



HUMAN RIGHTS IMPACTS AND RISKS ASSOCIATED WITH THE KHARTOUM PROCESS

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BACKGROUND

According to the UN High Commission for Refugees (UNHCR), as of June 2016, Sudan hosted 365,460 refugees, asylum-seekers, and other persons of concern. The majority come from South Sudan (64%) and Eritrea (29%).¹ Refugee policy is regulated by the 2014 Asylum Act and implemented by the Commission for Refugees, in collaboration with UNHCR. Sudan has ratified both the 1951 UN Refugee Convention Relating to the Status of Refugees and its 1967 Protocol (1951 Refugee Convention) and the 1969 African Union Convention Governing Specific Aspects of Refugee Problems in Africa (the 1969 AU Convention), and accepts international definitions of refugees, recognizing the overwhelming majority of asylum seekers reaching Sudan.

Sudanese law gives refugees basic rights. However, the 2014 Asylum Act maintains long-standing restrictions on freedom of movement.² These restrictions are applied unevenly, depending on country of origin. For example, South Sudanese refugees had freedom of movement and access to services, but these rights were rescinded in March 2016;³ Eritrean refugees are required to stay in camps; most Chadian refugees live in villages on the Chad border. Refugees who bypass freedom of movement restrictions may become vulnerable to round-ups by security services, detention, deportation and *refoulement* (forced return to a country where they are at risk of being persecuted or suffering serious human rights violations).⁴ An increase in reported cases of *refoulement* in recent years may have pushed more refugees in Sudan to move to other countries.⁵ Sudan is thus a transit country as well as a destination country for refugees.

Sudan is also a country of origin for refugees. UNHCR reported in June 2016 that there were 3,218,234 internally displaced persons (IDPs) in Sudan – a significant increase on 2015.⁶ Most IDPs are displaced as a result of the conflicts in South Kordofan, Blue Nile and Darfur, where government counter-insurgency tactics are often based around displacement of civilians whom the government associates with rebellion. Some displaced people become refugees and internal displacement is generally considered to be a risk factor for forced migration. A major route runs from Khartoum to the north-western border with Libya: other refugees transit through Egypt to Libya.⁷

Sudan's importance as a country of asylum, transit and origin for refugees has given it new relevance in the context of what the European Union (EU) has described as a migration crisis. In 2011, the EU set out a Strategic Framework for the Horn of Africa, which calls for accountable political structures, human rights, conflict resolution, regional security, regulated migration, economic growth and regional cooperation.⁸ These objectives speak to some of the problems which push so many people in the region to flee their homes or seek better lives. In 2014, the EU set up the EU-Horn of Africa Migration Route Initiative (known as the Khartoum Process). It brings together EU and African states and regional bodies to tackle irregular migration.⁹ The UK has taken a lead role in

1 See: http://reliefweb.int/sites/reliefweb.int/files/resources/Sudan_Humanitarian_Snapshot_A3_30_Jun_2016.pdf (accessed 24 October 2016)

2 Unofficial English translation of 2014 Asylum Act available at www.pclrs.com/english/bills-and-laws (accessed 24 October 2016)

3 'Sudan stops open-door policy to refugees,' *Sudan Tribune*, 18 March 2016, available at www.sudantribune.com/spip.php?article58339

4 Rachel Humphris, *Refugees and the Rashaida: human smuggling and trafficking from Eritrea to Sudan and Egypt*, UNHCR Research Paper No. 254, 2013, page 8; *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*, UNCHR 2010, page 5.

5 See, for example: 'UNHCR concerned over forced returns of refugee and asylum-seekers from Sudan,' UNHCR press statement, 4 July 2014, available at www.unhcr.org/news/briefing/2014/7/53b69a4f9/unhcr-concerned-forced-returns-refugee-asylum-seekers-sudan.html; 'Concluding observations on the fourth periodic report of the Sudan,' Human Rights Committee, 19 August 2014, CCPR/C/SDN/CO/4, page 7; 'Sudan: Hundreds Deported to Likely Abuse', Human Rights Watch, 30 May 2016, available at www.hrw.org/news/2016/05/30/sudan-hundreds-deported-likely-abuse; Amnesty International, 'Sudan must end forced returns of asylum seekers to Eritrea,' Public Statement, AFR 54/039/2012, 15 August 2012, available at www.amnesty.org/en/documents/AFR54/039/2012/en/ (all accessed 24 October 2016)

6 <http://reporting.unhcr.org/node/2535?y=2016#year> (accessed 24 October 2016)

7 *Mixed Migration: Libya at the Crossroads. Mapping of Migration Routes from Africa to Europe and Drivers of Migration in Post-revolution Libya*, Altai Consulting, UNHCR, 2013, pages 32–45.

