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Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: *Third Cycle, 39th Session*

SUDAN

I. BACKGROUND INFORMATION

Sudan is a party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly the *1951 Convention*) with a reservation on article 26 relating to freedom of movement for refugees. However, Sudan is not a party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) nor the *1961 Convention on the Reduction of Statelessness* (*1961 Convention*). Sudan is also not party to the Convention on Eradication of All Forms of Discrimination against Women (CEDAW). Sudan is party to the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (the *OAU Convention*) but has not ratified the *AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the *Kampala Convention*). Sudan adopted the ICGLR Declaration on Eradication of Statelessness in the Great Lakes Region in 2017¹. In addition, the two ICGLR Protocols on IDPs (Protocol on the Protection and Assistance to Internally Displaced Persons and Protocol on the Property Rights of Returning Persons 2006) are legally binding for Sudan.

Since the change of the government in April 2019 and the start of a democratic transition, the political situation in Sudan remains precarious. Although peace negotiations were concluded in Juba in 2020, the security situation, especially at the Eastern and Southern border areas, as well as in Darfur, remains precarious with armed clashes and tribal conflict inside the country and instability in neighbouring countries. Furthermore, Sudan's economic downturn has continued in 2020 with inflation reaching over 100% in June 2020 coupled with severe fuel, bread and electricity shortages resulting in demonstrations and increasing pressure on the Transitional Government.

Refugees, like other displaced population groups, have been severely affected by the COVID-19 pandemic since March 2020 in the face of an already weak national health system with shortages of qualified staff, equipment, and medications. At the same time, refugees are highly vulnerable to COVID-19 outbreaks due to overcrowding in camps and most settlement locations. The onset of the COVID-19 crisis further exacerbated the existing economic crisis as well as under-resourced health services. Other refugee services, such as birth registration, were temporarily halted until preventive measures were introduced. Additionally, prolonged lockdown measures to slow the spread of the virus further reduced income opportunities and other basic services, such as schools, have yet to re-open.

Refugees: Sudan has a long-standing tradition of welcoming refugees and hosts one of the largest refugee populations in Africa. Refugees are often living alongside host communities in remote and under-served areas with limited infrastructure and basic services. As of February

¹ This Declaration was adopted in 2017 in Brazzaville by member states in the International Conference of the Great Lakes Region (ICGLR)

2021, a total of 1,086,917 refugees and asylum-seekers living in Sudan, 55% are female and 45% male. 30% of them are living in the camps and 70% out. Absolute majority of refugees are from South Sudan (762,288) followed by (Eritrea (123,276), Syria (93,495), Ethiopia (73,818), CAR (27,043), Chad (3,522), Yemen (1972) and others (1,503).

Starting in early November 2020, military confrontations between the federal and regional forces in Ethiopia's Tigray region led thousands of civilians to flee to border areas into Sudan. As of 27 March 2021, over 62,255 individuals had arrived at the East Sudan border points from Ethiopia, with no indication of the influx ending.

UNHCR's refugee operation is characterised by several operational models. In East Sudan, 100,000 Eritrean refugees remain in a stagnant, protracted, costly operation. There are nine camps present in the East, including new ones established in response to the ongoing Ethiopia Emergency. There are also eleven South Sudanese refugee camps in White Nile State and East Darfur and other large settlements.

Some 40,000 South Sudanese live in "Open Areas" in Khartoum with very limited services and no assistance programs. On the other hand, the 20,000 individually registered non-South Sudanese refugees and asylum seekers in Khartoum have access to a fully-fledged urban support program implemented by office of the Commissioner of Refugees and several NGOs. Sudan also applies the Arab/Islamic notions of asylum with respect to some refugees from Arab countries such as Syria, Yemen, Iraq and Palestine. Refugees of these nationalities can enter and remain in the country and are notionally treated as nationals in terms of freedom of movement, choice of residence and access to social amenities. Access to employment is also substantively easier for refugees of these nationalities. However, after the change of the government in April 2019, there was a shift in the policy and some of these favourable standards of treatment were lifted, especially for Syrians.

