



Sudan's compliance with its obligations under the International Covenant on Civil and Political Rights in the context of mixed migration from, and to Sudan

124th session of the Human Rights Committee - Review of Sudan's State Party report

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1. Introduction

This submission by the Centre for Human Rights Law, SOAS, University of London, the International Refugee Rights Initiative (IRRI), and Waging Peace (WP) builds on the Centre's and IRRI's research and prior submission on the list of issues.¹ It also draws on WP's research on Sudanese asylum seekers and their return to, and experiences of human rights violations, in Sudan.²

Sudan has become the focal point of policy initiatives and projects on mixed migration in the Horn of Africa, particularly in the context of the Khartoum Process, an initiative comprising 41 States as well as European Union (EU) and African Union (AU) bodies.³ The Khartoum Process has been widely criticised, as it is viewed as prioritising migration control objectives over addressing the root causes of mixed migration from Sudan, particularly a legacy of, and ongoing, human rights violations.⁴ The

¹ IRRI, SIHA and SOAS, Centre for Human Rights Law, 'Tackling the Root Causes of Human Trafficking and Smuggling from Eritrea: The need for an empirically grounded EU policy on mixed migration in the Horn of Africa' (November 2017), available at <http://refugee-rights.org/wp-content/uploads/2017/11/IRRI-KP-final.pdf>; 'The Khartoum Process policy of engagement and human rights protection in Sudan', Written evidence submitted by the Centre for Human Rights Law, SOAS, to the UK All-Party Parliamentary Group for Sudan and South Sudan Inquiry: UK-Sudan Relations-Consequences of Engagement (August 2016), available at www.soas.ac.uk/human-rights-law/file114315.pdf. The report of the All-Party Parliamentary Group for Sudan and South Sudan, *Engagement beyond the Centre: An Inquiry Report on the Future of UK-Sudan relations* (February 2017), is available at <https://reliefweb.int/report/sudan/engagement-beyond-centre-inquiry-report-future-uk-sudan-relations-enar>.

² Waging Peace, 'The Danger of Returning Home' (September 2012), available at http://wagingpeace.info/wp-content/uploads/pdfs/pdf/Exclusives/2012_09_THE_DANGER_OF_RETURNING_HOME.pdf; 'The Long Arm of the Sudanese Regime' (September 2014), available at http://wagingpeace.info/wp-content/uploads/pdfs/The_Long_Arm_of_the_Sudanese_Regime_-_COMPRESSED.pdf; 'Recent cases of post-deportation risk' (January 2017), available at http://wagingpeace.info/wp-content/uploads/pdfs/Post-deportation_update_January_2017.pdf; 'Risk to individuals from the Nuba Mountains in Sudan' (March 2018), available at <http://wagingpeace.info/wp-content/uploads/2018/03/waging-peace-report-for-nuba-country-guidance-case-march-2018.pdf>.

³ Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative), Rome, 28 November 2014. See further www.khartoumprocess.net

⁴ See for a detailed analysis, Lutz Oette and Mohamed Abdelsalam Babiker, 'Migration Control á la Khartoum: EU external engagement and human rights protection in the Horn of Africa' (2017) 36(4) *Refugee Survey Quarterly* 64-89.

latter includes lack of recognition, and protection of the rights of foreign nationals in Sudan, including in the context of immigration controls. The EU has acknowledged some of these concerns, albeit without implementing fundamental changes to its approach. Further, several EU Member States, namely Italy, Belgium, France and the Netherlands, have pursued bilateral policies with Sudan aimed at, and resulting in, the deportation of Sudanese nationals to Sudan.

This submission highlights key areas of concerns in this context, which include human rights violations as causes of forced migration from Sudan, the treatment of Sudanese nationals who have been returned to Sudan by third countries, and the treatment of foreign nationals in Sudan. On the basis of its findings, it recommends both fundamental and specific reforms in Sudan's legal system and practice.

