

**REFUGEE STATUS APPEALS**  
**AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76515**

**AT AUCKLAND**

<b><u>Before:</u></b>	A R Mackey (Chairman)
<b><u>Counsel for the Appellant:</u></b>	I Frengley
<b><u>Appearing for the Department of Labour:</u></b>	No appearance
<b><u>Dates of Hearing:</u></b>	25 & May 2010
<b><u>Date of Decision:</u></b>	22 June 2010

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, who claims he is a national of Sudan, a member of the ZZ tribe. He is of the Muslim faith.

**INTRODUCTION**

[2] The appellant was born in Nyala, southern Darfur, in 1973. He was educated both in Nyala and in Khartoum and later worked both in Khartoum and his home district of southern Darfur.

[3] After applying, in early 2008, for a visitor's visa to Immigration New Zealand (INZ) London so that he could study English in New Zealand, the appellant was ultimately issued with a visitor's visa. The appellant arrived in New Zealand a few hours before his visa was due to expire. He was issued a visitor's permit valid until November 2009. He lodged a claim for refugee status recognition with the RSB on 2 November 2009. His application for recognition was by the RSB. He

then appealed to this Authority in March 2010.

[4] The appellant predicts being persecuted on return to Khartoum, where he has lived and worked for some time and/or to his home town of Nyala, Darfur. That persecution will be at the hands of the National Intelligence Security Services (NISS) of the Sudanese government for reasons of both his imputed political opinions, arising primarily from his work with the African Mission in Sudan (AMIS) and two NGOs based in Khartoum, as well as his ethnicity. He considers the issue of a possible internal protection alternative does not arise as he faces similar risks both in Khartoum and in Darfur.

[5] The essential issue is one of credibility and then, if established on the facts as found, whether there is a real chance of him being persecuted on return for one or more Refugee Convention reasons.

#### Documents received

[6] Counsel presented a bundle of documents on 20 May 2010. These were a memorandum of counsel, dated 19 May 2010, a supplementary statement from the appellant, dated 18 May 2010, medical notes relating to the treatment of depression by Dr Richard Galea, photographs of the appellant whilst working with AMIS, copies of photographs and material from an "internet blog", dated 27 October 2005 (prepared by an Australian medical practitioner), and country information, including UK Border Agency *Operational Guidance Note (OGN) – Sudan*, 2 November 2009; Human Rights Watch *Country Summary – Sudan*, January 2010; Human Rights Watch, Vol 19 No 15(A) September 2007 "Darfur 2007: Chaos by Design, peace-keeping challenges for AMIS and UNAMID"; Refugees International: "No power to protect – the African Union Mission in Sudan"; and "Darfur in perspective", an article by Dr David Hoile, European-Sudanese public affairs counsel, 2<sup>nd</sup> revised edition published January 2006.

[7] On 24 May 2010, counsel provided further documentation to the Authority. These were colour copies of photographs from the original bundle; an email from a retired Sudan police brigadier, AR, dated 21 May 2010; a UN News Service report dated 19 May 2010; Amnesty International report, dated 18 May 2010, noting the continued arbitrary use of power by the NISS in Khartoum; and a report from the Refugee Documentation Centre (Ireland) entitled: "Sudan – Any evidence of adverse treatment by the authorities or other ethnic groups of members of the ZZ tribe in Sudan?", dated 20 April 2009.

[8] Medical reports received from The People's Centre clinic have been noted as exhibit "AA" and the email from AR has been noted as exhibit "BB".

[9] In addition, the Authority was provided two decisions of the UK Asylum and Immigration Tribunal (AIT) *HGMO* (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062, and *AA* (Non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 00056. The Authority was also referred to three previous decisions relating to Sudan: *Refugee Appeal No 75665* (26 September 2006), *Refugee Appeal No 76074* (22 November 2007) and *Refugee Appeal No 76446* (10 February 2010).

### **THE APPELLANT'S CASE**

[10] What follows is a summary of the evidence given by the appellant. All that evidence has been assessed, along with the relevant country information and other material evidence, to reach conclusions on the appellant's credibility, and then well-foundedness of his claim, later in this decision.

[11] In addition to his Confirmation of Claim, the appellant presented two written and signed statements. The first was dated 7 December 2009. The supplementary statement was dated 18 May 2010. He adopted both as these as statements of the truth.