Statelessness: Sudan underwent a state succession scenario in 2011 when South Sudan separated following the 2011 South Sudanese Referendum. After the secession, Sudan amended its nationality laws leading to massive denaturalization of individuals from South Sudanese origins/linkages. Several groups became at risk of statelessness as a result of withdrawal of their Sudanese nationality, including individuals of mixed Sudanese/South Sudanese origins and ancestries, border tribes and individuals of long residence in Sudan. In order to mitigate the risk of statelessness in the aftermath of the secession, UNHCR carried out extensive advocacy for law and policy reform which led to partial reform of the law in 2018. It also provided legal aid to the individuals who automatically lost their nationality and assisted those eligible and willing to acquire South Sudanese nationality. UNHCR also advocated for the adoption of the 'four freedoms agreement', signed in 2021, to enable the nationals of each country to enjoy access to residence, work, freedom of movement and property ownership. In terms of gender discrimination, while the Sudan law provides for conferral of nationality through both maternal and paternal sides, it does not do so on equal footing² which poses additional risks of statelessness.

Internally displaced persons (IDPs): As of December 2020, the total number of IDPs stands at 2,552,174 out of which, 31.1% are in South Darfur, 19/7% in North Darfur, 17.5% in Central Darfur, 13.2% in West Darfur, 8.5% in South Kordofan, 5.3% in East Darfur, 2.8% in West Kordofan and 1.9% in Blue Nile states. A majority of the IDPs are living in the camps/gathering sites, while limited numbers also reside in urban areas.

² Acquisition of nationality through father is automatic but through mother, an application process is required (article 4/3 of the Nationality Act), in addition the Nationality Regulation 2005 set conditions for the mother to confer nationality to her children including obtaining the approval of the father while the same is not required in case of the father.

UNHCR's presence in much of Darfur is covering both refugee and IDP response, UNHCR's engagement on internal displacement is a longstanding one, with a strong focus on protection as well as durable solutions for IDPs. . The unpredictable security and political situation in 2019, as well as recent inter-communal violence has displaced returnees and IDPs and caused renewed outflows into Chad. Parts of the Jebel Mara in Darfur, the Nuba Mountains in South Kordofan and parts of Blue Nile are controlled by non-state actors with very limited humanitarian access.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

The political landscape in the country changed substantially following the Sudanese revolution of December 2018 and the appointment of the Transitional Government on September 2019. Since then the Transitional Government of Sudan has taken some positive steps towards promoting human rights and improving the general protection environment including mainly:

- At the 2019 Global Refugee Forum (GRF) delivery of several pledges by Sudan including commitments on maintaining the open-door policy for refugees, adopting self-reliance policy for refugees and host communities, facilitate movement and work for refugee (including through facilitating access of refugees to work permits and facilitating pathways to formal labour opportunities).
- Sudan continues to adopt an open door policy towards refugees including in the context of the recent conflicts in Ethiopia.
- Signing of a peace deal in Juba in 2020 that brought different conflict parties together and ended hostilities.
- Adoption of a National Plan for Protection of Civilians and planned deployment of Joint Security Forces to the hotspot areas of Darfur.
- Introduction of some positive legislative amendments in the Criminal Act including on aspects relating to child protection, women's rights, and basic freedoms.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Upholding the principle of non-refoulement

Linked to 2nd cycle UPR recommendation no. 138.127 Ensure safety of refugees and asylum seekers by also seeking international assistance (Nigeria)

