



Sudan’s compliance with its obligations under the International Covenant on Civil and Political Rights: Anti human trafficking initiatives, the rights of refugees and the human rights of migrants

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I. Introduction

This submission by the Centre for Human Rights Law, SOAS, and the International Refugee Rights Initiative builds on their recent research and publications on policy responses on mixed migration in and from the Horn of Africa and their impact on, and compatibility with, the rights of refugees and the human rights of migrants.¹

Sudan is at the centre of several policy initiatives and projects on mixed migration in the region. It is part of the steering committee of the Khartoum Process, “a platform for political cooperation amongst the countries along the migration route between the Horn of Africa and Europe.”² In the Rome Declaration of 28 November 2014, thirty-seven states and the EU and AU Commissioners in charge of migration and development, as well as the EU High Representative/Vice President of the European Commission, agreed “to undertake concrete actions to prevent and tackle the challenges of human trafficking and smuggling of migrants between the Horn of Africa and Europe.”³ Several projects are being implemented as part of the

¹ See in particular IRRI, SIHA and SOAS, Centre for Human Rights Law, *Tackling the Root Causes of Human Trafficking and Smuggling from Eritrea: The need for an empirically grounded EU policy on mixed migration in the Horn of Africa*, November 2017, 48, 49, available at <http://refugee-rights.org/wp-content/uploads/2017/11/IRRI-KP-final.pdf>; ‘The Khartoum Process policy of engagement and human rights protection in Sudan’, Written evidence submitted by the Centre for Human Rights Law to the UK All-Party Parliamentary Group on Sudan and South Sudan Inquiry: UK-Sudan Relations-Consequences of Engagement, August 2016, available at www.soas.ac.uk/human-rights-law/file114315.pdf.

² www.khartoumprocess.net (emphasis omitted).

³ Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative), Rome, 28 Nov. 2014, 3. Actions to be taken include, *inter alia*, “identification and prosecution of criminal networks by enhancing national law enforcement agencies, and the judicial system responses ... improving or, where appropriate, establishing criminal law frameworks ... promoting a victim-centred approach ... developing a regional framework for return, including voluntary, and reintegration ... [and] where appropriate, on a voluntary

Khartoum Process, including “Better Migration Management” and the “Regional Operational Centre in support of the Khartoum Process and AU-Horn of Africa Initiative (ROCK)”.⁴

The present submission highlights shortcomings in the legislation that Sudan has enacted in the broader context of the Khartoum Process; ongoing concerns relating to responses to human trafficking and smuggling; and the adverse consequences of migration control measures, including the refoulement of Eritrean nationals. It also identifies the increased risk of violations that Sudanese nationals are exposed to resulting from bilateral cooperation designed to facilitate their return.

II. Issues

1. Legislation

Sudan has adopted a number of laws in the field of refugee and migration law, including the Asylum Act of 2014, the Combating of Human Trafficking Act of 2014, and the new Passport and Immigrations Act of 2015. The legislation addressed a number of shortcomings and gaps in Sudanese law, such as the absence of anti human trafficking laws. However, the laws raise several concerns in terms of their compatibility with the Covenant.⁵ The Asylum Act restricts freedom of movement and does not provide effective remedies to challenge deportation orders and revocation of refugee status.⁶ The Combating of Human Trafficking Act, in addition to using a definition of trafficking that is at variance with article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol),⁷ stipulates that the death penalty may be imposed for nine aggravated acts of trafficking, several of which do not meet the criteria of a “serious crime”.⁸ The Combating of Human Trafficking Act does not provide for the rights of foreign trafficking victims to remain in the country, nor for an explicit prohibition of *refoulement*. The Passport and Immigrations Act criminalises illegal entry and grants wide powers of deportation, without judicial review.⁹

basis and upon individual request of a country in the region, assisting the participating countries in establishing and managing reception centres, providing access to asylum processes in line with international law, if needed, improving camp services and security, screening mixed migratory flows and counselling migrants.” Ibid., 3-4.