8 'Council conclusions on the Horn of Africa', Council of the European Union, 3124th Foreign Affairs Council meeting, Brussels, 14 November 2011.

9 Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative), Rome, 28 November 2014

the Khartoum Process.¹⁰ For EU and Sudanese diplomats, the Khartoum Process appears to have shifted attention and commitment away from the Strategic Framework and the focus is now on a narrow migration and security agenda.

In 2016, the EU announced that it was giving Sudan €155 million for measures to address root causes of irregular migration and forced displacement.¹¹

HUMAN RIGHTS RISKS

The EU's partnership with Sudan on the issue of migration raises a number of serious human rights concerns.

RISK OF VIOLATIONS BY THE SECURITY FORCES

The process of stopping people believed to be irregular migrants from moving into Libya necessitates the involvement of security or border control forces. Sudan has tasked the Rapid Support Forces (RSF), which fall under the command of the National Intelligence and Security Services (NISS), with some elements of border control. The precise orders under which the RSF is operating are not known. However, accounts of RSF involvement in border control have been reported in the media and corroborated by sources in Sudan. For example, in an interview on 23 August 2016 with the news website Global Media Services, an RSF commander said: 'What we are doing is part of the plan set for 2016. We were ordered/requested to close the borders with South Sudan and [with] the northern and north-western borders'.¹² The official Facebook page of the RSF frequently reports on operations to interdict human traffickers on Sudan's northern border. A Facebook post, dated 29 September 2016, quoted the same RSF Commander as saying that his "forces had, in the past days, combed and cleansed the north-western borders of the remnants of rebel movements and of human traffickers and smugglers. The operation included Sudan's borders with Egypt, Libya and Chad and the area of Al-'Atrun."¹³

The RSF was established in 2013 to fight in support of Sudan's national armed forces in their counter-insurgency operations in Kordofan. Most of its recruits are from Darfur, and many appear to have been recruited on the basis of ethnicity.¹⁴ RSF recruitment is led by Brigadier-General Muhammad Hamdan Dalgo, known as 'Hemeti.' Hemeti was formerly the commander of the Border Guards, a unit of the Sudan Armed Forces Military Intelligence which came to prominence during counter-insurgency operations in Darfur – a campaign characterised by mass violations, including crimes under international law. The Border Guards served as a structure for incorporating irregular forces allied to the government, which gained notoriety for their abuse of the civilian population.¹⁵ These irregular forces were often drawn from landless camel-pastoralist groups in Darfur who speak Arabic as a first or only language, and were sometimes called 'Janjaweed.' Together with other government security forces they carried out serious violations of human rights and international humanitarian law, including widespread and systematic unlawful killings, forced displacements and sexual violence in Darfur from 2003 onwards. The UN Panel of Experts continues to report serious violations by the Border Guards in Darfur.¹⁶ In 2009, the International Criminal Court issued an arrest warrant for President Omar Hassan al-Bashir for genocide, crimes against humanity and war crimes in connection with crimes committed as part of this campaign.

In addition to recruitment, Brigadier General Muhammad Hamdan Dalgo exercises day-to-day operational command of the RSF.¹⁷ That the RSF is led by an individual who was part of the command structure of an army unit implicated in serious and systemic violations of human rights and international humanitarian law is, in itself, a matter of serious concern. There has been no accountability for the violations in Darfur. As Brigadier-General Muhammad Hamdan Dalgo appears to have repeated similar recruitment patterns for the RSF, it is possible that the RSF includes former Janjaweed fighters.