2. Sudanese nationals

2.1. Human rights violations as root causes for forcible displacement and mixed migration from Sudan

Sudanese nationals have emigrated in large numbers from Sudan over the last three decades.⁵ Much of this movement has been forced, as Sudanese have fled both serious human rights violations committed in the course of armed conflicts and other acts of persecution. Many Sudanese have also left the country, ostensibly voluntarily for economic reasons. Yet, as shown in a recent study on displacement and migration from Darfur,⁶ the economic situation cannot be disassociated from the denial, and violation of civil and political rights. The study, which was based on a total of 248 interviews, found that:

The causes of Darfuri migration are multiple, complex and interlinked. For many young Darfuris, attack, arrest and harassment by government forces, paramilitary groups and militia are the primary reason for leaving. Young men from particular ethnic groups come under close surveillance. Their movements are restricted and teenagers are persuaded to spy on their relatives. Internally displaced people (IDPs) and students are also particularly affected. They also experience discrimination in finding work, especially government and civil service jobs... Displacement, discrimination and limited freedom of movement have contributed to a **loss of livelihoods, including access to land...** **The violence experienced by Darfuris from particular ethnic groups can be described as systemic persecution.**⁷

Several reports on developments in the Nuba Mountains and Blue Nile region have equally documented serious human rights violations in the course of armed conflict, including after the first ceasefire in June 2016.⁸ This has been complemented by a significant deterioration of living standards, including basic survival, as a result of the bombing of vital infrastructure and lack of

⁵ See 'Refugee Movements: Sudan and South Sudan', at <https://refugeemovements.com/sudan>, and Munzoul A.M. Assal, 'Refugees From and To Sudan, Paper prepared for the Migration and Refugee Movements in the Middle East and North Africa', The Forced Migration & Refugee Studies Program, The American University in Cairo, Egypt (23-25 October 2007).

⁶ Susanne Jaspars and Margie Buchanan-Smith, *Darfuri Migration from Sudan to Europe: From Displacement to Despair* (Research and Evidence Facility and Humanitarian Policy Group, August 2018).

⁷ *Ibid* xvi (emphasis in original).

⁸ There are regular reports of armed looting raids, some fatal, abductions and killing of people perpetrated by the Sudanese Armed Forces (SAF) and its paramilitary, the Popular Defence Forces (PDF) and the Rapid Support Forces (RSF) in the two regions. See e.g. National Human Rights Monitors Organisation, 'Human Rights Update: September 2017-February 2018' and prior updates, which are available at www.sudanconsortium.org

adequate support, which has forcibly displaced a number of residents within the region, and across borders.⁹

The Darfuris, particularly young, poor males with limited education and/or a history of displacement, and other Sudanese being forced to leave their country in large numbers, are an indicator of persistent human rights violations that result in forced displacement. The findings of the study quoted above demonstrate that a series of actual and potential violations of the Covenant prompt and perpetuate this situation, particularly violations of the right to life, the prohibition of torture, freedom of movement, unlawful interference with private and family life, and discrimination. These violations are compounded by the lack of legal and institutional protection in the absence of an independent judiciary, and severe constraints experienced by human rights defenders in violation of the right to freedom of expression, association, and assembly.¹⁰ Many of the concerns highlighted in this regard by the Committee on Economic, Social and Cultural Rights in its 2015 Concluding Observations on Sudan's second periodic report apply in equal measure to Sudan's compliance with its obligations under the Covenant.¹¹

Securing a viable future for all Sudanese within Sudan requires an end to armed conflicts, and, more fundamentally, far-reaching reforms that effectively respect the right to self-determination and minority rights, and secure the right to equality and the gamut of other civil and political rights within a functioning rule of law system.