[12] The appellant was born in Nyala, the main town in southern Darfur in 1973. He is a single man of the Muslim faith and a member of the ZZ tribe, which is one of the black African tribes native to the Darfur region in Sudan. He is one of five children born to his parents. His father worked in the Nyala district and died in 1985. His mother and four siblings remain in Darfur. All of the family reside in the family home, formerly owned by his father, in Nyala. The appellant is the youngest sibling. One of his sisters works in a centre next to the family home; another sister is a teacher; one brother is a mechanic and the other is a driver. The family have no property apart from the home which is based in the city area. Nyala is about 1300 kilometres southwest of Khartoum and is primarily accessed by train. It takes approximately five days to make the trip.

#### **Schooling**

[13] The appellant is clearly the most highly educated member of his family. After completing primary and intermediate education in Nyala, he was sent to a school in Omdurman (across the river from Khartoum). A paternal uncle, who

lives and works in Saudi Arabia, paid for his education and indeed has financially supported the appellant and his family on several other occasions.

[14] The appellant completed high school in his mid-20s. He then undertook an English language course. Again, the fees were paid by his uncle. He completed this course in 1996. The course took just under one year. He continued his English education and also trained at a news agency in Khartoum, obtaining a certificate in news translation in July 1997. For one year from May 1998, he studied at university and obtained a diploma in translation. Over the period from March 2005 to March 2009, he studied towards a bachelor's degree in the English language at the YY University through distance learning. He has not completed these studies because he has come to New Zealand.

### Employment

[15] His employment commenced in August 1997, when he worked as a volunteer translator, for three months, for the United Nations Information Centre for the Sudan and Somalia in Khartoum. After spending the next eight months back in Darfur, unsuccessfully looking for a job, the appellant was employed in Khartoum as a translator in a private company, "XX". This company was a trading house where English was the *lingua franca* in all its commercial transactions. While working for XX, he lived in Omdurman. During that time, he tried to obtain employment with the Sudanese Ministry of External Affairs. However, his application did not get past the first step because of his African tribal background.

[16] In late 2002, he returned to his home in Darfur where the international forces, particularly those from the African Union (AU), were starting to build up their peacekeeping role under the auspices of the AU and United Nations. He left his job with XX to try and obtain a job with the AU who, he understood, would give priority to natives of the region. He also thought that such a job would give him added protection in the escalating unrest in Darfur at that time and in addition, because it was impossible for him to get a government job in Sudan as such positions were only available to those from Arab tribes.

[17] In later 2003, he was able to secure a position with the African Union Mission in Sudan (AMIS), working out of Nyala, doing translations for a Nigerian supervisor, Major FF. Along with the seven other interpreters at AMIS, he often had to work in internally displaced persons (IDP) camps and at a medical clinic in Nyala, assisting IDPs. At the time he took up that job, the AMIS organisation was in its early developmental stages and staff was being built up. These

AMIS/UNAMID numbers increased substantially to approximately 7,000 in 2004 and then ultimately to the figure of around 26,000 personnel, who still remain there. The appellant was well paid at US\$1,000 a month for this work which involved him not only in activities in Nyala but also moving around other dangerous parts of Darfur. While they were on mission outside Nyala, they travelled in convoys of between three and nine cars, but even then, on occasion, they were attacked by Janjaweed forces.

[18] During his time with AMIS, he was also asked to act as an interpreter on their behalf at an international peace conference for a period of three months. To do this, he obtained a passport by bribing an official of the Sudanese government and departed and returned through UN immigration channels. The AMIS organisation later evolved into a full United Nations mission, known as United Nations African Mission in Darfur (UNAMID).

[19] In approximately August 2007, after a series of threats and detentions from NISS officials, and the deaths of fellow translators (discussed below), the appellant considered that his position with AMIS/UNAMID was too risky to continue. He explained his situation to an officer working for UNAMID. That officer, sympathising with the appellant's position, contacted a friend in Khartoum who worked for an NGO called "TT". The appellant was then able to secure a position with TT in Khartoum. This UK-funded NGO carried out disposal work. It employed approximately 30 staff and the appellant's role was to interpret between employees, who did not speak Arabic, the engineers involved in disposal work and the supervisors headed by a British man.

[20] After returning to Khartoum again, the appellant obtained accommodation in Omdurman and commenced work with TT. He was the only translator working for some 12 or 13 people. TT had no links to the Sudanese government but did have links to British donors and a UN action group. The Sudanese government officials, however, did supervise NGOs, such as TT, and insisted on regular, detailed reports of their operations. This was carried out by the Sudanese Human Commission.