The RSF has been implicated in serious human rights violations, in Darfur, Kordofan and Khartoum, since its inception. The RSF has attacked villages, burned and looted homes, and tortured, raped and killed civilians,

10 See: www.iom.int/eu-horn-africa-migration-route-initiative-khartoum-process (accessed 24 October 2016)

11 See: http://europa.eu/rapid/press-release_IP-16-1206_en.htm (accessed 24 October 2016)

12 See: <http://gmsudan.sd/ar/index.php/interview/6066-%D9%81%D9%8A-%D8%AD%D9%88%D8%A7%D8%B1-%D9%85%D8%B9-%D9%82%D8%A7%D8%A6%D8%AF-%D9%82%D9%88%D8%A7%D8%AA-%D8%A7%D9%84%D8%AF%D8%B9%D9%85-%D8%A7%D9%84%D8%B3%D8%B1%D9%8A%D8%B9-%D8%AD%D9%85%D9%8A%D8%AF%D8%AA%D9%8A.html> (accessed 24 October 2016)

13 See: www.facebook.com/Niss.Sd/?fref=ts (accessed 24 October 2016)

14 *Report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005)*, UN Security Council document S/2015/31, 19 January 2015, pages 13-14.

15 *Report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005)*, UN Security Council document S/2015/31, 19 January 2015, page 14.

16 In their 2016 report, the Panel of Experts identified during 2015, 29 out of 42 incidents of violations of resolutions and international humanitarian law were committed by the Government of Sudan and its armed forces and allied militia in Darfur. The SRF and Border Guards committed six of these violations. See: Final report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005), 22 September 2016, Annex 40, pages 182-189, available at www.un.org/ga/search/view_doc.asp?symbol=S/2016/805 (accessed 24 October 2016)

17 *Report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005)*, UN Security Council document S/2015/31, 19 January 2015, pages 13-14.

causing a massive increase in displacement.¹⁸ In 2013 they were deployed against rebels in Kordofan. They reportedly faced losses, and moved to El Obeid, the capital of North Kordofan, where they conducted a campaign of looting and rape until they received payment.¹⁹ In 2014, they suppressed protests in Khartoum and in both 2014 and 2015, unpaid RSF personnel looted shops and cars from checkpoints they set up near the capital Khartoum.²⁰ In 2014, 2015 and 2016 they led counter-insurgency campaigns in the Jebel Marra area at the centre of Darfur, where they attacked villages, raped scores of women and girls, often in front of community members who were forced to watch. Those who resisted were killed.²¹

The precise legal powers and mandate of the RSF are not known. The UN Panel of Experts on Darfur reported in 2015 that “Members of the [RSF] are reportedly issued with official Government identity cards. Under the terms of article 52 of the National Security Services Act 2010, members and associates of the National Intelligence and Security Service are immune from prosecution for all acts committed in the course of their work.”²² The NISS has powers of arrest under the 2010 National Security Act.²³ In January, the Sudanese Parliament passed amendments to the Interim Constitution, including one extending the NISS’ mandate. The amendment to Article 151 transforms the NISS from an intelligence agency focused on information gathering, analysis and advice, to a fully-fledged security agency with a broad mandate to exercise a mix of functions usually carried out by the armed forces or law enforcement agencies.²⁴

Since becoming involved in border control, the RSF has intercepted hundreds of people. In early July 2016, Brigadier General Muhammad Hamdan Dalgo told al-Shurooq TV that his forces had detained 300 people who they considered irregular migrants or victims of trafficking near the Libyan border, and later that month announced that 600 had been ‘arrested’.²⁵ In a news clip from Sudan TV posted on the RSF Facebook page on 7 July 2016, Brigadier General Muhammad Hamdan Dalgo said that his forces intercepted 49 Somalis, 74 Ethiopians, 196 Eritreans, 48 Sudanese and one Syrian.²⁶ On 31 August 2016, an RSF spokesperson claimed they had intercepted 816 ‘victims of trafficking’ in the current year.²⁷ The fate of the individuals stopped by the RSF is largely unknown. Although Sudanese security forces have reported publically on the numbers of ‘victims’ intercepted, they have not reported on their treatment. A confidential source stated that some people have been taken to police stations in North Darfur. Prosecutors have not filed charges and, as far as Amnesty International could discover, they have not been released.