2.2. Treatment of forced and voluntary returnees to Sudan

The treatment on return of Sudanese nationals who have sought protection abroad, but been forcibly or voluntarily returned back to Sudan, has been a long-standing concern.¹² The numbers of such individuals have increased following the establishment of bilateral policies aimed at facilitating the return of unsuccessful asylum applicants, particularly with EU Member States¹³ and under the aegis of the Khartoum Process, notably in Italy,¹⁴ Belgium,¹⁵ France,¹⁶ the Netherlands,¹⁷ and the United

⁹ See Samuel Totten and Amanda F. Grzyb (eds.), *Conflict in the Nuba Mountains: From Genocide by Attrition to the Contemporary Crisis in Sudan* (Routledge, 2014), and Matthew Ponsford, 'Interview-Quit dithering, says last doctor in Sudan's Nuba mountains', *Reuters* (1 June 2017), available at <https://af.reuters.com/article/sudanNews/idAFL8N1IY2VH>

¹⁰ See on some of the latest developments, *Report of the Independent Expert on the situation of human rights in the Sudan*, UN doc A/HRC/36/63 (27 July 2017), paras 21-25, and Human Rights Watch, "*Good Girls Don't Protest*" *Repression and Abuse of Women Human Rights Defenders, Activists, and Protesters in Sudan* (March 2016).

¹¹ *Concluding observations on the second periodic report of the Sudan*, UN doc E/C.12/SDN/CO/2 (27 October 2015).

¹² See above note 2.

¹³ EMN Ad-Hoc Query on return to Sudan', available at

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2018.1263_-_be_emn_ncp_ahq_on_return_to_sudan.pdf

¹⁴ Associazione per gli Studi Giuridici sull'Immigrazione, 'Memorandum of Understanding between Italy and Sudan: a legal analysis', available at <https://www.asgi.it/wp-content/uploads/2017/10/Report-Memorandum-of-Understanding-Sudan-Italy-SL-Clinic-UniTO.pdf>

¹⁵ In December 2017, the Federal Secretary of State responsible for Asylum and Migration, Theo Francken, invited Sudanese officials on an identification mission to assess Sudanese individuals in Belgium. The delegation is widely believed to have been from Sudan's NISS. They were allowed to question Sudanese without Belgian officials present. See report of the Belgian Office of the Commissioner General for Refugees and Stateless Persons, 'Respecting the Principle of Non-Refoulement When Organizing the Return of Persons to Sudan', 8 February 2018, available at https://www.cgrs.be/sites/default/files/respecting_the_principle_of_non-refoulement_when_organizing_the_return_of_persons_to_sudan.pdf

¹⁶ According to internal memos of the Sudanese Embassy in France, Sudanese officials collaborated with French authorities on returns, including arranging a potential identification mission. See 'Comment la France a livré des opposants politiques à la dictature soudanaise', *Street Press*, 1 October 2017, available at <https://www.streetpress.com/sujet/1506702391-la-france-livre-opposants-politiques-dictature-soudan>

Kingdom.¹⁸ The practices of EU Member States, that is inviting identification missions from Sudan who have allegedly involved officials associated with the National Intelligence and Security Services (NISS),¹⁹ are highly problematic in terms of their compatibility with the Covenant, and may have violated the principle of refoulement.²⁰ Sudan bears responsibility, as a party to the Covenant, for the protection of those returned to its territory.

States looking to pursue bilateral arrangements on returns should first consider what protections are offered to those they are returning, and possibly halt such agreements, and the return of unsuccessful asylum applications, until they are convinced of the nature of treatment returnees can expect. Despite the vital need for such information, there is limited verifiable information about the fate of those returned. Under the Refugee Convention unsuccessful asylum applicants who do not face refoulement are not in need of post-return protection, so it is not insisted on by bilateral partners, and the EU itself considers this a matter of national competency beyond its purview.²¹ Individuals and civil society organisations have been prevented by the State Party from conducting effective post-deportation monitoring in Sudan. In some cases those looking to investigate the fate of those returned had to abandon their endeavour due to threats and harassment.²²

The risks of operating in this space means there is no organisation conducting comprehensive checks, be it international monitors, or national human rights defenders who have faced restrictions and harassment for carrying out monitoring work.²³ Despite these challenges, reports have nonetheless emerged from Sudan evidencing the routine deprivation of liberty, ill-treatment, and torture of returnees. Most individuals are returned via Khartoum International Airport (KIA), where they are subject to immigration, but also security checks. There is widespread acceptance that Sudan takes interest in those who have returned from abroad,²⁴ normally identifiable because they are accompanied by immigration officials from the returning country, because they lack the required exit visas, or because they are part of charter flights expressly used for this purpose. For instance, the British Upper Tribunal, in a judgment dated April 2016, referred to “the extremely common