Cases of *refoulement* of refugees continue to happen in Sudan with number of Eritrean and Ethiopian refugees and asylum-seekers refouled by the Government of Sudan particularly in 2017 and 2019 targeting mainly Eritreans and Ethiopians³. Refoulement is initiated on different grounds including medical grounds and violation of criminal Act. UNHCR and COR managed to intervene and stopped some decisions to refoule, however other groups were unfortunately forcefully returned to their country of origin. UNHCR is concerned that the Government of Sudan is not fully respecting the principle of non-refoulement enshrined in article 33 of the *1951 Convention*, article 13 of the *International Covenant on Civil and Political Rights (ICCPR)* and reinforced in Article 28 of Sudan's Asylum Act 2014. The Minister of Interior can order deportations even to countries where refugees would be in danger if NISS (recently renamed as the General Intelligence Service) finds their presence in Sudan to be dangerous to the national security or public order⁴. Furthermore the Passport and Immigrations Act 2015 criminalizes illegal entry and grants the executive authorities wide powers of deportation without judicial review⁵. The Combating of Human Trafficking Act of 2014 does not provide for

³ No cases of refoulement of refugees and asylum seekers were detected in 2020

⁴ Asylum Organization Act 2014, Article 28/3/b

⁵ Passports and Immigration Act 2015, articles 29-30

the right of foreign trafficking victims to remain in the country nor does it provide an explicit prohibition of refoulement. There's also lack of procedural safeguards in the Asylum Act when compelling reasons of national security serve as the basis for decisions to expel refugees.

Recommendations:

UNHCR recommends that the Government of Sudan:

- a) Ensure access to territory and protection from refoulement to all persons who are within Sudan's jurisdiction and are claiming to be at risk or fearing return to country of origin or any other country, in line with Sudan's obligations under the *ICCPR*, the *1951 Convention*, the *OAU Convention*, and the Government of Sudan's pledges⁶;
- b) Reinforce the capacity of the national asylum institution to maintain access to the asylum system and set up adequate and proper referral mechanisms from all the official border points to the national asylum institution and allow UNHCR and relevant partners to continue regular border monitoring mission; and,
- c) Ensure that all deportations are subject to judicial review and due process of law, in order to prevent refoulement in accordance with Sudan's obligations under international human rights law and the *1951 Convention relating to the Status of Refugees*.

Additional protection challenges

Issue 2: Freedom of movement and facilitated access to work opportunities for refugees

In line with Sudan's reservation to Article 26 of the *1951 Convention* (relating to freedom of movement for refugees), Article 14 of the Asylum Act 2014 reinforces the limitations the Government may place on the freedom of movement of refugees. Refugees are not permitted to leave their designated place of residence without permission from the competent authorities. In practice, this authorization is granted on extremely limited grounds including serious medical conditions. The movement of refugees and asylum-seekers from their assigned residence without legal permission constitutes an offence under the Asylum Act 2014. Considering the devastated economic situation in Sudan, the restriction on freedom of movement severely affects refugees' access to livelihood opportunities and increases incidents of smuggling and unlawful activities to irregularly move to other parts in Sudan in search of better services. Refugees, like other foreigners, generally can only work in private sector after obtaining a work permit. In practice, the conditions of obtaining a permit are too excessive for refugees to meet⁷.

Recommendations:

UNHCR recommends that the Government of Sudan:

- a) Lift its reservation on Article 26 of the *1951 Convention* and adopt a flexible framework for the movement of refugees;
- b) Reform the encampment policy for refugees, especially for those in Eastern Sudan with a view to prevent instances of smuggling and trafficking and increase access to livelihood and work opportunities, in line with Sudan's pledges⁸; and,
- c) Accelerate legislative and policy reforms to facilitate access to work permits, including through the adoption of flexible procedures that consider the specific situation of refugees, and allow refugees to move freely outside their assigned living area for work related purposes.

Issue 3: Eradication of statelessness

⁶ Sudan GRF Pledge No.1 Continue to maintain and implement an open-door policy for refugees

⁷Article 5 of the Organization of Employment of Non-Sudanese Act of 2001, the conditions include having valid residence permit, ID document, contract with the employer etc.