The RSF frames its intervention in terms of stopping human trafficking. It is not clear what happens to alleged traffickers, although a Sudanese media outlet reported that, in late October 2016, a court in Kassala State in East Sudan sentenced eight people convicted of human trafficking to death.²⁸ There is no evidence that traffickers have been prosecuted or of any programme to support and protect victims of trafficking. While some of those intercepted by the RSF may be victims of human trafficking, others are likely to be refugees seeking to enter Libya of their own volition or aided by people smugglers. Victims of trafficking may also be refugees and need to be treated as such – being both victims and in need of international protection because of other factors related to the

18 ‘Men With No Mercy’ Rapid Support Forces Attacks against Civilians in Darfur, Sudan, Human Rights Watch, 2015; *Twenty-third Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1593 (2005)*, Office of the Prosecutor, International Criminal Court, 9 June 2016.

19 ‘Janjaweed ‘causing chaos’ in North Kordofan capital,’ *Radio Dabanga*, 7 February 2014, available at www.radiodabanga.org/node/66218 (accessed 24 October 2016)

20 See: ‘Sudan’s RSF militia blocks highway in Khartoum for several hours,’ *Sudan Tribune*, 6 September 2015, available at www.sudantribune.com/spip.php?article56290 (accessed 24 October 2016); ‘Sudan to ‘deploy’ controversial military unit around Khartoum,’ *Agence France Presse*, 19 May 2014.

21 ‘Men With No Mercy’: *Rapid Support Forces Attacks against Civilians in Darfur, Sudan*, Human Rights Watch, 2015. Also: Amnesty International, *Scorched Earth, Poisoned Air, Sudanese government forces ravage Jebel Marra, Darfur*, AFR 54/4877/2016, September 2016, available at www.amnesty.org/en/documents/afr54/4877/2016/en/ (accessed 24 October 2016)

22 *Report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005)*, UN Security Council document S/2015/31, 19 January 2015, page 15.

23 ‘Agents of Fear: The National Security Service in Sudan,’ *Amnesty International*, AFR 54/010/2010, 2010, page 10.

24 See: ‘Sudanese National Intelligence Service empowered to violate human rights’, *Amnesty International*, 19 March 2015, www.amnesty.org/en/latest/campaigns/2015/03/sudanese-national-intelligence-service-empowered-to-violate-human-rights/ (accessed 24 October 2016)

25 ‘Sudan’s RSF arrests 300 illegal immigrants near Libyan border,’ *Sudan Tribune*, 5 July 2016, www.sudantribune.com/spip.php?article59515; ‘Sudan’s RSF militia arrests 600 illegal migrants near Libyan and Egyptian border,’ *Sudan Tribune*, 31 July 2016, available at www.sudantribune.com/spip.php?article59779 (both accessed 24 October 2016)

26 See: www.facebook.com/Niss.Sd/videos/721605884647902/ (accessed 24 October 2016)

27 وزارة الدفاع تستعرض جهود القوات النظامية في مكافحة تهريب البشر في مؤتمر صحفي أمس <http://mod.gov.sd/index.php/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%A7%D9%84%D9%82%D9%88%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B3%D9%84%D8%AD%D8%A9%D8%B2%D9%8A%D8%A7%D8%B1%D8%A7%D8%AA-%D9%88%D8%AA%D9%81%D9%82%D8%AF%D8%A7%D8%AA/25364-%D9%88%D8%B2%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%AF%D9%81%D8%A7%D8%B9-%D8%AA%D8%B3%D8%AA%D8%B9%D8%B1%D8%B6-%D8%AC%D9%87%D9%88%D8%AF-%D8%A7%D9%84%D9%82%D9%88%D8%A7%D8%AA-%D8%A7%D9%84%D9%86%D8%B8%D8%A7%D9%85%D9%8A%D8%A9-%D9%81%D9%8A-%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9-%D8%AA%D9%87%D8%B1%D9%8A%D8%A8-%D8%A7%D9%84%D8%A8%D8%B4%D8%B1-%D9%81%D9%8A-%D9%85%D8%A4%D8%AA%D9%85%D8%B1-%D8%B5%D8%AD%D9%81%D9%8A-%D8%A3%D9%85%D8%B3.html> (accessed 24 October 2016)

28 See: <http://tinyurl.com/j2xcerh> (accessed 24 October 2016)

situation in their country of origin.

