



**Written evidence submitted by the Centre for Human Rights Law to the UK All-Party Parliamentary Group on Sudan and South Sudan Inquiry: UK-Sudan Relations – Consequences of Engagement\* - August 2016**

**The Khartoum Process policy of engagement and human rights protection in Sudan**

The Khartoum Process constitutes a major EU policy initiative on migration in the Horn of Africa. Trafficking and smuggling are serious concerns in the region. Criminal networks, in apparent collusion with officials, exploit the vulnerability of refugees and migrants who are often subject to severe abuse to extort ransom from their families. Combating trafficking is therefore a legitimate policy objective. The Khartoum Process, however, represents a flawed response. It is not based on prior empirical evidence, transparency and participation. Its combination of a high level policy dialogue and technical project implementation does not adequately respond to local concerns. The lack of attention to the need for legal migration channels fails to adequately address the root causes of migration challenges. The focus of proposed projects on repressive capacity building ignores the serious deficiencies of Sudan's criminal justice system, and the resulting inability to implement projects in accordance with the rule of law. This has already become evident in recent reports of violations of the rights of refugees and migrants in Sudan. Entering into partnerships with regimes that have a poor human rights record also undermines EU and UK policy on human rights, and the ICC, as it creates an obvious conflict of interest between cooperation and confrontational approaches. We call for an alternative approach, which is based on a holistic policy on migration, foregrounds human rights protection, takes measures to ensure transparency and participation, and establishes a system of effective monitoring and review of both policy and project implementation.

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## I. The Khartoum Process

The EU-Horn of Africa (HoA) Migration Route Initiative (the Khartoum Process (KP)), was launched in November 2014 as a joint initiative aimed at tackling “the challenges of human trafficking and smuggling of migrants between the [HoA] and Europe, in a spirit of partnership, shared responsibility and cooperation.”<sup>1</sup> The KP is steered by a group of EU and African states,<sup>2</sup> the European Commission, the European External Action Service and the AU Commission.<sup>3</sup> A series of KP meetings have taken place in 2015-16. At the latest meeting in Rome on 8 July 2016, Sudan expressed an interest in hosting a Regional Operational Centre to share information and intelligence.<sup>4</sup> The UK has taken a lead role in the KP (currently chairing it), which it is expected to retain for the foreseeable future (at least until any withdrawal from the EU comes into effect). It has complemented multilateral EU initiatives with its own bilateral efforts, including by engaging in an ongoing strategic dialogue with Sudan.<sup>5</sup>

The KP is partially funded through the EU Emergency Trust Fund for Africa (EUTF).<sup>6</sup> €714 million of a total of €1.8 billion EUTF funds have been set aside for the HoA, to address root causes, improve conditions for refugees, IDPs and host communities, and strengthen migration management.<sup>7</sup> €40 million were allocated for the Action Plan: Better Migration Management (BMM) in support of the KP (April 2016-March 2019) under which states can request funds for

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<sup>1</sup> Declaration of the Ministerial Conference of the Khartoum Process, Rome, 28 November 2014, 3.

<sup>2</sup> Italy, France, Germany, UK, Malta, Egypt, Eritrea, Ethiopia, South Sudan, Sudan.

<sup>3</sup> (N. 1), 5.

<sup>4</sup> Information shared with author.

<sup>5</sup> FCO, ‘Completion of UK-Sudan strategic dialogue’, 20-21 March, 22 March 2016; ‘Sudan, UK agree to enhance economic cooperation’ *ST*, 21 March 2016.

<sup>6</sup> [https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa\\_en](https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en).