⁸Pledge No.8 Facilitate movement for refugees and No. 9. Facilitate work for refugees

The Sudan Nationality Act 1994 (amended on 2005, 2011, and 2018) contains a few safeguards against statelessness including a foundling provision. However the law does not provide all the guarantees to prevent and reduce statelessness in line with the standards set out in the *1954* and *1961 Statelessness Conventions*. Sudan has not yet acceded to the Statelessness Conventions, despite commitments made under the 2017 ICGLR Brazzaville Declaration and reiterated in the 2019 Ministerial Conference on the Eradication of Statelessness in the Great Lakes.

Among these gaps, there is no provision which would grant citizenship to a child born on the territory that would otherwise be stateless. Sudan is a party to the African Charter on Welfare and Rights of Child, which provides for a safeguard that no child should be born stateless. However, this guarantee has not been incorporated into the domestic legal order. While the Sudanese Constitutional Charter 2019 and the nationality law provide that both men and women have an equal right to confer nationality to their children, some sex discriminatory provisions remain in the Nationality Laws⁹ creating risks of statelessness. The Nationality Law also does not contain explicit provision to ensure that deprivation and loss of Sudanese citizenship will not render the individual stateless.

Following the secession of South Sudan from Sudan in 2011, significant number of individuals from mixed Sudanese/South Sudanese parentage, individuals from cross-border tribes, persons with long established residence in Sudan prior to independence, and those living outside tribal structures and/or in disputed areas from both countries remain in a legal limbo situation after having automatically lost their Sudanese nationality without having confirmed their entitlement to South Sudanese nationality¹⁰.

Level of birth registration in Sudan remains relatively low (68%). The capacity of the Civil Registry is limited with low outreach, the registration procedures are not flexible and entail excessive costs for late birth registration¹¹ and this has led to significant gaps in terms of accessing birth registration in particular for refugees and asylum-seekers born in Sudan. For forcibly displaced populations, birth registration is not only a protection tool but also a key for prevention of statelessness arising out of forced displacement and a prerequisite for the realization of any durable solution in line with SDG Target 16.9 legal identity for all.

Recommendations:

UNHCR recommends that the Government of Sudan:

- a) Promptly accede to CEDAW and remove all sex discrimination in the domestic nationality law to ensure that women have equal rights than men to confer their nationality to their children, retain and change their nationality as well as confer their nationality to their spouse;
- b) Accede to the *1954* and *1961 Statelessness Conventions* and incorporate the standards set by these treaties into the national legislation with the technical assistance of UNHCR;
- c) Insert a legal safeguard in the national laws to ensure attribution of Sudanese nationality at birth if at the time of the child's birth, he or she was not granted any nationality by any other State in accordance with its laws, in line with Article 6(4) of the African Charter on the Rights and Welfare of the Child;
- d) Incorporate an explicit legal guarantee to ensure that any deprivation or loss of Sudanese citizenship is not permitted if the person or their relatives would thereby become stateless; and,

⁹ According to Article 4/3 of the Nationality Act 1994, acquisition of nationality through the maternal descent is not automatic (unlike if it's through paternal descent), also Article 6 of the Nationality Regulation 2005 requires the mother, in order to confer her Sudanese nationality to her children, to bring the approval of the father and the marriage certificate if the father is alive or the death certificate of the father (if deceased) or a custody order from the court (if the parents are divorced). These are excessive requirements and does not apply in case the nationality is acquired through the father.

¹⁰ Article 10/2 of the Nationality Act amendment in 2011, provides that Sudanese nationality shall be automatically revoked if the person has acquired, de jure or de facto, the nationality of South Sudan, later in 2018 another amendment to this article was adopted to exempt those of South Sudanese origins who were residing in Sudan since 1924 from the application of article 10/2, this is considered positive step however it only addresses the situation of a very limited group of the affected population

¹¹ For instance, the regulations require to show the marriage certificate, or legal affidavit from the court and in some cases witnesses

- e) Facilitate access to regular and late birth registration and certification for all asylum-seekers, refugees, IDPs born in Sudan to prevent statelessness arising from protracted displacement, seeking the technical assistance of UNHCR.

