

Recommendations for returns and readmission discussions at 5th round of Strategic Dialogue

Recommendations

Offered to protect the safety and wellbeing of those returned, or scheduled to be returned, from the UK to Sudan.

Establish best practice for *re-documentation and identification interviews*, including:

- Not inviting or facilitating Sudanese identification missions to the UK.
- Appropriate background checks for those Sudanese officials conducting re-documentation or identification interviews. No individual associated with the National Intelligence and Security Services should be allowed to take part.
- Asylum cases that are not appeal rights exhausted should not be invited to interview for re-documentation or identification purposes.
- Where individuals are invited to interview, this invitation should make clear the voluntary (or not) nature of the interview, the reasons for interview, and the realistic consequences of non-compliance.
- Home Office or UKVI staff should be present at all times during interviews, as well as interpreters familiar with Sudanese Arabic, to monitor the nature of questioning and ensure it does not exceed that which is required to obtain travel documentation or verify nationality.
- Individuals must confirm they are satisfied with the interpreter provided, and the interview must terminate if they say they are not.
- Where requested, an individual can be accompanied by a third party, or McKenzie friend.
- Complete confidentiality concerning personal information known about the individual by the Home Office or UKVI must be maintained, including disclosure of the fact that a claim for asylum has been made.
- Procedures for re-documentation or identification interviews are made public so as to ensure transparency and accountability.

Institute a proper system for *post-deportation monitoring*, including:

- The appointment of a contact in the Embassy who is reachable where there are individuals slated for return that are of particular concern to external groups.
- An agreement allowing for this contact point, or another staff member in the British Embassy, to make checks in Khartoum International Airport when returnees are expected, as well as on an ongoing basis.
- Public commitments to monitor the fate of those returned on an ongoing basis.
- The establishment of a secure hotline, or WhatsApp service, that returnees can contact should they encounter difficulties.
- The deepening of cooperation with NGOs, human rights defenders, or civil society groups, on whose shoulders it usually falls to monitor the fate of those returned.
- The issuance of guidance and training to NGOs, HRDs, and CSOs on how to produce information on the fate of returnees in a manner which the Embassy deems credible.
- Development of a grievance procedure where abuses are uncovered, with a formalised understanding of who is held ultimately responsible.
- A stop to the use of unhelpful language in correspondence between the Embassy and the Home Office regarding the fate of those returned. Where incidents are not known about, Embassy staff must make clear they currently have no means of obtaining reliable information, and that there are likely cases of post-return abuse of which they are not made aware.
- Consultation with organisations developing best practice in this area, notably the Rights in Exile programme. Lessons can be drawn from experiences in other countries.

Fate of returnees

The risk faced by returnees into Sudan has become particularly evident recently because of reported cases of ill-treatment following repatriation from various European Union Member States, briefly summarised by country below. These add to the weight of evidence that we have gathered on treatment of returnees from the UK, with three reports dedicated to the topic – ‘The Danger of Returning Home’ (2012),¹ ‘The Long Arm of the Sudanese Regime’ (2014),² and ‘Recent cases of post-deportation risk’ (2017)³. These show that individuals are monitored while abroad, and that the evidence gathered by intelligence and security officials operating out the UK is used against them in detention in Sudan, even where these individuals had an even nominal political or social profile prior to leaving Sudan, and where their activities outside of the country were perceived as posing a threat to the Sudanese government. These reports have received hundreds of citations across the various country policy and information notes produced by the Home Office.⁴

The UK’s own Country Guidance on Sudan (IM and AI⁵) refers to “the extremely common phenomenon of arrest and detention” in Sudan, but uses this to suggest that “those who are arrested, detained for a short period, questioned, probably intimidated, possibly rough handled” are not necessarily at risk of suffering “serious harm”. There has to date been no response to our repeated requests to clarify what constitutes ‘rough handling’. This is not a term with a solid legal foundation or definition.

Belgium

In December 2017 it was reported that several individuals deported to Sudan from Belgium alleged they had been tortured.⁶ The decision to deport them was made by the Federal Secretary of State responsible for Asylum and Migration, Theo Francken. This followed Francken inviting Sudanese officials on an identification mission to assess Sudanese migrants, some of whom had been arrested in a raid on a makeshift camp in Brussels’ Maximillian Park.⁷ The delegation was widely believed to have been from Sudan’s NISS, and they were allowed to question Sudanese without Belgian officials present. The episode eventually threatened the survival of the coalition government in Belgium, as tensions mounted between Francken, a Flemish nationalist, and Prime Minister Charles Michel from the other Francophone liberal party, over a charter flight scheduled after the allegations came to light.⁸

In total, the testimonies refer to nine Sudanese who were sent home. We are in touch with the organisation that compiled this evidence, the Tahrir Institute for Middle East Policy. Hence we have seen the original testimonies, most of which were obtained over the messaging service WhatsApp. All describe a period of detention on arrival at the airport

¹ Waging Peace, ‘The Danger of Returning Home’, 2012, accessed 19.03.18 at <http://wagingpeace.info/wp-content/uploads/pdfs/pdf/Exclusives/2012_09_THE_DANGER_OF_RETURNING_HOME.pdf>