<sup>7</sup> *Ibid.* The UK has pledged a contribution of €3 million.

specific projects.<sup>8</sup> The BMM is expected to result in the development of national legislation, enhanced national capacity, improved access to justice and greater awareness in respect of irregular migration, particularly trafficking and smuggling.<sup>9</sup>

## **II. Key concerns**

### **1. Lack of transparency**

The KP lacks participation and transparency.<sup>10</sup> It is not based on prior empirical research and has been largely developed at the inter-state/regional institutions level with virtually no consultation or meaningful participation of concerned communities and civil society representatives (who consequently lack awareness of the KP). The combination of a high-level policy dialogue and technical project implementation has also sidelined political participation. Debates in the European Parliament<sup>11</sup> and questions in national parliaments<sup>12</sup> highlight both the demand for greater transparency and the unease that the KP has generated. Statements by civil society organisations and individual commentators reflect similar concerns.<sup>13</sup>

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<sup>8</sup> Germany provides an additional €6 million co-funding contribution. COM(2016)385 final., 15.

<sup>9</sup> T05-EUTF-HoA-REG-09: Better Migration Management (Khartoum Process) (undated).

<sup>10</sup> Maximilian Stern, *The Khartoum Process: Critical Assessment and Policy Recommendations*, IAI WP 15/49, December 2015, 12-13.

<sup>11</sup> EP, 'Khartoum Process and the forthcoming "EU-Horn of Africa Migration Route Initiative" (debate)', 17 December 2014.

<sup>12</sup> E.g. PQs by Lord Hylton, HL1149; Lord Chidgey, HL1047, 1048 and 1050; Lord Sheikh, HL1252.

<sup>13</sup> 'Civil Society Statement on Push Factors in Sudan and the Khartoum Process', 20 June 2016, [http://sudanconsortium.org/darfur\\_consortium\\_actions/pressreleases/2016/Civil%20Society%20Statement%20on%20Push%20Factors%20in%20Sudan%20and%20the%20Khartoum%20Process%20final%20\(1\).pdf](http://sudanconsortium.org/darfur_consortium_actions/pressreleases/2016/Civil%20Society%20Statement%20on%20Push%20Factors%20in%20Sudan%20and%20the%20Khartoum%20Process%20final%20(1).pdf); HRW, 'EU/AU: Put Rights at Heart of Migration Efforts', 9 November 2015; Ahmed Adam and Ashley Robinson, 'EU sidesteps human rights standards', *ST*, 26 July 2016.

## 2. Substantive focus

Sudan, Somalia, South Sudan and Eritrea are among the ten major source countries of refugees worldwide.<sup>14</sup> Trafficking is a serious crime, and concern in the region,<sup>15</sup> including Sudan which serves as major transit country, particularly for Eritreans (via Eastern Sudan and Ethiopia/Khartoum).<sup>16</sup> Criminal networks, in collusion with officials, exploit the vulnerability of refugees and migrants who are often subject to severe abuse to extort ransom from their families.<sup>17</sup>

The KP links irregular migration with trafficking and thereby risks equating migration with “security issues and crime.”<sup>18</sup> It does not acknowledge that EU migration control measures create, or at least contribute to irregular migration. Instead, the problems identified, and the areas of cooperation are all located in the region. The Rome Declaration “express[es] our firm political commitment to expand the [KP] into a sustainable regional dialogue on migration and mobility which will address the root causes of irregular migration and mixed migration flows in a comprehensive and balanced way”, which includes efforts to foster development and to provide channels for legal migration.<sup>19</sup> Notwithstanding this commitment, the KP has a distinctively lopsided focus on migration control which fails to holistically address regional concerns, a fact that has already met with criticism from African states.<sup>20</sup>

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<sup>14</sup> UNHCR, *Global Trends 2015*, 16.

<sup>15</sup> See e.g. HRW, *I Want to Lie Down and Die, Trafficking and Torture of Eritreans in Sudan and Egypt*, 2014; SAHAN and IGAD, *Human Trafficking and Smuggling on the Horn of Africa-Central Mediterranean Route*, February 2016.

<sup>16</sup> *Ibid.*

<sup>17</sup> HRW (n.15), 28-30.

<sup>18</sup> See more broadly, UN Doc. A/HRC/23/46, 24 April 2013, para.32.