[21] In September 2008, after extended pressure from NISS officials, the appellant had to stop working for TT. The following month he was able to find work as a translator for another UK-based NGO called "SS". This NGO was also funded from the UK and employed some 25 people, predominantly in the Khartoum office.

[22] In late May 2009, NISS officials discovered, through unintentional disclosure by a staff member at SS, that the appellant was about to depart Sudan and travel to New Zealand. He was detained again for a period of three months and ultimately, after an escape was arranged by a family friend, AR, the appellant was able to leave Sudan.

#### The appellant's early problems with the NISS

[23] The appellant's first problems arose in 1998 when he was living in Omdurman and attending university. Along with other Darfurian students, he attended political discussions at the university where the students were complaining about the relatively poor treatment of Darfurians in their home district. At the conclusion of one meeting, the appellant and six other Darfurians were detained near the entrance to the university by NISS officials. They were taken to the central office in Khartoum and questioned about their political viewpoints and why they had spoken out against the government. The appellant was beaten, threatened with death, and warned that he should stop such activities. After being held for seven days one of the students was able to make contact with officials at the University of Khartoum who verified that they were genuine students. Their release was then negotiated.

[24] He incurred no other problems with NISS officials for the remainder of the time that he stayed in Khartoum. However when he returned to Darfur in 2003 and took up his job with AMIS problems arose.

[25] In mid-2004, while at a market with some other people from AMIS, the appellant was approached by two national security officials who took his passport from him. He was physically assaulted and beaten by them. They stated that he was leaking information about the government to AMIS and that he should co-operate with them by giving false translations to the AMIS officials. The appellant refused to co-operate, stating that it would be unprofessional and that he had a duty to give correct information to the AMIS officials.

[26] He was next detained by the NISS, in mid-2005, when walking home from one of the IDP camps. He was again questioned and mistreated and asked to give information about what he had heard from AMIS officials. The appellant was held for one or two nights at a NISS office near the Kelma IDP Camp. He was released and immediately told Major FF what had happened. Unfortunately, without detailed thought, Major FF went to the NISS offices and complained strongly about the treatment of the appellant, stating that he would report the

matter to much higher officials. This tended to escalate problems rather than help the situation for the appellant, as NISS officials then harassed him more frequently. The appellant therefore decided to stop telling Major FF about his problems.

#### Maltreatment of other translators

[27] In June 2005, a fellow interpreter, named UU, was beaten and left for dead by NISS officials at a camp south of Nyala. Fortunately he survived the attack but left his job as a result. The appellant lost contact with him.

[28] On 15 June 2006, RR, another interpreter and colleague of the appellant, was killed in an IDP camp by NISS forces. He was shot while interpreting. The UNAMID officers ran away to save themselves. They were not allowed to carry weapons in the camp in an effort to maintain peace, so there was no defence available. The appellant was not there at the time as he was in west Nyala. RR had told the appellant at an earlier time that he had been threatened by the NISS as he was being pressured to co-operate with them. The threats were of a similar nature to those received by the appellant.

[29] Later in the same month, another colleague, PP, also an interpreter with UNAMID, was attacked by the *Janjaweed*. They attempted to confiscate his car. He was able to drive off quickly but the car was overturned. Fortunately, the *Janjaweed* left when they realised that the vehicle was too damaged to be of any value.

[30] In addition to the attacks on three out of seven of the interpreters the appellant worked with, two drivers involved in delivering petrol supplies for UNAMID, were also killed in 2006, after being attacked by the *Janjaweed*. The combination of these attacks terrified the appellant to the extent that he felt forced to leave his job and move away from Nyala.

#### Problems on return to Khartoum and work with NGOs

[31] Within one or two months of returning to Khartoum, NISS officers approached him in the immediate location of his office. They stated that they knew he had returned from Nyala and that he should not consider himself safe in Khartoum as they still wanted to cause problems for him because of his failure to co-operate and report on his AMIS employers and their activities. On another occasion, he was approached by eight NISS people. They took him to their office

and proceeded to beat, kick and abuse him, claiming he had leaked information to AMIS. The officials stated they did not believe his protestations.

[32] During his time with TT, he was detained on three occasions, the longest period being for six or seven days. At that time he was kept in a prison-like situation, and questioned regularly about his links to AMIS. Some of the NISS officers were more lenient than others. One allowed him to watch television while others kicked and pushed him and fed him basic rations only. The appellant consistently stated that he had nothing to disclose. Ultimately he was released but, on each occasion, they informed him that if they wanted to get him, they would simply pick him up again.