² Waging Peace, ‘The Long Arm of the Sudanese Regime’, 2014, accessed 19.03.18 at <http://wagingpeace.info/wp-content/uploads/pdfs/The_Long_Arm_of_the_Sudanese_Regime_-_COMPRESSED.pdf>

³ Waging Peace, ‘Recent cases of post-deportation risk’, 2017, accessed 19.03.18 at <http://wagingpeace.info/wp-content/uploads/pdfs/Post-deportation_update_January_2017.pdf>

⁴ Gov.uk, ‘Sudan: country policy and information notes’, accessed 18.04.18 at <<https://www.gov.uk/government/publications/sudan-country-policy-and-information-notes>>

⁵ <http://www.bailii.org/uk/cases/UKUT/IAC/2016/188.html>

⁶ FlandersNews.Be, ‘Deported Sudanese migrants say they were tortured’, December 2017, accessed 15.03.18 at <<http://derefactie.be/cm/vrtnieuws.english/News/1.3117089>>

⁷ The Daily Telegraph, ‘Belgium criticised for inviting Sudanese ‘secret agents’ to Brussels to identify migrants’, September 2017, accessed 15.03.18 at <<https://www.telegraph.co.uk/news/2017/09/20/belgium-invites-sudanese-secret-agents-brussels-identify-migrants/>>

⁸ New York Times, ‘Belgium in Uproar Over Torture of Sudanese It Deported’, January 2018, accessed 15.03.18 at <<https://www.nytimes.com/2018/01/10/world/europe/belgium-sudan-theo-francken.html>>

and interrogation lasting several days, then being released on family guarantee or personal security, which obliges them not to engage in any political activities, or possibly leave the country, and gives the police the right to detain them at any time. A few describe physical torture (being beaten with a stick) or emotional torture. One testimony is from a gentleman from the north of Sudan. He credits the fact that he is not from one of the more marginalised areas (Darfur or the Nuba Mountains) with his relatively benign treatment.

As it stands, the Belgian Commission which independently handles asylum claims, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), reported that it did not find the testimonies credible. Hence, Sudanese identification missions will continue, though with more oversight by Belgian officials.⁹

Italy

Italy was one of the first European governments to put in place a formal bilateral agreement on returns and readmission. It signed a Memorandum of Understanding in August 2016 aimed at increasing police cooperation in the fight against transnational organised criminality, and especially irregular immigration.¹⁰ Like the Belgian arrangement, it included provisions for missions of officials from the respective territories to help investigate details to facilitate returns, as well as of training and equipment for the Sudanese police.

This led to the forcible return of around 40 individuals on a charter flight to Sudan in August 2016. Again, testimonies received by NGOs confirm accounts of detention and interrogation on arrival, with some individuals witnessing beatings, as documented by Amnesty International.¹¹ The human rights monitoring group Huqooq also provided the testimony of a gentleman nicknamed 'Barakat'.¹² 'Barakat' claims he was beaten by NISS during the period the group was detained, and he has since gone into hiding. Other testimonies seen by us also suggest that the deportees now live in fear for their physical security, as well as that of their families, and that they believe they are being monitored by NISS, including via their mobile phones.

Just recently, these returnees received permission to appeal their cases before the European Court of Human Rights for violating the principle of *non-refoulement*.¹³

France

There are rumours that bilateral discussions have been held between the French and Sudanese governments to arrange for the return and repatriation of Sudanese living in France. Documents produced by Sudan's Foreign Ministry have come to light that mention Sudanese concerns about a particular community in a Paris suburb that Sudanese authorities wanted to see returned to Sudan, and a request for France to share a contact database (this document can be provided on request). This letter indicates Sudan's clear interest in the behaviour and members of its diaspora, particularly insofar as they may be loyal or merely sympathetic to rebel and opposition activity.

⁹ FlandersNews.Be, "'Doubt About the Truthfulness of Testimony'", February 2018, accessed 15.03.18 at <<http://deredactie.be/cm/vrtnieuws.english/Politics/1.3140963>>

¹⁰ Associazione per gli Studi Giuridici sull'Immigrazione, 'Memorandum of Understanding between Italy and Sudan: a legal analysis', accessed 15.03.18 at <<https://www.asgi.it/wp-content/uploads/2017/10/Report-Memorandum-of-Understanding-Sudan-Italy-SL-Clinic-UniTO.pdf>>

¹¹ Amnesty International, 'Hotspot Italy: How the EU's flagship approach leads to violations of refugee and migrant rights', November 2016, accessed 15.03.18 at <<https://www.amnesty.org/en/documents/eur30/5004/2016/en/>>

¹² Huqooq, 'Human Rights Monitoring Sudan-Report No:10 1st – 31st August 2016', August 2016, accessed 15.03.18 at <<http://www.sudanrights.com/2016/09/05/human-rights-monitoring-sudan-report-no10-1st-31st-august-2016/>>

¹³ InfoMigrants, 'ECHR accepts anti-Italy appeal for forced removal of Sudanese', January 2018, accessed 15.03.18 at <<http://www.infomigrants.net/en/post/6989/echr-accepts-anti-italy-appeal-for-forced-removal-of-sudanese>>

A French journalist, Tomas Stadius, has also recently started documenting cases where it seems individuals slated for return to Sudan were interviewed by a Sudanese delegation, in a manner that resembles the approach taken in Belgium.¹⁴ The mission delegates seemed to show particular interest in those individuals who had been formerly imprisoned in Sudan. Mr Stadius suggests this may be because the security services are able to verify their presence and activity in the country through fingerprint technology implemented in 2012. Mr Stadius has identified four people deported to Sudan following a Sudanese delegation visit. However, he has encountered severe difficulties when trying to monitor those returnees and report on their wellbeing post-return.

