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OPERATIONAL GUIDANCE NOTE

SUDAN

CONTENTS

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 province. It must be read in conjunction with the RDS - COI Service Sudan Country of Origin Information Report of October 2005 at:

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.[1]

2.2 The Government and the Sudan People's Liberation Movement/ Army (SPLM/A) signed the Machakos Protocol during 2002, which addressed the issues of the right to self-determination and the separation of religion and state, whilst wealth-sharing arrangements were agreed in January 2004. In May 2004, the issues of power-sharing, Shari'a law in Khartoum and the status of the disputed areas - Abyei, Blue Nile States and Southern Kordofan/the Nuba Mountains - were finally agreed. Vice President Ali Osman Taha, and the then leader of the SPLM/A, Colonel John Garang signed the Comprehensive Peace Agreement (CPA) on 9 January 2005 in Nairobi, Kenya.[2]

2.3 Dr John Garang, the First Vice-President and leader of the SPLM/A, was killed in a helicopter accident in Southern Sudan on 30 July 2005. Lt. Gen. Salva Kiir Mayardit, the new leader of the SPLM, has been appointed as First Vice President and has stated his determination that the SPLM remains committed to the objectives for which Dr Garang worked so hard. Rioting and demonstrations broke out in Khartoum, in the days after Garang's death with reports of around 100 fatalities, although the situation has since calmed.[3]

2.4 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 was sworn in on 9 July 2005, the National Assembly first sat on 1 September 2005 and the formation of the GNU was announced on 20 September 2005. In accordance with the CPA, a Government of Southern Sudan was announced in October 2005 with the aim of giving a large degree of autonomy to the south and the chance to vote for full independence in six years' time.[4]

2.5 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 2004 and 2005.[5] The Government of Sudan, SLM and JEM are currently engaged in African Union-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. However, in September 2005 the Foreign and Commonwealth Office reported that neither side is abiding fully by their commitments to the earlier agreements and insecurity continues to hamper the delivery of humanitarian assistance.[6]

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[1] Home Office COI Service Sudan Country of Origin Information Report October 2005 (paras 5.1 & 5.16) & Europa Regional Surveys 2005 (Sudan, History)
[2] COI Service Sudan Country Report (paras 6.9 – 6.11) & Europa 2005 (Sudan, History)
[3] Foreign and Commonwealth Office Sudan Country Profile 21 November 2005 FCO Country Profile November 2005
[4] FCO Country Profile November 2005 & BBC World News: Africa 'South Sudan get a new Government' 23 October 2005
[5] COI Service Sudan Country Report (paras 6.12 – 6.30 & 6.82 – 6.84)
[6] FCO Country Profile November 2005

2.6 According to a December 2004 article published on the Sudan Tribune website, a conflict between government forces and the armed groups of the Eritrea-based National Democratic Alliance (NDA) has been fought for ten years. Clashes between the Beja National Congress and government forces in late 2004 and early 2005 escalated into bloody confrontations in the Kassala state, eastern Sudan. 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.[7]

2.7 The Sudanese Government continued to have an extremely poor human rights record during 2004 and early 2005. The Government's security forces reportedly committed extrajudicial killings, rape, torture and beat and abused detainees and prisoners, with impunity. The fundamental freedoms of the people continued to be severely restricted by the authorities. The security forces arbitrarily arrested and detained persons in prolonged incommunicado detention during 2004. Although the international standards of legal protection were nominally met in trials conducted in regular courts during 2004, defendants frequently did not receive legal counsel and counsel were sometimes prevented from presenting their defendant's case in court. The special courts operating in Darfur were criticised as being deeply flawed and grossly unfair with sentences of death, or punishments considered cruel, inhuman and degrading, often being carried out. In 2004, prison conditions continued to be harsh, overcrowded and life threatening.[8]