[33] The appellant told his employers at TT that he had been detained by NISS. They understood the situation but there was nothing they could do about it as an NGO in Sudan, operating at the whim of the Sudanese government.

[34] After approximately one year, the appellant decided he had to leave TT for basically the same reasons he had left AMIS. His manager at TT, with whom he discussed the problem, suggested he get a position elsewhere. After some investigation, he was fortunate to find work with another NGO, SS, who worked with handicapped people.

[35] In his employment with both NGOs in Khartoum, he was paid approximately half of what he earned with AMIS. He provided his own accommodation. The three or four people with whom he shared accommodation were not aware of his problems.

#### Final problems in Khartoum and departure from Sudan

[36] While working, for about one year with SS, he was at the same time endeavouring to leave Sudan by firstly applying to the go to the UK and then later to New Zealand. In May 2009, very shortly after being advised he would be issued a visitor's visa to come to New Zealand, he was again detained and held by the NISS, this time for a period of about three months.

[37] This final detention came about through an unfortunate set of circumstances. A few days after his visitor's visa had been formally approved, following his sending his passport to INZ in London, the appellant was asked to go to the receptionist at SS to uplift a package from DHL which had been brought to the office and contained his passport. Very shortly after he had uplifted his passport and explained to the receptionist and his employer that the DHL package



contained his passport and visa to travel to New Zealand, NISS officers called to make one of their regular visits to SS. In the discussions which took place, the SS staff unintentionally passed on the information that the appellant was going to travel to New Zealand. The receptionist had no idea of the risk that this posed to the appellant. Two or three days later, in late May 2009, NISS officers came to the appellant's workplace and detained him. He was taken to their headquarters in Khartoum. Questioning about his alleged spying and why he was leaving Sudan and maltreatment continued while he was held in detention. However, the appellant was given access to a fixed landline and was able to telephone his employers and advise them that he had been detained and also to arrange for a close friend and relative, MM, to visit him, several times.

[38] He provided all the details of his visitor's visa application to MM who, using the appellant's own email address and not disclosing that the appellant had been detained, wrote to INZ in London, asking for the appellant's visa to be renewed for a further period of time because the appellant was delayed. MM also obtained various certificates relating to his studies at a university in Khartoum. The appellant thought these might assist him if he was ever able to escape to New Zealand and wanted to seek employment here.

[39] MM also arranged, by paying bribes to Sudanese officials, for the appellant's passport to be renewed until August 2011 and made contact with his family in Nyala, requesting their assistance to get him released. The family then contacted AR, the appellant's uncle's old friend, and requested his assistance.

[40] In mid-August 2009, AR, MM, and some of AR's support staff, arrived in a police vehicle at the NISS centre where the appellant was being held in Khartoum. AR explained to the captain in charge of the NISS who he was and that the appellant was to be released into his custody. Because of AR's rank, the captain of the detention centre obeyed the orders and the appellant was taken out to a waiting vehicle and driven away from the NISS compound.

[41] The appellant explained that after he had left Sudan, as a result of the purging in the police force of officers with a Darfurian background that has taken place recently, following the issue of a warrant for the arrest of President al-Bashir from the International Criminal Court, AR was forced to take early retirement and has since returned to Nyala. The email BB, recently received by counsel on 21 May 2010, explains the situation and the friendship between AR and the appellant's uncle. It also sets out that AR carried out the appellant's illegal release from detention by the NISS (because he was suspected of being a spy while

working for the AU). It also states that AR advised the appellant to leave the country immediately or he would be killed by NISS personnel.

[42] Immediately on his release from the last detention, the appellant, with the assistance of MM, bribed two security officers who worked at Khartoum airport. These officers informed the appellant that he was on a banned list so could not depart without an exit visa. Within three or four days from the appellant's release from detention, he and MM made all the departure arrangements and then met with the airport security officials who (after being bribed) took him through the security checks at the airport. He was then able to fly to Dubai and ultimately on to New Zealand.

[43] The appellant explained that all of the documents he had obtained and all other steps taken in relation to his departure had been arranged by bribery. He had been able to pay these bribes, for his air tickets and all other expenses through the services of a wealthy businessman (KK) in Omdurman who he knew and trusted implicitly. KK had acted as a form of Islamic banker to the appellant for many years. The appellant left money with this trusted colleague who invested his "savings" in his trading business. In return, the appellant was able to call on KK for money as and when it was needed. This arrangement also ensured that when the appellant was detained and searched his money was not taken from him.