Issue 4: Protection and durable solutions for IDPs

Sudan has protracted internally displaced populations that have limited or no access to protection (security, justice and documentation) or social services, in particular in remote places. The situation is further exacerbated by the absence of a clear durable solution strategy. Frequent conflicts between nomads and herders (local population) over access to natural resources continues to cause displacement and serious human rights violations. The Government is facing difficulties in providing physical protection to civilian populations, including populations of asylum-seekers, refugees and IDPs, as well as in implementing disarmament, demobilization, and reintegration and preventing human rights violations, there's are also difficulties facing the IDPs in relation to access to housing, land and property, in addition, level of civil and legal documentation remains very low among the IDPs. There are also issues with securing regular access of humanitarian agencies to Blue Nile and South Korodofan and Jabal Marra, controlled by SPLM-N and SLA/AW¹² respectively. Increased negotiations and reconciliation efforts as well as flexibility from the Government of Sudan side are needed. Sudan has not ratified the *Kampala Convention* and does not have a national IDP law. Sudan's IDP Policy of 2009 is outdated, as it was framed in a context that drastically changed with the revolution and other major political developments. In 2019, the Government signed a peace deal with Darfur armed movements which includes a special protocol on IDPs and refugees. In anticipation of the exit of UNAMID, the Transitional Government of Sudan adopted a National Plan¹³ for the protection of civilians and a detailed work plan which was approved in August 2020. The Government has also established national and state level committees for its implementation and monitoring. In line with Juba peace agreements, signed in October 2020, the Government reportedly has deployed 6,000 joint security forces (including the Sudanese Armed Forces (SAF), Rapid Support Forces (RSF) and police) to different hot-spots areas in Darfur, An additional 6,000 security forces are to be formed and deployed from the movement's signatories to Juba peace agreement.

Recommendations:

UNHCR recommends that the Government of Sudan:

- a) Develop a clear durable solutions strategy for internal displacement that covers security, justice, documentation, and social services aspects in line with Juba Peace Agreement and other relevant documents with assistance of UNHCR and international community;
- b) Housing, Land and Property (HLP) restitution, through removal of unlawful occupants and identification of alternative arrangements, alongside compensation for HLP damage/destruction. At the same time, the government to explore options for regularization of camps/sites, including through further investments in public infrastructure, provision of additional basic services, and recognition of HLP rights, to enable IDPs to locally integrate in their areas of displacement.
- c) Improve level of civil documentation among IDPs and IDP and refugee returnees.
- d) To ensure the participation of IDP representatives in relevant State and locality level durable solutions decision-making fora related to durable solutions (e.g. Area Durable Solutions Working Groups).
- e) Conduct security sector reform and establishment of rule of law in the conflict affected areas as soon as possible;

¹² Sudan people Liberation Movement- North Sudan (SPLM-N. Sudan Liberation Army-Abdel Wahid

¹³ See, Security Council, S/2020/429, Letter dated 21 May 2020 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council, Annex: The national plan of the Sudan for protecting civilians after the exit of the African Union-United Nations Hybrid Operation in Darfur (UNAMID): <https://undocs.org/en/S/2020/429>.

- f) Establish a National Human Rights Commission under the law compliant with the Paris principles and expand its presence in all conflict affected areas particularly IDP hosting and returning areas and ensure its presence in the State departments within the security institutions (MOD, MOI, RSF, National and Military Intelligence) to monitor their performance and prevent illegal practices; and,
- g) Ratify the Kampala Convention and fully incorporate its standards into a national law relating to assistance and protection of IDPs.

UNHCR
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