⁴ BMM project website, <https://www.giz.de/en/worldwide/40602.html> and Action Fiche for the implementation of the Horn of Africa Window: Regional Operational Centre in support of the Khartoum Process and AU-Horn of Africa Initiative (ROCK), available at https://ec.europa.eu/europeaid/sites/devco/files/regional-operational-centre_en.pdf.

⁵ See for further analysis, Lutz Oette and Mohamed Abdelsalam Babiker, ‘Migration Control á la Khartoum: EU external engagement and human rights protection in the Horn of Africa’, *Refugee Survey Quarterly*, (2017) 36(4), 64-89.

⁶ See articles 14(2)(a) (place of residence), 11 (Revocation of refugee status) and 12 (Establishment of Council of Appeal and Procedures) of the Asylum Act 2014.

⁷ Article 7. The Act came into force on 3 March 2014. A translated version of the Act is available at: www.ilo.org/dyn/natlex/docs/MONOGRAPH/99189/118286/F148132047/SDN99189%20Eng.pdf .

⁸ Article 9(2) *ibid.*

⁹ The 2015 Act replaces the 1994 Passports and Immigration Act, see further Mohamed Abdelsalam Babiker, *Irregular Migration in Sudan: A Legal Perspective, Carim Analytic and Synthetic Notes-Circular Migration Series, Socio-political Module*, CARIM-AS 2011/64, Robert Schuman Centre for Advanced Studies, San Domenico de Fiesole (FI), European University Institute, 2011.

Questions:

What measures, if any, has Sudan taken to ensure that recently adopted legislation – Asylum Act of 2014, Combating of Human Trafficking Act of 2014, and Passports and Immigrations Act of 2015 – complies with its obligations under the Covenant, particularly articles 2, 7, 8, 9, 12, and 13?

2. Combating trafficking

Sudan has adopted anti-trafficking legislation and set up the National Committee for Combating Human Trafficking.¹⁰ The implementation of the Combating Human Trafficking Act of 2014 (see for its legislative shortcomings II.1., above) has been inadequate in terms of prevention, lack of adequate mechanisms for the identification and protection of trafficking victims, which may result in detention and deportation in violation of the prohibition of *refoulement* (see below at II. 3), and limited prosecutions of suspected traffickers.¹¹ This applies particularly to the prosecution of officials alleged to be involved in trafficking. Notwithstanding reports alleging involvement of officials in trafficking,¹² coming against the backdrop of wider allegations of corruption and participation in illicit activities,¹³ there appears to have been no serious efforts to investigate the nature and extent of such involvement, and to hold individuals responsible.

Questions:

How many trafficking victims have been identified, and what protection measures have been provided?

How many persons have been prosecuted for human trafficking or related crimes, and what has been the outcome of relevant cases?

How many officials, if any, have been prosecuted for human trafficking or related crimes, and what has been the outcome of relevant cases (including in relation to the lifting of immunity that officials enjoy under various Sudanese laws)?

3. Treatment of foreign nationals

Several reports have highlighted the discrimination, arbitrary detention and ill-treatment, including rape and other forms of sexual violence that certain foreign nationals face in Sudan.¹⁴ Their status, poor living

¹⁰ The Committee has been set up pursuant to article 5 of the Combating Human Trafficking Act.

¹¹ United States Department of State, Trafficking in Persons Report, June 2017, 371-373. The US State Department found that “The Government of Sudan does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so.” Ibid., at 371.

¹² See e.g. Ayin, ‘Sudan’s state-supported smugglers’, *Mail & Guardian*, 12 January 2018, available at <https://mg.co.za/article/2018-01-12-00-sudans-state-supported-smugglers>, Human Rights Watch, *I Want to Lie Down and Die, Trafficking and Torture of Eritreans in Sudan and Egypt*, November 2014, 28-30, available at www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt.

¹³ Suliman Baldo, *Border Control from Hell: How the EU’s migration partnership legitimizes Sudan’s “militia state”*, Enough Project, April 2017, available at https://enoughproject.org/files/BorderControl_April2017_Enough_Finals.pdf.