¹⁷ In 2011, the Netherlands signed an MOU with Sudan for the voluntary or forced repatriation of Sudanese nationals and the issuing of laissez-passers by the Sudanese diplomatic representation. See <https://www.diensterugkeerenvertrek.nl/Landeninformatie/sudan/>

¹⁸ The UK launched a UK-Sudan Strategic Dialogue in 2016 which saw biannual meetings in which areas of mutual concern are discussed, including returns procedure. The most recent meeting was April 2018, see further <https://www.gov.uk/government/news/uk-sudan-strategic-dialogue-april-2018-communique>

¹⁹ ‘Belgium criticised for inviting Sudanese ‘secret agents’ to Brussels to identify migrants’, *The Telegraph*, 20 September 2017, available at <https://www.telegraph.co.uk/news/2017/09/20/belgium-invites-sudanese-secret-agents-brussels-identify-migrants/>

²⁰ Scrutiny extends to the level of the European Court of Human Rights, where a case is being pursued by lawyers on behalf of five of the 40-48 individuals (sources differ) returned in August 2016 from Italy. See <http://www.infomigrants.net/en/post/6989/echr-accepts-anti-italy-appeal-for-forced-removal-of-sudanese>

²¹ Conversation with European External Action Service Desk Officer for Sudan, Brussels, 6 April 2018.

²² For instance, the lawyers associated with a case before the European Court of Human Rights representing five of the 40-48 individuals returned from Italy to Sudan in August 2016, reported that on a trip to meet their clients in December 2016, and even though they were part of an EU Parliamentary mission, they and their clients suffered harassment, and the lawyers themselves were threatened with detention. They cut short their trip after consultation with their Embassy. Belgian Office of the Commissioner General for Refugees and Stateless Persons, ‘COI Focus, Sudan, Risk on return’, February 2018, <https://www.cgra.be/en/country-information/risk-upon-return>

²³ See above note 10.

²⁴ See reporting by Waging Peace above note 2.

phenomenon of arrest and detention” on arrival, also distinguishing between such routine circumstances, even where they include being “rough handled”, and “serious harm”.²⁵

Individuals report being deprived of their liberty for prolonged questioning, and asked about activities, particularly if anti-government, abroad. Often such conversations are informed by surveillance undertaken in the deporting state.²⁶ Many report ill-treatment and torture. Individuals are released only subject to agreeing to regular reporting conditions, and are forced to sign a document on “family guarantee/personal security” which obliges them not to engage in any political activities, seek outside medical or consular support, or leave the country, and gives the police the right to detain them at any time. The fact that they are expressly restricted from telling others what has occurred to them makes the task of post-deportation monitoring even more difficult.

Further investigation is required to consider the treatment of individuals returned to Sudan, notably the 40-48 individuals deported to the Sudan in August 2016 by Italy; the 800 Sudanese deported to the Sudan by the Jordanian authorities in December 2015;²⁷ and the 36 Sudanese deported to Sudan by Egypt in July 2016.²⁸

The State party should also provide information on the circumstances of, and measures taken in response to the following cases, including on the wellbeing and whereabouts of other returnees:

- In December 2017, the Tahrir Institute for Middle East Policy publicised excerpts from testimonies obtained from eight individuals deported to Sudan following the visit of an identification mission to Belgium. All describe a period of detention on arrival at Khartoum airport and interrogation lasting several days, then being released on family guarantee/personal security, with some of them describing being subjected to physical torture (being beaten with a stick).²⁹
- In June 2018, a United States (US) citizen named Bishara Gomatallah (originally from Darfur) who was not a returned asylum seeker, filmed himself being detained and ill-treated on arrival at KIA, after trying to track down missing luggage at the airport.³⁰ There are also concerns that a colleague of Mr Gomatallah who also worked at Trident Seafoods in the US, Abdullah Yacoub, might have been killed after he had sustained injuries during days-long interrogation and torture, in a separate incident involving a trip to the Darfur region.³¹

²⁵ *IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM) Sudan* CG [2016] UKUT 188 (IAC), paras. 4 and 2, respectively.

