



**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report**

- Universal Periodic Review:

SUDAN

I. BACKGROUND AND CURRENT CONDITIONS

Treaties

Sudan ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in 1974 (henceforth referred to jointly as the 1951 Convention) and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa in 1978.

Sudan's asylum policy and practice are governed by the Regulation of Asylum Act 1974 (the Asylum Act), but UNHCR has been assisting the Government to draft the new Asylum Bill 2010. The administrative framework for Sudan's asylum policy and practice currently falls under the mandate of the Commissioner for Refugees (COR), whose administrative and operational costs are funded by UNHCR.

The South Sudan Relief and Rehabilitation Commission (SSRRC) currently has *de facto* responsibility for certain aspects of asylum matters in South Sudan, because of issues concerning north/south institutions in the Comprehensive Peace Agreement's pre-referendum period,

Sudan has not signed the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the "Kampala Convention").

Nor is Sudan a party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

Populations of concern to UNHCR

In Sudan, UNHCR provides assistance to refugees and asylum-seekers; assumes protection cluster/sector responsibility for internally displaced persons (IDPs); facilitates the voluntary repatriation of Southern Sudanese refugees; assists with reintegration of these returnees; and prevention of statelessness.

Approximately 10% of the Sudanese population is internally displaced or in exile abroad as refugees. Sudan is host to over 200,000 refugees and asylum-seekers from a number of neighbouring countries (mainly Eritrea, Ethiopia, Somalia, Chad, Central African Republic and the Democratic Republic of Congo (DRC)).

In recent months, the international community has been increasingly focused on the progress in the Comprehensive Peace Agreement (CPA) as the main determinant for peace and stability in Sudan. A period of prolonged instability and general insecurity during the lead up to and following the 2011 referendum is likely. The dynamics of the CPA have led to a renewed appreciation of the potential displacement of groups at risk, such as southerners in the north, along with concerns relating to their future citizenship status. UNHCR is concerned by some statements of Government authorities reported in Sudanese media suggesting lack of respect for human rights of affected populations, should the outcome of the referendum lead to secession by the south. It is therefore important that the negotiation process quickly address all key outstanding issues, such as the clarification of the north/south borders and the protection of the rights of the people in the post-CPA era, in particular minority rights.

The situation in the Transitional Areas (Abyei, Southern Kordofan and Blue Nile State) remains a major cause for concern in the overall peace equation and tensions remain high, with Abyei being considered as a major flashpoint.

Refugees

Currently, some 63,000 (mostly Eritrean) refugees are residing in 12 camps in eastern Sudan. Sudan's reservation to Article 26 of the 1951 Convention restricting freedom of movement of refugees has led to encampment policies and penalization of refugees who attempt to leave the camps. Thus, for the past 40 years the protracted refugees in the eastern camps have been dependent on food rations and other assistance.

There are steady new influxes of Eritrean refugees and asylum-seekers into eastern Sudan, at a rate of 1800 per month. In 2008 nearly 20,000 new arrivals were registered, while in 2009 23,895 were registered. Most of these new arrivals do not stay in the camps, but move on to urban areas within Sudan or on to Europe, often through smuggling operations.

Refugees in Darfur, totaling some 41,000 persons, are mainly from Chad and the Central African Republic. The majority of these refugees live in border communities where they generally have ethnic/kinship ties, although some are in two camps at Um 13Shalaya and

Mukjar. These refugee groups continue to require protection and assistance. In addition, the possibility of new arrivals is not excluded. Conditions in the countries of origin are not yet conducive to facilitate voluntary repatriation.

Approximately 25,000 refugees in South Sudan are primarily from the DRC, Central African Republic, and Ethiopia. The continued influx from the DRC is due to Lord's Resistance Army (LRA) violence, which is likely to continue.