In summary, the entity which Sudan has tasked with intercepting people, many of whom are likely to be refugees, has a history of committing serious human rights violations with impunity. The scope of their powers to stop and detain people is unclear, and there is no clarity on what happens to people who come into contact with them.

FAILURE TO PROTECT REFUGEES AND REFOULMENT

The nationalities of the individuals whom the RSF has reported stopping include countries where there is a well-established basis for people fleeing as refugees. However, as noted above, it is not clear if people intercepted by the RSF (or any security or border officials) are charged with criminal offences, held without charges, or rehabilitated as 'victims of trafficking.' Without any clarity on what happens to people who are stopped by the RSF, the risk of *refoulement* cannot be discounted. In 2014, a court in Dongola, Northern Province, reportedly fined 600 people, mainly from Eritrea and Ethiopia, and served them with deportation orders.²⁹

THE ROLE OF THE EU

The EU is providing financial and technical support to Sudan within the context of the Khartoum Process framework, the objective of which is migration control. The EU's framework makes several mentions of refugee protection but does not include any explicit guarantees on the protection of the rights of refugees, asylum-seekers or victims of human trafficking, nor does it include any obvious means of monitoring what happens to people stopped by security forces as suspected irregular migrants or victims of trafficking. This raises several issues and questions for both the EU and the UK.

Firstly, although the EU has stated that the aid which it gives to Sudan under the Khartoum Process does not go to the RSF, there is no transparent monitoring system to track the resources given to Sudan. The EU project framework for the Khartoum Process states that it will provide Sudan with "training for immigration and other border management officials and border police officers".³⁰ The RSF has been given a role in border management and is now acting in this capacity. Either the RSF is being given training, which means EU taxpayers' money is being used to support individuals and structures implicated in grave human rights violations, or the RSF is excluded from the training programme, in which case the EU has no means of ensuring that border control operations are operating to any reasonable standards. The EU's project document outlines no safeguards bar training and sensitising of border control officials, but this cannot be effective if those providing a key element of border control are not trained. It seems unlikely that the RSF membership would have prior training or experience dealing with immigration issues, or with vulnerable migrants and refugees. As noted above, little is known about the fate of refugees or irregular migrants stopped by the RSF.

In addition, the EU project framework for the Khartoum Process outlines a range of technical support to be given to border officials, including "computers, cameras, scanners, servers, cars, aircraft."³¹ Again, if these resources are to go to officials involved in border control, how will the EU ensure they do not go – indirectly – to the RSF or other security forces who have been implicated in human rights violations?

The EU cannot disassociate itself from the human rights risks linked to migration control in Sudan by ensuring it is not directly funding the RSF, even if it were possible to guarantee this. The objective of Sudan's migration control operations in the north of the country on the border with Libya are based on the Khartoum Process which the EU catalysed, and is funding. The EU and Sudan share responsibility for the human rights impacts of this project and it is impossible for the EU to construct a firewall around its responsibility by only funding parts of the system which it considers acceptable. If the EU considers that the RSF constitute a serious human rights risk – and it is hard to see how any other conclusion is possible – then the EU cannot fund a system in which the RSF is a central element. To date the EU has not provided any coherent explanation for how its alliance with a force deeply implicated in Sudan's human rights crisis is consistent with the obligations under the EU Treaties.

29 '600 Illegal Immigrants Brought for Trial in Dongola,' *Sudan Vision*, 5 May 2014, available at <http://news.sudanvisiondaily.com/details.html?rsnpid=235377> (accessed 24 October 2016)

30 See: The European Union Emergency Trust Fund For Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa, available at https://ec.europa.eu/europeaid/sites/devco/files/t05-eutf-hoa-reg-09-better-migration-management_en.pdf (accessed 24 October 2016)

31 See: The European Union Emergency Trust Fund For Stability and Addressing the Root Causes of Irregular Migration and Displaced Persons in Africa, available at https://ec.europa.eu/europeaid/sites/devco/files/t05-eutf-hoa-reg-09-better-migration-management_en.pdf (accessed 24 October 2016)