Need for post-deportation monitoring

Under international refugee law there is no requirement to monitor the fate of those voluntarily or forcibly returned to countries of origin. As a result, few Embassies engage in such activities, and the responsibility for doing so is transferred to NGOs, human rights defenders, and civil society organisations, either on the ground, or in the countries scheduling return, as we have seen above. These groups are often left demoralised when their testimonies, often painstakingly gathered, are then dismissed as not credible, precisely because of the often difficult means by which they are obtained. Home Ministries instead rely on the judgments of their Embassies, but as mentioned, these have no measures in place to gather this evidence. This produces a severe information and protection gap, and both places individuals at extreme risk, and returning countries at risk of litigation when abuses come to light, as it becomes clear that adequate safeguarding measures were not adopted.

There are particular difficulties in Sudan. Waging Peace is in fact listed as the only support organisation that can provide post-deportation support on public forums.¹⁵ We regularly get requests from NGOs and support organisations across Europe, including from France, Norway, Italy, the Netherlands, etc. But this is despite the fact that at present we possess no practical means to monitor someone post-return, particularly as we would advise anyone being returned to delete our contact information or conversation history before arrival, as phones are routinely searched by security officials for evidence of foreign involvement or activities.

We are also unable to advise that a returnee be met at the airport, as this itself could put them at risk, as it would show engagement with local human rights defenders or groups, and it would in turn put those human rights defenders or groups at increased risk.

There are organisations establishing best practice in this area, for instance the Rights in Exile programme,¹⁶ which should be consulted when returns and readmissions are being considered.

Re-documentation and identification best practice

The above examples from Belgium, Italy, and France demonstrate the risk in inviting Sudanese officials to identify and re-document their nationals, especially via dedicated missions, and if adequate checks are not conducted to ensure relevant officials are not in any way associated with NISS.

¹⁴ Street Press, 'Comment la France a livré des opposants politiques à la dictature soudanaise', accessed 15.03.18 at <<https://www.streetpress.com/sujet/1506702391-la-france-livre-opposants-politiques-dictature-soudan>>

¹⁵ Rights in Exile Programme, 'Sudan Post-Deportation', accessed 15.03.18 at <<http://www.refugeelaidinformation.org/sudan-post-deportation-monitoring>>

¹⁶ <http://www.refugeelaidinformation.org/>

We have before raised such concerns about procedural safeguards in the UK context, via two dedicated reports – “‘I felt like I had been brought into a lion’s den.’ - How Darfuri asylum seekers are being illegally interviewed by Sudanese Embassy officials at Home Office facilities’ (2007),¹⁷ and “‘The Border Agency are playing a game to scare us’ – A report and recommendations on Sudanese re-documentation interviews’ (2011).¹⁸

These reports documented instances where individuals were intimidated or threatened during questioning with Sudanese officials, who asked questions clearly in excess of that required to obtain travel documentation or verify nationality, for instance the whereabouts of family members back home, and jobs held in country. The twelve testimonies in our 2011 report also document instances of threats and bribery. We strongly suspect no officials from the then UKBA were present during such interviews and so able to monitor these breaches of conduct.

We regularly speak to individuals invited to interview in the Sudanese Embassy who are absolutely terrified by the prospect. Many simply refuse to attend, despite knowing the potential negative repercussions for their cases, due to a well-founded fear that they will be intimidated during such meetings, and that information obtained will be used against them should they be returned, against their family if they remain in Sudan, or even lead to adverse consequences in the UK-based community.

There are several easily implemented procedural safeguards that can be implemented to prevent this, included in full in our initial recommendations.

¹⁷ Waging Peace, “‘I felt like I had been brought into a lion’s den.’ - How Darfuri asylum seekers are being illegally interviewed by Sudanese Embassy officials at Home Office facilities’, October 2007, accessed 18.04.18 at <http://wagingpeace.info/wp-content/uploads/pdfs/pdf/Exclusives/2007_10_Waging_Peace_Report_Home_Office.pdf>

¹⁸ Waging Peace, “‘The Border Agency are playing a game to scare us’ – A report and recommendations on Sudanese re-documentation interviews’, September 2011, accessed 18.04.18 at <http://wagingpeace.info/wp-content/uploads/pdfs/pdf/Exclusives/2011_09_A_report_and_recommendations_on_Sudanese_re-documentation_interviews.pdf>