

UNHCR POSITION ON RETURNS TO SUDAN

May 2023

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Introduction

1. On 15 April 2023, fighting broke out between the Sudanese armed forces (SAF), led by Abdelfattah al-Burhan, and the Rapid Support Forces (RSF), a paramilitary force led by Mohamed “Hemedti” Hamdan Dagalo, in multiple cities across the country, including the capital Khartoum.¹ Hundreds of civilians are reported to have been killed, and thousands injured.² The widespread fighting has led to shortages of food, water, medicine, fuel and electricity, and has left civilians without access to essential services.³
2. Prior to the eruption of the current conflict, Sudan was already affected by a major humanitarian crisis, with 3.7 million IDPs and 15.8 million people in need of humanitarian assistance, including approximately 11 million people in need of emergency assistance.⁴ Concerns have been expressed about a significant increase in humanitarian needs as a result of the fighting, while humanitarian response operations face major challenges due to the security situation.⁵
3. Despite calls by international and regional actors to end the hostilities, the fighting continues unabated. Large numbers of civilians have been forced to flee areas affected by the fighting, including people who were already internally displaced as a result of previous conflicts in Sudan, and refugees from other

¹ International Crisis Group, *Stopping Sudan’s Descent into Full-Blown Civil War*, 20 April 2023, www.crisisgroup.org/africa/horn-africa/sudan/stopping-sudans-descent-full-blown-civil-war.

² BBC, *Sudan crisis: Civilians facing catastrophe as 100,000 flee fighting – UN*, 3 May 2023, <https://www.bbc.com/news/world-africa-65448691>; OCHA, *Sudan: Clashes between SAF and RSF - Flash Update No. 9*, 2 May 2023, <https://reliefweb.int/report/sudan/sudan-clashes-between-saf-and-rsf-flash-update-no-9-2-may-2023>.

³ AP News, *Heavy Clashes Rock Sudan’s Capital Despite Truce Extension*, 28 April 2023, <https://apnews.com/article/sudan-war-military-rsf-truce-civilians-7a7c558e8a5ce2a23bd7049641e14782>; OCHA, *Sudan: Clashes Between SAF and RSF – Flash Update No. 7*, 26 April 2023, <https://reports.unocha.org/en/country/sudan>; Al Jazeera, *Sudan Updates: WHO Says 60% of Khartoum Health Centres Closed*, 26 April 2023, www.aljazeera.com/news/liveblog/2023/4/26/sudan-live-news-truce-violations-worsen-civilian-suffering; Devex, *Health System under Attack in Sudan’s ‘Horrific’ Conflict*, 20 April 2023, www.devex.com/news/health-system-under-attack-in-sudan-s-horrific-conflict-105382.

⁴ UNHCR, *Data Portal: Sudan*, <https://data.unhcr.org/en/country/sdn>, accessed 28 April 2023; OCHA, *Sudan Humanitarian Needs Overview 2023*, 7 November 2022, <https://reliefweb.int/report/sudan/sudan-humanitarian-needs-overview-2023-november-2022>.

⁵ UNHCR, *Sudan: UNHCR Warns Forcibly Displaced Are Facing Worsening Risks in Sudan and Region*, 28 April 2023, www.unhcr.org/news/briefing-notes/sudan-unhcr-warns-forcibly-displaced-are-facing-worsening-risks-sudan; Axios, *Sudan “Staring into the Abyss” as Humanitarian Situation Worsens*, 26 April 2023, www.axios.com/2023/04/26/sudan-humanitarian-death-toll-hospital-biohazard; UNICEF et al., *Fighting in Sudan Rapidly Worsening an Already Dire Humanitarian Situation for Children, Warn UNICEF, Save the Children and World Vision*, 26 April 2023, <https://www.unicef.org/press-releases/fighting-sudan-rapidly-worsening-already-dire-humanitarian-situation-children-warn>.

countries who had sought safety in Sudan.⁶ In addition to new internal displacement,⁷ significant flows of people fleeing Sudan to surrounding countries have been observed, including notably flows of Sudanese nationals to Chad and returning South Sudanese refugees to South Sudan, as well as outflows to the Central African Republic, Egypt, Ethiopia, Libya and Eritrea.⁸

Access to the Territory and International Protection Needs

4. As the situation in Sudan remains fluid and uncertain, UNHCR calls on all countries to allow civilians of all nationalities fleeing Sudan non-discriminatory access to their territories. This applies to Sudanese nationals as well as persons of other nationalities and stateless persons, including persons who are not in possession of passports or other forms of identity documentation. The principle of non-refoulement should be respected at all times. Third country nationals who flee the conflict in Sudan but who are not in need of international protection should be allowed to access safe territory with a view to facilitating their onward travel. UNHCR is stepping up its support to Sudan's neighbouring countries as they prepare for larger numbers of arrivals.
5. All claims of Sudanese nationals, as well as claims of stateless persons who were habitual residents of Sudan, who apply for international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law. UNHCR considers that persons fleeing the ongoing conflict in Sudan, as well as Sudanese nationals who are outside the country and who cannot return there because of the conflict, are likely to be in need of international refugee protection under Article 1(2) of the 1969 OAU Convention,⁹ or under the Cartagena Declaration,¹⁰ or complementary forms of protection including subsidiary protection under Article 15(c) of the EU Qualification Directive.¹¹ In addition, persons fleeing the conflict in Sudan or who cannot return because of the conflict may also meet the 1951 Convention criteria for refugee status.¹²
6. In view of the volatility of the situation in the entire territory of Sudan, UNHCR does not consider it appropriate to deny international protection to Sudanese and former habitual residents of Sudan on the basis of an internal flight or relocation alternative.
7. There may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention.¹³ In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate

⁶ UNHCR, *UNHCR's Grandi: To Avoid Further Suffering and a Major Refugee Crisis, Sudan Needs Urgent Peace Efforts*, 26 April 2023, www.unhcr.org/news/unhcr-s-grandi-avoid-further-suffering-and-major-refugee-crisis-sudan-needs-urgent-peace;

UNHCR, *UNHCR Mobilizes to Help People Fleeing Sudan for Neighbouring Countries*, 25 April 2023, www.unhcr.org/news/unhcr-mobilizes-help-people-fleeing-sudan-neighbouring-countries.

⁷ As of 2 May 2023, an estimated 334,000 people were newly displaced within Sudan as a result of the conflict. OCHA, *Sudan: Clashes between SAF and RSF - Flash Update No. 9*, 2 May 2023, <https://reliefweb.int/report/sudan/sudan-clashes-between-saf-and-rsf-flash-update-no-9-2-may-2023>.

⁸ UNHCR, *Sudan Situation – UNHCR External Update #4*, 2 May 2023, <https://data.unhcr.org/en/documents/details/100409>; UNHCR, *Sudan Emergency | Population Movement from Sudan as of 1 May 2023*, 2 May 2023, <https://data.unhcr.org/en/documents/details/100372>.

⁹ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 UN, Treaty Series 45, www.unhcr.org/refworld/docid/3ae6b36018.html.

¹⁰ *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, www.refworld.org/docid/3ae6b36ec.html, para. III(3).

¹¹ European Union, *Directive 2011/95/EU of the European Parliament and of the Council on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)*, 13 December 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN>, Article 15.

¹² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UN, Treaty Series, Vol. 189, p. 137, www.unhcr.org/refworld/docid/3be01b964.html and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, UN, Treaty Series, Vol. 606, p. 267, www.unhcr.org/refworld/docid/3ae6b3ae4.html.

¹³ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, www.unhcr.org/refworld/docid/3f5857684.html.

them from the civilian refugee population.¹⁴

Suspension of Negative Decisions on Applications for International Protection

8. In light of the current volatility of the situation in Sudan, UNHCR calls on asylum States to suspend the issuance of negative decisions on applications for international protection by Sudanese nationals or by stateless persons who were former habitual residents of Sudan. The suspension should remain in place until such time as the situation in Sudan has stabilized and reliable information about the security and human rights situation is available to make a full assessment of the need to grant international protection to individual applicants.

Sur Place Claims by Nationals and Stateless Persons Who Were Habitual Residents of Sudan

9. Many Sudanese nationals (or stateless persons who were formerly habitual residents of Sudan) residing in other countries currently benefit from legal statuses, related to, for example, studies or work, granted before the current escalation of the conflict in Sudan. UNHCR recommends, where possible and appropriate, to extend existing legal statuses for as long as necessary. Persons benefiting from such arrangements should not be prevented from applying for asylum.
10. For Sudanese nationals whose claim for international protection has been rejected prior to recent events, the current situation in Sudan may give rise to changed circumstances, which need to be considered, including if a new asylum claim is submitted.

Refugees and Asylum-Seekers (Other Nationalities)

11. People of nationalities other than Sudanese may also choose, or be compelled, to leave Sudan as a result of developments related to the conflict, and should be allowed to do so. Some of these persons may have been recognized as refugees or registered as asylum-seekers in Sudan. South Sudanese nationals are the largest group of refugees in Sudan, while the country also hosts significant refugee populations from Eritrea, Ethiopia, Syrian, and Yemen, among others.¹⁵ If travelling onwards to third countries in search of safety, these persons should be referred to national asylum procedures for consideration of their applications for international protection. Refugees who are compelled by the situation in Sudan to return to their country of origin in adverse circumstances may find themselves in a situation where they need to flee again to a third country; such persons too should be referred to national asylum procedures for consideration of their applications for international protection.
12. In addition, there may be foreign nationals, as well as stateless persons and persons with undetermined nationality, who were in need of international protection and who enjoyed other forms of legal stay in Sudan. UNHCR recommends that these persons be referred to the national asylum procedure in the country where they seek international protection.

Non-Return Advisory

13. As the situation in Sudan is volatile and may remain uncertain for some time to come, UNHCR calls on

¹⁴ See UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, www.refworld.org/docid/452b9bca2.html.

¹⁵ For UNHCR country guidance on these populations, see UNHCR, *Position on Returns to Ethiopia*, March 2022, www.refworld.org/docid/623079204.html; UNHCR, *UNHCR Position on Returns to South Sudan – Update III*, October 2021, www.refworld.org/docid/617676f04.html; UNHCR, *Position on Returns to Yemen – Update I*, October 2021, www.refworld.org/docid/6171436e4.html; UNHCR, *International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic, Update VI*, March 2021, www.refworld.org/docid/606427d97.html; UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, 20 April 2011, www.refworld.org/docid/4d4fe0ec2.html.

States to suspend the forcible return of nationals and stateless persons who were habitual residents of Sudan, including those who have already had their asylum claims rejected. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security situation in Sudan has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection.

14. UNHCR will continue to monitor the situation in Sudan with a view to assessing the international protection needs arising out of the current situation.