IDPs

Some two million internally displaced Darfurians face continued insecurity and protection problems, despite the fact that the nature of the violence has changed considerably since the end of the 2004 crisis. The current multi-layered conflict in Darfur is characterized by a general state of lawlessness and fragmented rebel groups, which constitutes a very different landscape from the earlier large scale conflict. There is a continued absence of a comprehensive peace agreement, and the current state of the Doha peace talks is not encouraging. In the meantime, there is limited humanitarian space for humanitarian actors — and thus limited access to the persons in need — due to the ongoing security situation. Solutions for this population are urgently needed. Current returns of IDPs are mostly seasonal. IDP returns remain a precursor for the eventual repatriation of refugees. However, it is considered less likely that a return of Darfur refugees from Chad will take place in the near future.

An estimated 600,000 South Sudanese have been displaced within the south for varying periods of time during the past 18 months, due primarily to violence by or between armed forces and armed groups. These armed groups include Uganda's rebel group, the LRA, which has made incursions into South Sudan. Inter-tribal clashes in the south are also a source of displacement. The situation is compounded by general under-development and food insecurity.

IDPs in Khartoum are mainly from South Sudan and are dispersed among the urban population in Khartoum. Those who are living in four formal sites recognized by the authorities are estimated to be around 400,000, but the majority of the 1.9 million IDP/former IDP population is scattered across a large number of sites. IDPs in Khartoum were previously regarded as being primarily part of the urban poverty problem. However, as implementation of the Comprehensive Peace Agreement (CPA) comes to fruition, the southerners in this population have recently been more accurately viewed through a protection lens.

In addition, there are an estimated hundreds of thousands of IDPs in the east and Transitional Areas.

Returnees

More than 330,000 Southern Sudanese refugees have returned from other countries since 2005. In most cases, they return to areas where decades of conflict have destroyed even

the most basic infrastructure, affecting the returnees and the local communities alike. Another 60,000 refugees from South Sudan remain in countries of asylum and may choose to return after the referendum. This makes it even more urgent that conditions exist, which are conducive to safe and dignified return, in terms of security and sustainable reintegration.

Prevention of statelessness and citizenship arrangements in the context of the Southern Sudan referendum

This subject is of vital concern to UNHCR due to its mandate for prevention of statelessness and protection of stateless persons, its lead agency role in IDP protection and its mandate for finding durable solutions for Southern Sudanese refugees. Populations at risk of statelessness include: an estimated two million southern IDPs and migrants in the north; northerners in the south; border populations, including pastoralists and nomadic groups; and categories such as mixed marriage families. There are possibilities for statelessness arising following the referendum. Yet, the more likely result is a lack of effective citizenship appropriate to choice of durable solutions that guarantees the full rights of nationality (including freedom of movement, property rights, family reunion and employment).

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends the Government and people of Sudan for providing hospitality to asylum-seekers and refugees, hosting one of the world's most protracted refugee populations over the past four decades.

Recently, the return of 1.5 million South Sudanese from the north prior to the referendum through the "Come home and Choose" program was proposed by the Government of South Sudan. Following comments by the humanitarian community, the Government of South Sudan has now revised the figure downward and speaks about a longer period for the return plan, distancing it from the referendum voting. The new plan, called ARERI (Accelerated Returns and Reintegration Initiative), only foresees the return of half a million people prior to the referendum.

UNHCR commends the Government for making provision for voter registration and voting in the South Sudan referendum to be extended beyond South Sudan to southern IDPs in the north as well as Southern Sudanese refugees. However, preparations for the referendum need significant improvement, including mass information to ensure that IDPs and South Sudanese refugees are aware of their rights on a timely basis. UNHCR is also concerned about pressures for return of southern IDPs from the north to the south in a context where free and informed decision making may be lacking.

In September 2010 the Government released a new "Strategy for Achieving Comprehensive Peace, Security and Development in Darfur". The Strategy is founded upon pillars which include aspects of security, development, reconciliation and negotiation. The Strategy also provides ground for the humanitarian community and the

Government to engage constructively. On the positive side, the policy recognizes that security is an issue for civilians, including IDPs. Hence it clearly states that “protection of civilians and IDPs in particular in partnership and collaboration with UNAMID” is a priority. In addition, the policy highlights the importance of achieving justice for the victims of the conflict, including compensation and recovery of land based on a spirit of justice and reconciliation. Although unclear on how this will be achieved, it is a positive step that the Government has recognized that many IDPs have lost property, which signifies their main livelihood and is thus essential in finding a durable solution.