¹⁴ IRR, SIHA and SOAS, Centre for Human Rights Law, Tackling the Root Causes, above note 1, 48, 49; Equal Rights Trust and SORD, *In Search of Confluence: Addressing Discrimination and Inequality in Sudan*, October 2014, 83 available at www.equalrightstrust.org/ertdocumentbank/Sudan%20-%20In%20Search%20of%20Confluence%20-%20Full%20Report.pdf; REDRESS and SIHA, *Criminalisation of*

conditions, and exposure to trafficking or arbitrary law enforcement, or both, is one of the main reasons why Eritrean and Ethiopian nationals in particular have stated that they feel unsafe in Sudan (and seek to move to other places of safety).¹⁵

This precarious situation risks being compounded by the Khartoum Process, which provides a political incentive for Sudan to demonstrate its ability to effectively control migration. Sudan has deployed the paramilitary Rapid Support Forces (RSF) for this purpose, which reportedly arrested approximately one hundred “illegal immigrants” close to Sudan’s northern borders (Libya, Egypt) in 2016.¹⁶ The involvement of the RSF, which the Prosecutor of the International Criminal Court has implicated in international crimes in Darfur, has prompted serious concerns over the protection of rights of refugees and migrants.¹⁷ Further, Sudanese authorities have on several occasions detained, in conditions that raise concerns about their compatibility with articles 7 and 10 of the Covenant, and subsequently deported, Eritrean nationals in violation of the prohibition of *refoulement*.¹⁸ Foreign nationals have been charged with unlawfully entering the country under the Passports and Immigrations Act, with the Sudanese authorities using wide powers of arrest and deportation in relation to illegal entry, instead of treating these persons, particularly Eritreans, as asylum seekers and/or trafficking victims as required by the 1951 Convention Relating to the Status of Refugees.¹⁹ In recent incidents, in February 2017, “about 65 asylum seekers - the majority from Ethiopia and some from Eritrea - were lashed 40 times on their backs and the back of their legs with leather whips... 40 were deported immediately, after being arrested in what witnesses say was a violent police attack on a peaceful protest.”²⁰ On 29 August 2017, Sudanese authorities reportedly deported 30 minors aged 15-17 back to Eritrea.²¹ Shortly thereafter, on 17 September 2017, 36 Eritreans who had been imprisoned for illegal entry were deported to Eritrea, without having had effective access to a lawyer.²² The UNHCR Deputy Representative Elizabeth Tan, reportedly stated that: “UNHCR is concerned that these asylum seekers do not appear to have had their claims

Women in Sudan: A need for Fundamental Reform, December 2017, 5-6, 23-24, 30-31, available at <https://redress.org/wp-content/uploads/2017/12/report-Final.pdf>.

¹⁵ IRRI, SIHA and SOAS, *ibid.*, 35, 43, and IOM, *Migrants in Sudan: Pilot Study on Migrant’s Motivations, Intentions and Decision-Making in Khartoum*, February 2017, 61-79, available at <https://sudan.iom.int/sites/default/files/reports/IOM-MigrantsInSudan-2017.pdf>.

¹⁶ ‘Libya: Sudanese Force Arrests ‘300 Illegal Immigrants’ Near Libya’, *Radio Dabanga*, 5 July 2016, available at www.dabangasudan.org/en/all-news/article/sudanese-force-arrests-300-illegal-immigrants-near-libya.

¹⁷ See Baldo, above note 13, and European Parliament resolution of 6 Oct. 2016 on Sudan (2016/2911 (RSP)). The EU distanced itself from allegations that it was funding the RSF. ‘EU: “No support to Sudan’s RSF”’, *Radio Dabanga*, 6 September 2016, available at www.dabangasudan.org/en/all-news/article/eu-no-support-to-sudan-s-rsf.

¹⁸ Kristy Siegfried, ‘Sudan and Eritrea crackdown on migrants amid reports of EU incentives’, *IRIN*, 25 May 2016, available at www.irinnews.org/news/2016/05/25/sudan-and-eritrea-crackdown-migrants-amid-reports-eu-incentives; UNHCR, ‘UNHCR concerned over forced returns of refugee and asylum-seekers from Sudan’, 4 July 2014.