²⁶ See ‘The Sudanese spies in London Starbucks’, *The Telegraph*, 20 October 2014, available at <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/sudan/11173595/The-Sudanese-spies-in-London-Starbucks.html>

²⁷ See Waging Peace, ‘Recent cases of post-deportation risk’ (January 2017), available at http://wagingpeace.info/wp-content/uploads/pdfs/Post-deportation_update_January_2017.pdf for two testimonies from this group.

²⁸ Human Rights Watch, ‘Sudan – Events of 2016’, available at <https://www.hrw.org/world-report/2017/country-chapters/sudan>

²⁹ ‘Deported Sudanese migrants say they were tortured’, *FlandersNews.Be*, December 2017, available at <http://derefactie.be/cm/vrtnieuws.english/News/1.3117089>; ‘Deported from Belgium, tortured in Sudan’ Video produced by Mohamed Madi and Bruno Boelpaep, *BBC News*, 21 January 2018, available at www.bbc.co.uk/news/av/world-europe-42725089/deported-from-belgium-tortured-in-sudan

³⁰ A version of this video with English-language subtitles is as at <https://vimeo.com/276233919>, prepared by Belgian news site Apache (permission given).

³¹ ‘De Soedan-files (2): folteringen gaan gewoon verder’, *Apache*, 26 June 2018, available at <https://www.apache.be/2018/06/26/de-soedan-files-2-folteringen-gaan-gewoon-verder/?sh=7c8dbb72990354fd580f5-923987208>

In view of the series of allegations raised in respect of the treatment of returned individuals, Sudan should (i) provide detailed information on its procedures for receiving Sudanese nationals deported or otherwise returned to Sudan, particularly on how these procedures guarantee the rights of those returned under the Covenant; (ii) and set out the steps it has taken, if any, to investigate the allegations of ill-treatment and torture raised by individuals and concerned organisations, and the outcome of any such investigations. Sudan should enable independent monitors and experts to monitor and document the treatment of returned individuals following their return, and conduct effective investigations with a view to prosecuting those responsible in case of any evidence of torture or other forms of ill-treatment.

3. Treatment of foreign nationals in Sudan

3.1. Human trafficking

Sudan has taken a number of legislative and institutional measures to combat trafficking, particularly in the context of multilateral initiatives such as the Khartoum Process. Yet, there are a series of concerns concerning the compatibility of measures taken with Sudan's obligations under the Covenant.³² The definition of trafficking used in the Combating of Human Trafficking Act of 2014 is not fully in line with that found in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).³³ The Act provides for the death penalty for nine aggravated acts of trafficking; several of these acts do not meet the criteria of a "serious crime" and there have been long-standing concerns over the lack of respect for the right to a fair trial.³⁴ The latest US Trafficking in Persons report, according to which "seven traffickers [were convicted] under the 2014 anti-trafficking law to sentences ranging from three years to death",³⁵ indicates the risk that the death penalty might be increasingly imposed, not least to demonstrate that Sudan is taking effective action. Further shortcomings in Sudan's legal system that have been repeatedly highlighted, albeit without prompting reforms to date, concern the lack of provisions to guarantee rights under articles 7 and 8 of the Covenant. This includes in particular the absence of adequate protection and services for victims, the right of foreign trafficking victims to stay in the country and adequate protection against refoulement.³⁶

³² See for further analysis, Oette and Babiker, above note 4.