<sup>19</sup> (N.1), 4-5. See proposals for measures to be taken in this regard, UNHCR, ‘Observations regarding the Rome Conference of the EU Horn of Africa Migration Route Initiative’, 28 November 2014.

<sup>20</sup> Information shared with author.

### 3. Sudan as reliable partner

The KP treats states such as Sudan as reliable partners whose capacity is to be built in the specific area of combating trafficking and smuggling. Its effectiveness presupposes the existence of a criminal justice system (CJS) capable of functioning in accordance with the rule of law. Sudan's CJS is grossly deficient, having well-documented legislative shortcomings and pervasive institutional problems, including serious human rights violations, impunity and corruption.<sup>21</sup> In respect of refugees and other migrants, Sudanese authorities have repeatedly taken measures, particularly criminalising unlawful entry and expulsions of Eritreans,<sup>22</sup> which are incompatible with Sudan's international obligations and Sudan's Asylum and Refugee Regulation Act 2014, particularly in respect of the prohibition of refoulement.<sup>23</sup> In a recent development, Sudan has employed the Rapid Support Forces (RSF), members of which have reportedly committed international crimes in Darfur, to arrest and deport "illegal immigrants", on the border to Egypt and Libya.<sup>24</sup> These measures suggest that the KP has created an environment conducive to violations. Sudan's authorities may be capable of taking measures that effectively control migration. However, given the systemic CJS deficiencies, there is a high

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<sup>21</sup> E.g. HRCtee, *Concluding observations on the fourth periodic report of the Sudan*, UN Doc. CCPR/S/SDN/CO/4, 19 August 2014.

<sup>22</sup> See e.g. HRW, 'Sudan: End Mass Summary Deportations of Eritreans', 25 October 2011; UNHCR, 'UNHCR concerned over forced returns of refugee and asylum-seekers from Sudan', 4 July 2014; Kristy Siegfried, 'Sudan and Eritrea crackdown on migrants amid reports of EU incentives', *IRIN*, 25 May 2016.

<sup>23</sup> See in particular article 33 of the 1951 Convention relating to the Status of Refugees.

<sup>24</sup> 'Libya: Sudanese Force Arrests '300 Illegal Immigrants' Near Libya', *RD*, 5 July 2016; 'Sudan's RSF militia arrests 600 illegal migrants near Libyan and Egyptian border', *ST*, 31 July 2016; *Twenty-third Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to the UNSC 1593 (2005)*, 9 June 2016, para. 15.

likelihood that such measures will run counter to KP and EU policies stressing the need for the protection of refugee rights and the human rights of migrants.<sup>25</sup>

Under the BMM, Sudan's Ministry of Interior requested funding for training and border infrastructure equipment, which was in principle accepted (computers, cameras, scanners, servers, cars).<sup>26</sup> EUTF acknowledged the risk that "[p]rovision of equipment and trainings to sensitive national authorities (such as security services or border management) [is] diverted for repressive aims."<sup>27</sup> Multiple sources have documented the responsibility of national authorities concerned, particularly the National Intelligence and Security Services (NISS) and the BSF, for serious human rights violations.<sup>28</sup> Sudanese border guards have also reportedly colluded with traffickers.<sup>29</sup> The mitigating measures considered, such as "senior level buy-in" and "reliance on well-experienced implementing partner with good political relations with the target countries"<sup>30</sup> provide inadequate safeguards against the risk that equipment and training serve as tools of repression.

Sudan proposed the building of two reception centres in Gadaref and Kassala, which EUTF commented upon as "in principle could be funded later."<sup>31</sup> Following widespread criticism,<sup>32</sup>

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<sup>25</sup> (N. 1).

<sup>26</sup> (N. 9), 13.

<sup>27</sup> *Ibid.*, 9.

<sup>28</sup> See e.g. submissions on Sudan's UPR, UN Docs. A/HRC/WG.6/25/SDN/2, 7 March 2016, and A/HRC/WG.6/25/SDN/3, 19 February 2016.

<sup>29</sup> HRW (n.15).