2.8 Human rights abuses in the former war zones in southern Sudan were committed with impunity by all parties to the conflict. These abuses included attacks on villages, bombings, summary and arbitrary executions, torture, abductions and sexual violence against women and the forcible recruitment of children into fighting forces. It is estimated that over four million people have been displaced as a result of the conflict and many continued to experience insecurity and hunger during 2003, 2004 and 2005. The main rebel group was the Sudan People's Liberation Army (SPLA), the military arm of the Sudan People's Liberation Movement (SPLM). Armed conflict between government forces and the SPLM/A was suspended in October 2002, although sporadic fighting reportedly still occurred in 2004. Since the end of the conflict, over 500,000 IDPs have returned to the south, however the returnees are facing great difficulties due to the difficult humanitarian and uncertain security situation in the south. [9]

2.9 In general, Sudanese nationals are free to enter and leave Sudan provided they have proper travel documentation. However, during 2004, some categories of people such as police officers, leading political activists and those wanted for criminal prosecution were denied exit visas. According to one source, female Sudanese nationals can reportedly only leave Sudan if given permission by their husbands or male relatives but this is not always strictly enforced. However, another source stated that the right of women to travel freely has been recognised in Sudan.[10]

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

[7] COI Service Sudan Country Report (paras 4.10 – 4.11, 6.203 & Annex B)
[8] COI Service Sudan Country Report (paras 5.25, 5.38 – 5.47, 5.53 – 5.59, 5.78 & 6.01 – 6.02)
[9] COI Service Sudan Country Report (paras 6.03 – 6.08, 6.79 – 6.80, 6.210 – 6.211, 6.287 – 6.292 & Annex B)
[10] COI Service Sudan Country Report (paras 6.148 – 6.157)

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 para 11 of the API on Assessing the Claim)

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave**.** (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

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

3.6 Members of the Beja Congress

3.6.1 Some applicants will claim asylum based on alleged ill treatment 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.[11]

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

[11] COI Service Sudan Country Report (Annex B)

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.[12]

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.[13]

3.6.5 ***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.

3.6.6 ***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.

3.6.7 ***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 The BC has been responsible for numerous serious human rights abuses and actions that amount to war crimes. If it is accepted that the claimant was a member or combatant for this group then caseworkers should consider whether to apply one of the Exclusion clauses. All such cases should be referred in the first instance to the Senior Caseworker.

3.7 Members of armed opposition groups

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

[12] COI Service Sudan Country Report (Annex B)
[13] COI Service Sudan Country Report (paras 4.10 – 4.11, 6.118 – 6.125, 6.203 & Annex B)

SPLM/A or members of one of the non-Arab ethnic groups in Darfur being associated with the SLM/A or JEM.[14]

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

3.7.1.2 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 and have fought against government forces. However, there were no reports in 2004 (unlike in previous years) that the Government arrested individuals suspected of supporting the rebels.[15]

3.7.1.3 The cessation of hostilities was largely respected during 2004, although there were some violations by both sides. There was a series of killings committed by both the Government and SPLM/A in the Shilluk Kingdom after a key leading figure, Dr. Lam Akol, defected from the government-affiliated SPLM-United to the main SPLM/A in March 2004. The Government's Civilian Protection Monitoring Team (CPMT) and the Joint Military Commission (JMC) operating in the Nuba Mountains had considerable success in monitoring and curbing serious abuses during 2004 and the United Nations deployed peace monitors to the Nuba Mountains in June 2005. On 9 January 2005, representatives of the Government and the SPLM/A signed a Comprehensive Peace Agreement (CPA). All of the protocols, including those on wealth-sharing, power-sharing and the status of the three contested areas were signed in June 2004.[16]

3.7.1.4 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 with the CPA, a Government of Southern Sudan was announced in October 2005 with the aim of giving a large degree of autonomy to the south and the chance to vote for full independence in six years' time.[17]

3.7.1.5 Since the implementation of the ceasefire in 2002 and subsequent peace agreement in January 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. After Garang was killed in a helicopter accident in Southern Sudan on 30 July 2005. Lt. Gen. Salva Kiir Mayardit, the new leader of the SPLM, was been appointed as First Vice President and has stated his determination that the SPLM remains committed to the objectives for which Dr Garang worked so hard. Rioting and demonstrations broke out in Khartoum, in the days after Garang's death with reports of around 100 fatalities, although the situation has since calmed.[18]

3.7.1.6 ***Sufficiency of protection.*** Since the conclusion of the CPA in January 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.