³³ Section 7(1) Combating of Trafficking Act of Sudan, 2014: "There shall be deemed to have committed the offence of in [sic] human trafficking, whoever kidnaps, transfers, abducts, transports, harbors, receives, detains or equips a natural person, with intent to exploit or use the same in unlawful business, or any acts, as may by nature degrade his dignity, or achieve unlawful aims in consideration of any of the following: (a) material return, or promise therewith; (b) moral gain, or promise therewith; (c) granting any type of advantages.(2) The acts mention in sub-section (1), shall be deemed human trafficking, where they have been accomplished by the use of force, or threat of use of force, or by any of the forms of coercion, abduction, fraud, deception, or abuse of power and influence, or exploitation of a state of weakness or need, or by granting payments or advantages, or promise therewith, in order to obtain the consent of a person to traffic in another person upon whom he has control." The text is available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=99189

³⁴ See Nabil Adib, 'At the State's Mercy: Arrest, Detention and Trials under Sudanese Law', in Lutz Oette (ed.), *Criminal Law Reform and Transitional Justice: Human Rights Perspectives for Sudan* (Ashgate, 2011), 121-138, and the Committee's concerns and recommendations concerning the death penalty in Sudan, Concluding observations on the fourth periodic report of the Sudan, UN doc CCPR/C/SDN/CO/4, 19 August 2014, para 14.

³⁵ US Department of State, *2018 Trafficking in Persons Report*, 397.

³⁶ See Oette and Babiker, above note 4.

While the Government of Sudan has reportedly investigated close to a hundred trafficking cases, it reported the prosecution and conviction of only two officials, a police officer and army colonel.³⁷ This constitutes a small number considering the widely reported involvement of officials in trafficking, as well as corruption and other illicit activities.³⁸ Accountability of officials for violations of the Covenant such as torture or trafficking is conditional upon, and therefore hampered by, the provisions under Sudanese law that grant immunity to law enforcement agencies and army personnel. These provisions have particularly shielded members of the NISS from prosecution.³⁹ In light of practice to date, it is highly unlikely that members of the Rapid Support Forces (RSF) operating in the border areas or other security agents face the risk of prosecution for complicity in trafficking (and torture as well as other violations). This impunity persists notwithstanding reports according to which “each smuggler -interviewed separately- said that the R.S.F. was often the main organizer of the trips, often supplying camouflaged vehicles to ferry migrants through the desert. After being handed over to Libyan militias in Kufra and Sabha, in southern Libya, many migrants are then systematically tortured and held for ransom-money that is later shared with the R.S.F, each smuggler said.”⁴⁰ The limited prosecutions for trafficking do not, in light of the known modus operandi of traffickers, indicate a firm commitment of the State Party to ending impunity for violations of the Covenant.

The training reportedly provided to Sudanese law enforcement officers on combating trafficking might contribute to build their capacity to undertake investigations⁴¹ but does, without more far-reaching reforms in law and institutional practices, not suffice to put in place an anti-trafficking system that operates in compliance with Sudan’s obligations under the Covenant. These reforms should include amendments to bring the anti-trafficking law of 2014 fully into line with the Palermo Protocol and Sudan’s obligations under the Covenant, and reforms in related areas of the law (see below at 3.2). Further reforms include the repeal of immunity provisions in various laws so as to enable prosecutions against officials complicit in trafficking and other related violations.

3.2. Lack of adequate protection against ill-treatment, arbitrary deprivation of liberty and refoulement

Refugees and migrants, particularly from Eritrea and Ethiopia, are reported to have been subjected to various violations in Sudan, including discrimination, arbitrary detention and ill-treatment, and a lack of protection.⁴² Researchers and journalists speaking to these foreign nationals found that their status and living condition exposes them to trafficking, arbitrary law enforcement, threats and corruption.⁴³

³⁷ US 2018 Trafficking in Persons report, above note 35, 397-98.

³⁸ Suliman Baldo, *Border Control from Hell: How the EU’s migration partnership legitimizes Sudan’s “militia state”*, Enough Project, Washington, April 2017, available at https://enoughproject.org/files/BorderControl_April2017_Enough_Finals.pdf and Hassan A. Abdel Ati, ‘Human Smuggling and Trafficking in Eastern Sudan’, Number 2 *Sudan Report*, Chr. Michelsen Institute (September 2017), 7, 18, 44,

³⁹ See the Committee’s concluding observations, above note 11, para 17.