#### Problems for his family in Nyala

[44] While none of the appellant's family have been specifically detained by the NISS, nor have the NISS gone onto the family property, his family report that on regular occasions, NISS personnel are seen in the vicinity of the home and neighbours are asked about the appellant's whereabouts.

#### Late evidence from NGOs

[45] After the hearing was completed, the appellant submitted two emails. One was from the manager of TT, dated 2 June 2010, confirming that the appellant had been employed by them as an interpreter/translator for the period September 2007 to September 2008. The second email, from the manager of SS in Khartoum and dated 2 June 2010, confirmed his employment from October 2008 to May 2009.

#### Summary of the appellant's predicament

[46] The appellant considered that if he was returned to Khartoum, he would be immediately detained at the airport. He considered that there would probably be no record of him actually being released from NISS custody as the manner in which AR was able to obtain his release was illegal and purely based on AR exerting rank over a lower level officer. Accordingly, the records would show that he was in fact still detained in custody. This would cause an even bigger problem for him on return because of the significant embarrassment factor to the NISS. For all of the reasons he presented, but particularly his past association with AMIS and the fact that the NISS considered him to be a traitor and a spy against Sudan, he would be killed or tortured on his return. He also considered that there could be big problems for AR (and then the appellant as well) through their past association. This risk arose as, although AR was “retired”, his “retirement” had only come about through his politically-inspired expulsion from the Sudanese police force.

#### Country information

[47] The Authority has taken into account all of the country information set out above and has been particularly assisted by objective country information relating to the risks to non-Arab Darfurians following the 4 March 2009 issue of an arrest warrant by the International Criminal Court for President Al-Bashir for alleged war crimes and crimes against humanity committed in Darfur. The recent treatment of NGOs and members of UNAMID, by the ruling National Congress Party (NCP), has also been relevantly noted. Up to date commentary has been found in: Human Rights Watch, January 2010, *Country Support*; the UN News Service Report, 19 May 2010 (regarding the recent increase in attacks against UNAMID staff and relief workers in Darfur including the Nyala district); Amnesty International report of 18 May 2010 (noting the continuing arbitrary use of extensive powers granted to the NISS in Khartoum); and the report from the UN Secretary General, Ban Ki-moon, some four weeks ago, where he spoke with deep regret of the continuing detention of UNAMID staff, just outside Nyala and in Khartoum, and the arbitrary use of power by the Sudanese government.

#### **THE ISSUES**

[48] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion,

nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[49] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

### Credibility

[50] The Authority noted the medical reports submitted and agrees with the submission made by counsel that these reports show that the appellant's mental health has greatly improved over recent months (particularly since the time of his RSB decision). He presented his evidence in a full, frank and often very careful, detailed manner. He was clearly nervous and in an anxious state when presenting the early part of his evidence but later became far more relaxed and coherent in his presentation, and in his English language ability. Assessed in the round, and noting the observations and reservations that follow, his evidence has the "ring of truth".

[51] While the Authority noted some minor discrepancies over dates and an inability to give detailed accuracy to the total number of, often minor, detentions or confrontations that he had with the NISS authorities, the Authority found his explanations, and the detail with which he was able to explain the major detentions and incidents, in both his employment, and his problems with the NISS, compelling.

[52] The other reservation related to the numbers of documents he had to procure, bribes he had to pay and friends and relatives he had to rely on in the last few days of his detention and then departure from Khartoum. All the related "organisation" of these and the preparation for departure from Sudan, which ultimately resulted in him arriving in New Zealand only some four hours before his visitor's visa was due to expire, did appear implausible at first examination. His

explanations for all these incidents, however, were all rational and in the context of the corruption and virtually “failed state” situation existing in Sudan. Given that his general credibility is accepted, any benefit of the doubt is afforded in this regard.

[53] His credibility was also greatly assisted by the consistency between his evidence and the detailed country information before the Authority.

[54] The documentation recently received from the TT, SS and AR, which all could have been readily contrived, the Authority is prepared to accept as credible on the basis of its consistency and the appellant’s otherwise credible evidence.

### Profile

[55] The appellant is therefore found to be a single non-Arab Darfurian from the ZZ tribe who has spent considerable time in both Nyala and Khartoum. He is a trained and competent interpreter/translator who has worked for AMIS (later UNAMID), and two small, but clearly operational NGOs, in Khartoum. He has encountered significant problems and difficulties because of the profile he held with the NISS over a period of some four to five years before he left Sudan. It is against this profile, considered in the round, that his predicament on return must now be considered.