¹⁹ See US Trafficking in Persons report, above note 11, 372.

²⁰ Arthur Neslen, ‘EU urged to end cooperation with Sudan after refugees whipped and deported’, *Guardian*, 27 February 2017, available at www.theguardian.com/global-development/2017/feb/27/eu-urged-to-end-cooperation-with-sudan-after-refugees-whipped-and-deported.

²¹ ‘Sudan courts deported more than 100 Eritrean refugees in August’, *Radio Dabanga*, 4 September 2017, available at www.dabangasudan.org/en/all-news/article/sudan-courts-deported-more-than-100-eritrean-refugees-in-august.

²² ‘Sudan deports another 36 Eritrean migrants’, *Radio Dabanga*, 20 September 2017, available at www.dabangasudan.org/en/all-news/article/sudan-deports-another-36-Eritrean-migrants.

adequately heard, and they were deported on charges of illegal entry into Sudan which is not supported under international refugee law.”²³

The Khartoum Process project on the establishment of the Regional Operational Centre in support of the Khartoum Process and AU-Horn of Africa Initiative (ROCK) in the Khartoum police training centre, aimed at strengthening sharing of information in the region on irregular migration and smuggling, is problematic in terms of adequate data protection.²⁴ The envisaged cooperation may result in an enhanced focus on repressive measures and the violation of the rights of refugees and human rights of migrants.

Questions:

What is the extent of the deployment of the Rapid Support Forces and the National Intelligence and Security Services (NISS) in migration control measures (numbers of personnel, assigned role)? What mechanisms are in place to ensure that these forces operate in accordance with Sudan’s obligations under the Covenant?

How many foreign nationals (disaggregate according to nationality) have been detained for illegal entry into Sudan? How many foreign nationals (disaggregate according to nationality) have been deported to which countries? How many foreign nationals (disaggregate according to nationality) have lodged an appeal against deportations, and what has been the outcome of such cases? How long have foreign nationals been detained for? What are the facilities in which they have been detained, and conditions of detention? How many complaints, if any, have been lodged concerning the length, conditions of detention, various forms of ill-treatment, and what has been the outcome of such cases?

What measures is Sudan taking to ensure that data protection in the operation of the Regional Operational Centre (ROCK) is in accordance with the Covenant, and that data is not used to carry out measures in violation of the Covenant?

4. Torture and other ill-treatment of returned Sudanese nationals

The Khartoum Process has resulted in enhanced bilateral cooperation, which has facilitated the deportation of Sudanese nationals from countries such as Italy, Belgium and the Netherlands. Agreements, deportation practices, which have included inviting Sudanese officials to identify Sudanese nationals in countries such as Italy and Belgium, and failures of post deportation monitoring have increased the risk that Sudanese nationals are subjected to torture and ill-treatment upon return.²⁵ While post-return monitoring has proved difficult for civil society organisations, available evidence indicates that several Sudanese nationals have been subjected to torture and other ill-treatment upon return, particularly at the hands of the NISS.²⁶

²³ Ibid.

²⁴ See above note 4.

²⁵ See Human Rights and Migration Law Clinic of Turin, *Memorandum of Understanding between Italy and Sudan: a legal analysis*, 2017, available at www.asgi.it/wp-content/uploads/2017/10/Report-Memorandum-of-Understanding-Sudan-Italy-SL-Clinic-UniTO.pdf.

²⁶ See Waging Peace, ‘Recent Cases of post-deportation risk’, available at www.wagingpeace.info/wp-content/uploads/pdfs/Post-deportation_update_January_2017.pdf, which documents violations in 5 cases of deportation from Jordan, Israel, and Italy.

Questions:

What is the procedure followed by Sudanese authorities in dealing with Sudanese nationals who are returned by third countries?

What safeguards are in place to ensure that Sudanese nationals in this position are not subjected to arbitrary arrest and detention, torture or other ill-treatment?

Have there been any investigations following allegations of torture or ill-treatment in relation to returned Sudanese nationals concerned, and, if so, what has been the outcome?