⁴⁰ Patrick Kingsley, ‘By Stifling Migration, Sudan’s Feared Secret Police Aid Europe’, *New York Times*, 22 April 2018, available at www.nytimes.com/2018/04/22/world/africa/migration-european-union-sudan.html

⁴¹ US 2018 Trafficking in Persons report, above note 35, 398.

⁴² Equal Rights Trust and SORD, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan*, London, October 2014, 83 available at www.equalrightstrust.org/ertdocumentbank/Sudan%20-%20In%20Search%20of%20Confluence%20-%20Full%20Report.pdf; IIRI, SIHA and SOAS, Centre for Human Rights Law, above note 1, 48-49

⁴³ Ibid, and IOM, *Migrants in Sudan: Pilot Study on Migrant’s Motivations, Intentions and Decision-Making in Khartoum*, Khartoum, February 2017, 61-79, available at <https://sudan.iom.int/sites/default/files/reports/IOM-MigrantsInSudan-2017.pdf>

This situation fuels smuggling operations, which exposes those being smuggled to abuses by the smugglers and/or by security forces (see above 3.1.).

Sudan has strengthened its border controls. The RSF have been vested with a prominent role in controlling borders, notwithstanding the fact that it has been implicated in international crimes by the International Criminal Court.⁴⁴ This role, ostensibly to combat smuggling and trafficking, exposes refugees and migrants to violations by the RSF. Foreign nationals entering the country are frequently treated as ‘illegal’ immigrants who are charged with unlawfully entering Sudan under the Passports and Immigration Act of 2015. In 2017 alone, Sudanese officials reportedly had routine recourse to detention, lashed 65 asylum seekers, and on several occasions deported asylum seekers, including minors, without due process guarantees.⁴⁵ The UNHCR Representative Elizabeth Tan stated in 2017 that these practices are incompatible with international refugee law.⁴⁶ The practices also raise serious concerns over their compatibility with Sudan’s obligations under the Covenant, particularly articles 7, 9, 14 and 24.

In 2018, IRIN reported, “based on interviews with more than a dozen refugees and a former UNHCR staff member,” that they alleged “that decisions on which refugees would be permanently resettled to a third country were often made on the basis of bribes rather than standard eligibility criteria.”⁴⁷ In response, the UNHCHR suspended the resettlement programme and launched an investigation. However, several refugees reportedly feared harassment, and refrained from providing testimony in the investigation.⁴⁸ This is because of the close links between Sudanese UNHCHR staff and security officials who risk losing a source of income if the allegations of corrupt practices in the resettlement scheme are vindicated. The concerns of asylum seekers reach beyond this particular case. Lack of adequate protection under Sudan’s asylum laws, and an uncertain status have frequently exposed asylum seekers to extremely poor living conditions, exploitation, arbitrary arrest, harassment and corruption. These practices may amount to a violation of several rights that anyone present in Sudan are guaranteed under the Covenant where Sudanese officials are either complicit or Sudan fails to provide adequate protection against abuse.

In light of these developments, reforms of the Asylum Act of 2014 and the Passport and Immigration Act of 2015 should be complemented with strengthening human rights protection and institutions, and effective anti-corruption initiatives. These are among the measures needed to ensure the rights of refugees and migrants in accordance with the Covenant, particularly effectively guaranteeing the right to liberty and security, and non-refoulement, and providing effective access to justice and remedies in case of violations. Further, any officials alleged to be involved in violations should be suspended, and be subject to a full investigation, and prosecution where warranted. This is to be complemented by more far-reaching institutional reforms where malpractices are found to be systemic. Given their record to date, the RSF or other security agents should not be vested with any tasks in the field of immigration control so as to minimise the risk of violations.

⁴⁴ See further Baldo, above note 38.

⁴⁵ See SOAS and IRRI, *Sudan’s compliance with its obligations under the International Covenant on Civil and Political Rights: Anti human trafficking initiatives, the rights of refugees and the human rights of migrants*, 122nd session of the Human Rights Committee (2018) – List of issues: Sudan, January 2018, 4.

