP Project Report (March 2005), and; Amnesty International's paper on the situation for Darfuris (April 2005).

**LM (Sudan) [2005] UKIAT 00114 promulgated 30 June 2005.** This case followed the country guidance of AE Sudan [2005] UKAIT 00101, but also considered the US State Department Report for 2004 which was not before the Tribunal in that case. The AIT found that there is no general risk for Sudanese who are not from Darfur and concluded that there is no general risk to Sudanese returning to IDP camps except for students, lawyers, traders, merchants and possibly those with a known or perceived rebel profile from African ethnic groups. The AIT also concluded that the Government's stated aim to promote voluntary relocation of IDPs does not engage the refugee or HR convention. However, the AIT found that those with a genuine political profile with the Beja Congress Party may be at risk upon return to Sudan.

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<sup>28</sup> COI Service Sudan Country Report (paras 6.118 – 6.126 & 6.212 – 6.226)

<sup>29</sup> COI Service Sudan Country Report (paras 6.118 – 6.126 & 6.212 – 6.226)

**Hamid & Others (Sudan) [2005] EWCA Civ 1219 (25 October 2005).** Ethnicity-only Darfur claims. "...On the issue of asylum, there is no general principle or presumption that persecution by or on behalf of the state is incompatible with acceptable internal relocation. This has been made clear by AE and FE. So far as the fact-specific matters referred to in the second part of this judgment are concerned, we are entirely satisfied that no error of law has been identified in any of the determinations and that on both asylum and human rights grounds the decisions are entirely compatible with the country guidance contained in AE (*Relocation – Darfur – Khartoum*), which has not been shown to be legally erroneous in any way." (para 42)

**Januzi & Others (Sudan) [2006] UKHL 5 (15 February 2006).** The Lords judged that three of the four cases heard should be remitted back to the AIT for further hearings to consider more closely the humanitarian conditions in Khartoum and the viability of internal relocation.

**MH (Sudan) CG [2006] UKAIT 00033 promulgated 3 April 2006.** Darfurians: relocation to Khartoum? We (the Tribunal) are not satisfied that the two divisions of the Tribunal in MM and AE came to the wrong conclusion as a result of their not being shown background material that properly reflected conditions in Sudan in the early part of 2005. Whilst we cannot say that conditions have improved since that date, we do not consider that they have deteriorated to a significant extent and certainly not to such a significant extent that those returned to Khartoum are now at risk, thereby effectively reversing the decisions in all of the various cases that have sought to make an assessment of risk.

*The country information considered in all major caselaw promulgated between May 2005 and April 2006 on Darfuris living in or travelling to the capital indicates that internal relocation from Darfur is a viable alternative and that conditions in Khartoum for internal migrants are difficult but do not reach the Article 3 ECHR threshold.*

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

**3.8.11** Applicants who claim to be ordinary members of non-Arab ethnic groups and fear persecution from state-sponsored Arab militia groups solely on the basis of their ethnicity in the Darfur States are not at risk of treatment amounting to persecution outside the Darfur States. There are areas of the country where they will not encounter persecution and to which it would not be unduly harsh for them to return. This option has been upheld in all major AIT hearings between May 2005 and April 2006 as a viable alternative for ordinary Darfuris. Such applications would not engage the UK's obligations under the 1951 Convention and the grant of asylum in these cases is therefore not likely to be appropriate.

**3.8.12** Though conditions for non-Arab Darfuris and other IDPs in Khartoum reportedly deteriorated in late 2004, it is unlikely that a claimant would be able to demonstrate that their living conditions in Sudan would be so harsh as to amount to inhuman or degrading treatment so as to engage the UK's obligations under Article 3 ECHR.

### **3.9 Prison conditions**

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

**3.9.2 Treatment.** Prison conditions remained harsh, overcrowded, and life threatening in 2005. Most prisons were old and poorly maintained, and many lacked basic facilities

such as toilets or showers. Health care was primitive, and food was inadequate. Prison officials arbitrarily denied family visits to prisoners. High-ranking political prisoners reportedly often enjoyed better conditions than did other prisoners.<sup>30</sup>

- 3.9.3** Juveniles often were held with adults and in some cases subjected to sexual abuse by the adult inmates in 2005. The government did not permit regular visits to prisons by domestic human rights observers; however, in the latter part of 2005, the government allowed limited access to UN monitors. The government granted the International Committee for the Red Cross (ICRC) limited access to some detention facilities, but the ICRC requested unrestricted access, which the government denied.<sup>31</sup>
- 3.9.4** In April 2005, conditions in the main prison facility [Rumbek Prison] under the newly established Government of Southern Sudan were 'extremely poor'. There are two wings (one for men, one for women), Facilities are missing: no beds, no medical ward. The women's ward has two toilets. Male prisoners are 'chained' when sitting in the open spaces of the prison compound. Food is provided by relatives of the prisoners and - sometimes- by the Church (Diocese of Rumbek). Due to lack of funding, the prison authorities are unable to provide food. Cases of malnourishment were witnessed. Pre-trial detainees and convicted criminals are not separated. Children are being imprisoned with adults, there aren't separate holding facilities. There are no recreational or educational facilities. The youngest prisoner seen in Rumbek was a boy of (reportedly) 8 years old convicted of murder.<sup>32</sup>

**3.9.5 Caselaw.**

**MA (Sudan) [2005] UKAIT 00149, promulgated 21 October 2005.** Operational Guidance – prison conditions – significance. So long as the IND Operational guidance Note on Sudan continues to view prison conditions in Sudan as being "likely to reach the Article 3 threshold", the Tribunal will expect the Home Office to concede in all appeals based on Article 3 where it is accepted that the appellant has demonstrated a real risk of imprisonment on return to Sudan.