3.7.1.7 ***Internal relocation.*** Since the conclusion of the CPA in January 2005, individuals

[14] COI Service Sudan Country Report (Annex B)
[15] COI Service Sudan Country Report (paras 6.112 – 6.114 & 6.163 – 6.167)
[16] COI Service Sudan Country Report (paras 6.05 – 6.21 & 6.163 – 6.167)
[17] FCO November 2005 & BBC World News: Africa 'South Sudan get a new Government' 23 October 2005
[18] FCO November 2005

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.

3.7.1.8 ***Conclusion.*** Prior to 2002, the Nuba people suffered military attacks and human rights abuses committed by government forces as they had become associated with the SPLM/A. They were also at risk of raids on their villages, which resulted in abductions and slavery. The ceasefire between the Government and the SPLM/A signed in 2002 has largely been respected and incidents of attack and ill treatment of those associated with the SPLM/A have declined considerably in the past few years. This improved situation has been further reinforced by the completion of the Comprehensive Peace Agreement in January 2005 between the two sides, since when there have been no reports of government-sponsored attacks on, or ill treatment of, SPLM/A members and associated ethnic groups such as the Nuba. Applicants 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.

3.7.1.9 The SPLM/A has been responsible for numerous serious human rights abuses and actions that amount to war crimes. If it is accepted that the claimant was a member or combatant for this group then caseworkers should consider whether to apply one of the Exclusion clauses. All such cases should be referred in the first instance to the Senior Caseworker.

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.[19]

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, the Foreign and Commonwealth Office 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 supporting rebels in the Darfur region. 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.[20]

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 for suspected support of the rebels in Darfur were tried, convicted and sentenced to death under Special

[19] COI Service Sudan Country Report (paras 6.22 – 6.46, 6.112 – 6.114 & Annex B) & FCO September 2005

[20] COI Service Sudan Country Report (paras 6.22 – 6.46, 6.112 – 6.114 & Annex B) & FCO November 2005

Courts and an indeterminate number of Darfurians remained in detention throughout the year. Amnesty International (AI) and the Sudan Organisation Against Torture (SOAT) recorded in October and December 2004, and January 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.[21]

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.[22] This development has not had any tangible impact on the treatment of these groups by the authorities however.

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, these particular groups operate exclusively in Darfur and there is no evidence that they operate in any other part of Sudan.[23] 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[24] 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 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 The SLM/A and JEM have been responsible for numerous serious human

[21] COI Service Sudan Country Report (paras 6.22 – 6.46, 6.112 – 6.114 & Annex B) & FCO November 2005
[22] COI Service Sudan Country Report (paras 4.10 – 4.11, 6.203 & Annex B)
[23] COI Service Sudan Country Report (paras 6.22 – 6.46, 6.112 – 6.114)
[24] COI Service Sudan Country Report (paras 6.22 – 6.46, 6.112 – 6.114)

rights abuses and actions that amount to war crimes. If it is accepted that the claimant was a member or combatant for one of these groups then caseworkers should consider whether to apply one of the Exclusion clauses. All such cases should be referred in the first instance to the Senior Caseworker.

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

3.8.1 A significant proportion of applicants will claim asylum 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 and 2005. 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.[25] In October 2005, Baba Gana Kingibe, the head of the African Union mission in Sudan, reportedly accused the Sudanese government forces of continuing to support Arab militiamen targeting civilians in Darfur.[26]

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 produced between April 2004 and August 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 human rights abuses continued to occur in Darfur during 2004 and 2005.[27]

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. In late 2004, 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.[28]

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.

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[25] COI Service Sudan Country Report (paras 6.175 – 6.186)
[26] BBC World News: Africa 'Sudan accused over Darfur attacks' 1 October 2005
[27] COI Service Sudan Country Report (paras 6.22 – 6.38)
[28] COI Service Sudan Country Report (paras 6.175 – 6.186 & 6.276 – 6.283)

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, these particular groups operate exclusively in Darfur and there is no evidence that they operate in any other part of Sudan.[29] 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[30] 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.***

IAT Determinations: 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) Heard 19 April 2005, promulgated 3 May 2005. Relocation from Darfur to Khartoum an option. In a case where the appellant was of Massaleit origin, the AIT surmised: "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 Heard 18 May 2005, 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.