⁴⁶ Ibid 4-5.

⁴⁷ Sally Hayden, ‘For refugees in Sudan, fears surround probe into UN resettlement fraud: Potential witnesses worry about retaliation and complain about the lack of protection’, *IRIN news*, 23 July 2018, available at www.irinnews.org/news/2018/07/23/refugees-sudan-fears-surround-probe-un-resettlement-fraud

⁴⁸ Ibid.

3.3. Treatment of foreign nationals in other contexts, particularly gender-based discrimination and violence

Foreign nationals based in Sudan, particularly Eritreans and Ethiopians, have repeatedly described their precarious situation and abuses they have suffered in the country. A series of structural factors enhance their vulnerability, i.e. a heightened risk of exposure to harm. The Sudanese legal system is characterised by a number of shortcomings that have translated into a lack of respect for the rule of law and human rights. In the absence of formal protection, factors such as ethnic origin, language, gender, class, networks and external support influence the degree of risk of exposure to violations. Foreign nationals are typically disadvantaged on account of these factors, in addition to the heightened vulnerability that their lack of status entails, particularly where they are treated as ‘illegal’ immigrants. In these situations, foreign nationals have reportedly been subjected to arrests, beatings, extortion and other harassment. Women have been particularly vulnerable to sexual harassment and rape by officials.

As set out in a recently published report by REDRESS and SIHA: “Migrant women from South Sudan, Eritrea and Ethiopia who are based in Sudan are also regularly arrested and detained by the public order police for alleged public order and immigration offences.”⁴⁹ These practices demonstrate the nexus between the criminalisation of immigration and the risk of arbitrary, discriminatory detention and attendant violations. As highlighted by “[a] lawyer working with detained Ethiopian and Eritrean women ... her clients are crowded inside in inhumane situations in the narrowest of spaces. Additionally, these women are subject to theft of their belongings including phones and money during arrest and detention.”⁵⁰ Further, “it is not uncommon for police to blackmail women in police stations by telling them that they will be released if they have sex with them. Ethiopian and Eritrean women are particularly vulnerable to this form of abuse”⁵¹ as well as “verbal abuse based on ethnicity and racial discrimination.”⁵²

Such treatment appears to be inextricably linked to the perceived identity of the asylum seekers in question. The hospitality Sudan demonstrates towards different nationalities reflects its policies towards marginalised groups and those from conflict areas in the country, and also its perception of itself as an Arab Islamic country more generally. As such, predominantly Christian Eritrean and Ethiopian populations are targeted as outlined above, alongside the ‘black African’ South Sudanese, formerly the targets in a civil war before secession, who are now accused by officials of being sources of insecurity and disease.⁵³ Meanwhile, Syrian refugees have a visa waiver programme in place, the right to work and education without permits, and a citizenship track once they have been there for more than six months, with accusations that Sudanese passports are for sale to this group as well.⁵⁴ This difference in treatment ostensibly based on grounds of ethnicity and religion is prima facie discriminatory.

To ensure adequate protection of the rights under the Covenant, Sudan should seek to avoid criminalisation and regularise the status of foreign nationals; reform any laws, including public order laws, which foster discriminatory practices; and put in place a legal and institutional framework

⁴⁹ REDRESS and SIHA, *Criminalisation of Women in Sudan: A need for Fundamental Reform* (November 2017), 6.

⁵⁰ Ibid 29.

⁵¹ Ibid 30.

⁵² Ibid 37.

⁵³ Ahmed Hussein Adam, interview with Al Araby TV, 3 August 2017

⁵⁴ ‘Passports for sale: how Sudan profits from Syrians’ *News Deeply*, 1 February 2019, available at <https://www.newsdeeply.com/refugees/articles/2018/02/01/passports-for-sale-how-sudan-profits-from-syrians>

aimed at ensuring accountability of perpetrators of violations and justice for those subjected to violations, in line with the State Party's obligations under article 2 of the Covenant. Further steps include becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, in addition to ratifying, without reservations, treaties of more general application, namely the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention for the Protection of All Persons from Enforced Disappearance.