In addition, the Southern Sudan Land Commission’s attempts to address returnees’ access to land with property restitution under the Land Act 2009 are to be commended.

III. CHALLENGES, CONSTRAINTS AND RECOMMENDATIONS

In view of the above, UNHCR suggests that the Office of the High Commissioner for Human Rights consider including in its compilation report the following issues and recommendations aimed at enhancing the protection of populations of concern to UNHCR in Sudan.

Issue 1: Enhance the asylum system

The Government’s reservation on freedom of movement of refugees and the consequent official encampment policy for refugees has resulted in dependency on aid, inadequate livelihood options and lack of durable solutions for refugees.

In Khartoum there are an estimated 40,000 urban refugees. Thus far, the Government does not have a policy with respect to these refugees. Consequently, this population has no legal status and is vulnerable to round-ups, detention, deportation and refoulement. An urban refugee policy is urgently needed, to provide for registration, refugee status determination, issuance of identity documentation and facilitation of legal permission for employment, in order to promote self-reliance.

In addition, access to asylum is inconsistent for certain categories of asylum-seekers, such as some nationals of Arab League countries. Greater compliance is needed with the Government’s international obligations.

In South Sudan there is a legal vacuum in matters relating to asylum, in view of north/south institution concerns. This situation will finally be resolved by the South Sudan referendum of January 2011. Despite these difficulties, refugees and asylum-seekers enjoy a tolerant environment by the Government and host communities in the south.

Recommendations:

a) The Government should fully implement the protection provided for under the Asylum Act 1974. It should also adopt a new Asylum Bill and implement policies and procedures that fully reflect its international obligations, including guaranteeing compliance with the fundamental principle of non-refoulement and providing for basic rights of refugees.

b) The Government should consider withdrawal of Sudan's reservation to Article 26 of the 1951 Convention, in order to permit freedom of movement of refugees and to facilitate an urban refugee policy. This should include registration, refugee status determination, identity card issuance and facilitation of legal permission to work in urban areas.

c) Constitutional guarantees in the Interim National Constitution should be extended to refugees, including in particular the prohibition of arbitrary arrest and the need for judicial determination without undue delay.

d) Whatever the outcome of the South Sudan referendum, an appropriate institutional framework should be adopted for asylum and durable solutions for refugees in the south. UNHCR stands ready to assist with capacity building.

Issue 2: Promote local integration and resettlement for protracted refugee populations

Local integration is the obvious durable solution for the majority of refugees, especially for protracted populations, and policies are needed by the Government to facilitate this. The Government's draft Asylum Bill 2010 recognizes that naturalization is an option for refugees, in accordance with the requirements of the Nationality Act (five years of residence in Sudan). Voluntary repatriation is not a solution in the foreseeable future and will depend on improvements in the situation in countries of origin in the future.

While the official position of the Commission for Refugees (COR) is to oppose local integration, progress is being made on UNHCR's self reliance/ livelihoods strategy for camp-based refugees in the east, based on the 2007 UNHCR/COR Solutions Strategy for the Protracted Refugee Situation in Sudan. This would entail the conversion of several camps into settlements which are *de facto* self-contained villages and which no longer receive assistance, in much the same vein as previous camps were allowed to become Sudanese villages. There are also refugee populations in urban areas in the east. An intensified focus by both the Government and the international community on development in the east (the most neglected area of Sudan) is essential to promoting local integration for refugees.

UNHCR has an annual quota of 1500 for resettlement of refugees to third countries. It hopes that group resettlement of larger populations will be possible from 2011, as part of responsibility-sharing by the international community, in order to strategically create space for local integration for the remaining population. Progress is being hampered, however, by a lack of predictability and timeliness in the issuance of Government visas and in-country travel permits for staff of resettlement countries.