<sup>30</sup> (N. 9), 10.

<sup>31</sup> *Ibid.*, 13.

<sup>32</sup> Jürgen Dahlkamp and Maximilian Popp, 'Questionable Deal: EU to Work with African Despot to Keep Refugees Out', *Spiegel Online International*, 13 May 2016.

the building of such centres has now been ruled out.<sup>33</sup> This development highlights the risk, and dilemma inherent in the KP. The more repressive measures are contemplated that are considered effective to combat trafficking, the greater the risk that they result in human rights violations.

#### **4. Compatibility with human rights protection**

The EU HoA Regional Action Plan identifies both migration and “[v]iolations of human rights, absence of the rule of law and authoritarian governance”<sup>34</sup> as challenges but is silent on how to address the inevitable tensions between the EU’s policy approaches on migration control and human rights protection. The KP also risks failing to comply with the EU policy that stresses consistency and coherence in its actions in relation to international crimes.<sup>35</sup> While the EU does not directly deal with individuals subject to an ICC arrest warrant, it engages with representatives of, and relies, on forces, such as the NISS and the RSF, alleged to have been responsible for crimes falling within the ICC’s jurisdiction.<sup>36</sup>

This same tensions, and concerns apply to the UK’s policy on Sudan. The FCO categorises Sudan as a human rights priority country and found that “there was no significant improvement in the human rights situation in Sudan during 2015.”<sup>37</sup> Although the UK was part of the troika statement of 27 May 2016, which condemned Sudan’s aerial bombardment of civilians in South Kordofan and the

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<sup>33</sup> Drucksache 18/8682, 23 June 2016, para.16.

<sup>34</sup> Council Conclusions on the EUHoARAP 2015-2020, COAFR310 ACP 153 CFSP/PESC 686 DEVGEN 205, 13363/15 (2015), 12, 13.

<sup>35</sup> Article 8 of Council Decision 2011/168/CFSP of 21 March 2011 on the ICC and repealing Common Position 2003/444/CFSP.

<sup>36</sup> (N. 24).

<sup>37</sup> FCO, *Human Rights and Democracy: The 2015 Foreign & Commonwealth Office Report*, 2016, 48.

de facto expulsion of the Head of OCHA,<sup>38</sup> it has not consistently raised concerns over the human rights situation in Sudan. Moreover, it is not evident that these concerns are adequately reflected in the UK's KP engagement, which has involved not only the FCO but also the Home Office and DFID.

### **III. Recommendations for an alternative approach**

In view of the multiple concerns outlined above, we recommend that the UK undertakes a comprehensive review of the KP, and its compatibility with UK policies, particularly on human rights. Any decision to continue to engage in the KP should be based on clear parameters aimed at ensuring coherence, transparency, and the protection of rights, both of refugees and other migrants, and include the following considerations and measures:

- **Foreground human rights:** Identifying human rights protection as a priority concern, and making tangible political, legal and institutional reforms a prerequisite for successful KP implementation.
- **Policy coherence:** Adopting a holistic policy on migration which is evidence based and includes opening legal migration channels.
- **Transparency:** Detailed reporting to parliament and concerned bodies on UK activities related to the KP and migration in Sudan.
- **Participation:** Building and maintaining fora with local communities, and civil society in Sudan and the diaspora to regularly discuss KP and related concerns.

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<sup>38</sup> FCO, 'Troika statement on current situation in Sudan', 27 May 2016.



- **Benchmarks:** Agreeing a set of criteria to guide KP implementation, with a particular focus on rights protection, following consultation with a cross-section of concerned actors.
- **Monitoring:** Establishing or assigning an independent body or monitors tasked with regularly monitoring measures taken under the KP, particularly on their compatibility with international refugee rights and human rights standards, and regularly reporting publicly on findings.
- **Audit:** Monitoring use of any funds in conformity with KP and recognised international standards.
- **Review:** Conducting annual review of KP in official reports, including by addressing concerns raised by cross-section of actors.