**BA (Sudan) CG [2006] UKIAT 00006 heard 12 December 2005.** Military service – no risk. The Tribunal stated, "while accepting that prison conditions are contrary to Article 3 we do not accept (the appellant's representative's submissions) that there is currently a real risk the draft evaders generally would face imprisonment (paragraph 32)." Rather than imprison draft evaders, the Sudanese authorities take steps to ensure they serve in the army under supervision (paragraph 33). The background evidence does not indicate that draft evaders and deserters, in general, face a real risk of imprisonment (paragraph 35). There is no compelling evidence to show that draft evaders, deserters or conscripts are being forced to fight in Darfur (paragraph 41).

The case of **AM (Sudan Draft Evader) Sudan 2004 UKIAT 00335** is no longer an authority on the issues of draft evasion and desertion. AM does not have an evidential basis to show that draft evaders or deserters would be forced to fight in Darfur, where involvement in the military conflict may be contrary to the basic rules of human conduct (paragraph 53). Only **TM (Persecution – Christians – Individual – General) Sudan CG (2002) UKIAT 04849** and **AE (Relocation – Darfur – Khartoum an option) Sudan CG (2005) UKIAT 00101** remain viable Sudanese country guidance cases (paragraph 58).

- 3.9.6 Conclusion.** Prison conditions in Sudan are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, widespread abuse of inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in Sudan are likely to reach the Article 3 threshold. Where caseworkers believe that an individual is likely to face imprisonment on return to the Sudan they should also consider

<sup>30</sup> COI Service Sudan Country Report (paras 5.75 – 5.86) & A Freedom House (FH) report entitled The Worst of the Worst: The World's Most Repressive Societies 2005 (p. 4)

<sup>31</sup> COI Service Sudan Country Report (paras 5.99 & 5.104)

<sup>32</sup> COI Service Sudan Country Report (paras 5.110 – 5.111)

whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseworkers consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to Sudan and exclusion is not justified, a grant of Humanitarian Protection will be appropriate. Where the real risk of imprisonment is for reason of one of the five Refugee Convention grounds a grant of asylum 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 API on Discretionary Leave)

**4.2** With particular reference to Sudan the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate care and support arrangements in place.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

#### **4.4 Medical treatment**

**4.4.1** Claimants may claim they cannot return to Sudan due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** Sudan's health care system cannot currently provide treatment for all medical conditions and only the most basic drugs are available in some areas of the country.<sup>33</sup> As a result there will be cases where taking into account our obligations as described in the IDI on medical treatment the Article 3 threshold will be breached and a grant of Discretionary Leave will be appropriate in such cases.

**4.4.3** Sudan had an overall HIV prevalence of approximately 2.3% in 2004, the worst in North Africa and the Middle East. The HIV/AIDS epidemic is most severe in south Sudan. No anti-retroviral (ARV) treatment is available through the state medical scheme but ARV drugs are available for those who can afford them. Mental health services and facilities are reportedly very limited and access to mental health care and therapeutic drugs in the

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<sup>33</sup> COI Service Sudan Country Report (paras 5.145 – 5.149)

primary health care system is reportedly unavailable. There is also reportedly a shortage of personnel, especially qualified Psychiatrists.<sup>34</sup>

- 4.4.4** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. All returns are to the capital Khartoum.
- 5.2** The UNHCR has recommended that asylum-seekers originating from the Darfur States of Sudan are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status then complementary forms of protection. UNHCR also re-iterates its call upon all governments to refrain from any forced returns of Darfuris to Sudan.<sup>35</sup> The UNHCR's position paper of February 2006 provides a broad assessment of the situation in Darfur and Sudan more generally and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems in Darfur. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation, that it is unsafe for all Darfuris who have been found not to be in need of some form of international protection to return to Sudan.
- 5.3** Sudanese nationals may return voluntarily to any region of Sudan at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Sudan. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Sudanese nationals wishing to avail themselves of this opportunity for assisted return to Sudan should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

## **6. List of source documents**

- Human Rights Watch World Report 2005 Sudan at: <http://hrw.org/english/docs/2006/01/18/sudan12310.htm>
- UK Home Office RDS-IND COI Service Sudan Country of Origin Information Report April 2006 at [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- US Department of State: Country Report on Human Rights Practices 2005 Sudan at: <http://www.state.gov/g/drl/rls/hrrpt/2005/61594.htm>

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<sup>34</sup> COI Service Sudan Country Report (paras 5.150 – 5.154)

<sup>35</sup> UNHCR Position paper on Darfuri asylum seekers from Sudan February 2006

- UNHCR Position paper on Darfuri asylum seekers from Sudan February 2006 at:  
<http://www.unhcr.org/cgi-bin/tehis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=43f5dea84>

**Asylum and Appeals Policy Directorate**  
**5 May 2006**