Recommendations:

- a) The Government should promote local integration and self reliance for the majority of protracted refugees and facilitate naturalization for those refugees who fulfill the residency requirements of the Nationality Act.
- b) The Government in collaboration with the international community should be encouraged to enhance the focus on longer term development in eastern Sudan, as part of promoting development through local integration of refugees. Increased access of the international community to the east, to be facilitated by the Government, is essential for this purpose.
- c) The Government should issue visas and in-country travel permits for officials from resettlement countries in an efficient manner and facilitate the resettlement of refugees.

Issue 3: Promote protection of and durable solutions for IDP populations

The indictment by the International Criminal Court of the President of Sudan on 4 March 2010 for crimes against humanity dominated the socio-political agenda and exacerbated an already complex operating environment for protection agencies. The subsequent expulsion of 13 international NGOs from Sudan and the deregistration of three national NGOs staggered the pace of humanitarian interventions for all actors, including UNHCR. In the protection sector, gaps remain from the expulsion of NGOs.

The absence of a peace agreement and ongoing clashes mean continued insecurity for the people of Darfur. The rapprochement between Chad and Sudan in early 2010 has reduced cross-border tensions, but also intensified the conflict within Darfur. The humanitarian situation continues to be affected by a lack of access and limited humanitarian space for humanitarian actors. For example, UNHCR has not had access to Eastern Jebel Marra, and access in South Darfur is severely limited.

The Government is to be commended for collaborative initiatives with UNHCR and the humanitarian community, including the Joint Verification Mechanism on returns, the regular meetings of the High Level Committee and the holding of protection roundtable workshops organized by UNHCR and the Humanitarian Aid Commission. Nevertheless, as a result of Government restrictions and lack of understanding and acceptance by some Government entities of UNHCR's role in IDP protection under the cluster approach, protection of IDPs is compromised. Therefore, UNHCR and the humanitarian community are continuing with initiatives in collaboration with the Government to spread greater understanding of such issues.

With respect to the potential for returns of South Sudanese from the North, UNHCR agrees with the need to separate the referendum and the return movement. Any movements should occur within a climate of respect for the principles of freedom of choice and of movement and secondary displacement must be prevented. To this end, it is

important to ascertain the wishes of the IDP population. Many IDPs may wish to adopt a “wait and see” attitude and will only make decisions regarding durable solutions after the referendum when options are clearer.

In the context of large-scale returns as a result of the referendum, there is a concern that it could lead to the creation of temporary sites in Southern Sudan. These sites could eventually turn into protracted camps due to a lack of alternative services in the returnees’ places of origin. These IDPs have been urbanized for years and will likely prefer to settle in and around urban areas. Returnees should be able to settle in the place of their choice in Southern Sudan. To make this possible, reintegration assistance — by the Government of South Sudan and the humanitarian community — should focus on areas of destination, as opposed to transit camps, and should consist of peri-urban services to avoid the congestion of major towns.

The “Strategy for Achieving Comprehensive Peace, Security and Development in Darfur” focuses solely on return, rather than the range of durable solutions that IDPs might choose following prolonged periods of displacement in predominantly urban areas. Therefore, it is necessary to reiterate that, according to international human rights standards, the choice to return should be voluntary and IDPs have the right to decide their durable solution.

Recommendations:

- a) The Government must ensure security and protection of IDPs at risk and affected communities in the context of the referendum (e.g. southerners in the north, northerners in the south, populations in border areas).
- b) It is essential to uphold the voluntariness of and full range of durable solutions for IDPs in conditions of safety and dignity, rather than the Government focusing solely on return to areas of origin. The realities of urbanization should be taken into account in facilitating durable solutions.
- c) The Government should be urged to create humanitarian space, in order to facilitate access by the humanitarian community to populations in need.
- d) The Government should be encouraged to sign the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and to implement this Convention in its domestic legislation, policies and procedures. UNHCR stands ready to provide technical support.
- e) The active involvement of Darfur refugees and IDPs as stakeholders in the Doha peace process should continue to be facilitated.
- f) The Government should be encouraged to support the Inter-Agency Standing Committee’s cluster approach for coordination in humanitarian emergencies, which

includes the need for full understanding and acceptance by relevant Government entities of UNHCR's protection lead role.