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

[29] COI Service Sudan Country Report (paras 6.22 – 6.46 & 6.112 – 6.114)
[30] COI Service Sudan Country Report (paras 6.22 – 6.46 & 6.112 – 6.114)

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)

3.8.7 ***Conclusion.*** We accept that 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' 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. 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 in 2004 were described as harsh, life-threatening and lacking in basic health and care facilities. A Freedom House (FH) report entitled The Worst of the Worst: The World's Most Repressive Societies 2005 stated that prison conditions do not meet international standards and claimed that secret police have operated 'ghost houses'—detention and torture centres—in several cities.[31]

3.9.3 No independent domestic or international human rights observers were allowed to regularly visit prisons during 2004. Sudan did have in place a Human Rights Committee whose responsibilities included the condition of prisons. The Inter-Parliamentary Union (IPU) website that recorded the existence of the Committee made no comment on its independence or effectiveness. Consequently, as there is no independent monitoring of Sudan's prisons by international or non-governmental organisations, very little information concerning the treatment and living conditions of ordinary prisoners is available.[32]

3.9.4 ***Caselaw.***

IAT/AIT Determination: UKIAT 00335 [2004] on draft evasion. As a result of the appellant being of Nuban ethnicity and a draft evader he will be imprisoned and that the conditions of imprisonment will reach the threshold of Article 3.

[31] 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)
[32] COI Service Sudan Country Report (paras 5.75 – 5.86)

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.

3.9.5 ***Conclusion.*** Prison conditions in Sudan are severe and taking into account the life-threatening conditions, lack of basic facilities and a virtually complete absence of external monitoring, conditions in prisons and detention facilities in Sudan are likely to reach the Article 3 threshold. Therefore a grant of Humanitarian Protection will be appropriate where individual claimants are able to demonstrate a real risk of imprisonment on return to Sudan. Where the real risk of imprisonment is related to 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 18th 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. 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 primary health care system is reportedly unavailable. There is also reportedly a shortage of personnel, especially qualified Psychiatrists.[33]

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 removals are to the capital Khartoum.

5.2 *Caselaw.*

IAT Determination: AA (Sudan) [2004] UKIAT 00167. This case deals with 'Decree 4/B/307', which it was suggested stated that any Sudanese person returning from abroad who had left Sudan after the Revolution of Salvation and had resided abroad for more than one year would be detained and investigated. The Danish Fact Finding Mission in early 2000 found that the decree did not exist and that Sudanese people returning to Sudan only had to report to the tax authorities. It is entirely plausible that someone who has been away from Sudan for a long time will be questioned and may be required to make tax payments in foreign currency but that could not amount to persecution or risk of Article 3 harm. The IAT also found that there is no evidence that the authorities treat returning southern Sudanese or members of the Kreish tribe in a manner which would breach Article 3. The Tribunal concluded that the conditions in Khartoum IDP camps would not breach Article 3.

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.

6. List of source documents

- UK Home Office COI Service Sudan Country of Origin Information Report October 2005 at http://www.homeoffice.gov.uk/rds/country_reports.html
- Europa Publications Regional Surveys of the World: Africa South of the Sahara 2005 (51st Edition): Sudan.
- UK Foreign and Commonwealth Office Sudan Country Profile 2 November 2005 http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1020687852749

[33] COI Service Sudan Country Report (paras 5.113 – 5.131)

- BBC World News: Africa. ‘ South Sudan gets new government’ 23 October 2005. http://news.bbc.co.uk/1/hi/world/africa/4370100.stm
- BBC World News: Africa. ‘Sudan accused over Darfur attacks’ 1 October 2005. http://news.bbc.co.uk/1/hi/world/africa/4300526.stm
- Freedom House. The Worst of the Worst: The World's Most Repressive Societies 2005. http://www.freedomhouse.org/research/mrr2005.pdf

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