Issue 4: Create conditions conducive for voluntary repatriation and sustainable reintegration of Southern Sudanese refugees

While the voluntary repatriation operation continues for South Sudanese refugees with UNHCR assistance, insecurity caused by tribal conflicts and LRA attacks creates a tense environment for returnees and host communities.

Recommendation:

The Government should be encouraged to create conditions conducive for voluntary repatriation in safety and dignity, including promoting security and facilitating sustainable reintegration and access to basic services. This includes restitution of land rights and compensation mechanisms, as well as facilitating access to national identity documentation under simplified and cost effective procedures.

Issue 5: Prevent statelessness and ensure citizenship arrangements complying with international obligations and best practices

Recommendations:

a) In the context of the South Sudan and Abyei referenda, the parties to the Comprehensive Peace Agreement negotiating citizenship arrangements should be urged to adhere to international obligations and best practices, in order to minimize the possible negative impact on human rights. These international law obligations include:

- the right of every individual to a nationality;
- the obligation to prevent statelessness arising from state succession;
- the right of every individual not to be arbitrarily deprived of their nationality; and
- the obligation to ensure non-discrimination with respect to acquisition or retention of citizenship.

b) In the context of the above citizenship negotiations, the following specific recommendations should be observed:

- The Republic of Sudan should ensure that it does not withdraw nationality from any individual without confirming that another nationality has already been obtained, in order to prevent cases of statelessness.
- Sudan should commit to protecting the fundamental rights of all individuals residing in its territory, including those current Sudanese citizens who may acquire a new nationality following the independence of South Sudan. These protections should include prevention of arbitrary detention and arbitrary expulsion, mass expulsion, protection of property rights, protection of the right to family unity and respect for the principle of non-discrimination.

-All decisions concerning individual citizenship status, particularly decisions to withdraw citizenship, should be subject to due process guarantees including effective judicial oversight.

- The population should have access to information about agreements, legislation or regulations that may affect their citizenship status, information about the choices they may make pursuant to this legislation and the consequences of any choices they may make on their citizenship status.

- As far as possible, the will of the individual should be respected where persons are entitled to the nationality of both the Republic of Sudan (North Sudan) and South Sudan. Where an individual has substantial links to both North and South Sudan (e.g. by birth, habitual residence, family ties) he should either be given the right to dual nationality (as currently provided for under the Interim National Constitution) or should be granted the option to choose between nationality of the Republic of Sudan (North Sudan) and South Sudan.

- Where habitual residents do not acquire the nationality of their state of residence, their right of residence should be protected, as should their basic socio-economic rights.

c) If agreements on citizenship cannot be reached prior to the referendum, reassurances should be provided to the affected populations, in order to avoid the panic of deadlines and to help calm the situation in a context of rising tensions. There should be transitional arrangements and, if necessary, a moratorium on Government actions negatively affecting citizenship rights and preservation of the status quo until a detailed agreement has been reached.

d) Regardless of the outcome of the referenda, the Government(s) should be encouraged to accede to and implement in domestic legislation, policies and procedures the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness, in order to avoid the detrimental effects that this can have on individuals and society, and ensure minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

IV. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

Secondary movements from and through Sudan, including of refugees and asylum-seekers, is a growing trend in recent years, relying on smuggling rings to facilitate movement within Sudan and to third countries. In 2010 UNHCR and IOM, in collaboration with the Government, organized the first workshop for Government officials to address trafficking and protect victims. UNHCR will continue such capacity-building initiatives to ensure that the special needs of refugees and asylum-seekers are taken into account in addressing smuggling and trafficking. The Government's determination of refugee status needs to be enhanced, in order to be able to distinguish between refugees and migrants.

Another important aspect is the need for national identity documentation to facilitate access to basic services and restoration of national protection, but issuance of such documentation is hampered by cumbersome and costly procedures. UNHCR has been supporting the Government to facilitate such documentation in remote areas through support to mobile teams of the Directorate of Nationality and National Identity. In the context of its operation, UNHCR is ready to continue to provide technical assistance and capacity-building for Government staff in order to enhance the protection of persons of concern in the country.

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