### Well-founded fear

[56] The Authority has, for many years, interpreted the term “being persecuted” in the refugee “inclusion clause” (Article 1A(2) of the Refugee Convention), as the sustained or systemic violation of basic human rights demonstrative of a failure of state protection. In other words, core norms of international human rights law are relied upon to define the forms of serious harm which fall within the scope of “being persecuted”. This is often referred to as the human rights understanding of being persecuted and is fully explained in *Refugee Appeal No 74664/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125].

[57] As noted above, recent relevant objective country information has greatly assisted the Authority. While all of the country information provided has assisted the Authority to gain a total picture of the risks to persons with the appellant’s profile in Sudan at this time, of particular relevance is the Human Rights Watch, January 2010 Country Summary. At the outset, this states:

Four years after Sudan’s ruling party and the southern rebels signed the 2005 Comprehensive Peace Agreement (CPA) ending 21 years of civil war, Sudanese civilians in Darfur, northern states, and the South are still enduring human rights

violations and insecurity. The Government of National Unity (GNU) has been unwilling to implement national democratic reforms as envisioned in the CPA. The failure of both Sudan's ruling National Congress Party (NCP) and the southern ruling Sudan People's Liberation Movement (SPLM) to implement other provisions of the CPA has contributed to insecurity and led to outright violence in some settings.

Accountability for human rights abuses remains practically nonexistent.

[58] The report goes on to note that the conflict in Darfur continues to involve government-backed militia and rebel movements that have caused civilian deaths, injuries and displacement and that the government has kept its war machinery in place throughout Darfur and that, despite international mediation and diplomatic support, no political solution has been reached. It notes the government expelled 13 international humanitarian organisations following the ICC arrest warrant for President al-Bashir and this has seriously undermined provision of humanitarian aid to Darfur. In addition, it notes criminal banditry and attacks on international aid workers and United Nations staff are also hampering humanitarian operations. More than a dozen UN peacekeepers have died since the mission's deployment in January 2008.

[59] The African Union-United Nations Mission in Darfur (UNAMID) documented 16 cases of arrest and detention by government security forces of people who are alleged to support the ICC or to have provided information to international interlocutors.

[60] Also noted is that the closure of three human rights organisations after the ICC's arrest warrant for the President has contributed to an atmosphere of oppression in Darfur and that prompted more than a dozen lawyers and activists to leave the country.

#### Immediate risks to NGOs and UN relief workers

[61] The immediacy of current risk is reflected in two recent publications. The first is the *UN News Service* report: "Ban stresses need for all sides to adhere to ceasefire in Darfur", 19 May 2010, published on the UNHCR RefWorld website ([unhcr.org/refworld](http://unhcr.org/refworld)). This reports not only the concerns expressed by the Secretary General Ban Ki-moon set out above but also a media release from UNAMID published earlier in May 2010, which states that:

... the mission today expressed great concern over yesterday's abduction of three relief workers outside Nyala, the capital of South Darfur state.

... the mission is deeply dismayed by the recent increase in these intolerable crimes and calls for the swift and unconditional release of the aid workers.

[62] An Amnesty International release: “Sudanese authorities shut newspapers in crackdown”, 18 May 2010, notes that four employees of an opposition newspaper were arrested in a late night raid by the NISS. The report states that the Sudanese authorities must stop trying to silence opposition by using forceful repression of freedom of expression. It also notes that the NISS agents retain sweeping powers under the 2010 National Security Act, passed by the Sudanese National Assembly in December 2009. The arrests are noted as another example of the arbitrary use of extensive powers granted to members of the security forces in Sudan and that NISS agents have constantly harassed students, journalists and human rights workers who have exercised their peaceful right to freedom of expression. Amnesty called for the government of Sudan to curb the NISS powers such as arrest and detention without judicial oversight.

#### Treatment of members of the ZZ tribe in Sudan

[63] A research note from the Refugee Documentation Centre (Ireland), compiled on 20 April 2009, notes several references to risks to members of the ZZ tribe and other non-Arab tribes. Quoting Human Rights Watch December 2005, it states that crimes against humanity and war crimes committed by the Sudanese military and militia forces included the targeted killing, summary execution, assault and rape of thousands of civilians, the destruction of hundreds of villages and the theft of millions of livestock, and the forced displacement of more than two million people. Overwhelmingly targeted were communities sharing the ethnicity of or geographic proximity to the two main rebel movements. These ethnic groups initially included Masalit, Fur and Zaghawa and later expanded to include communities in ZZ and other non-Arab tribes. The report also quotes an Associated Press report of 2006 which states:

These are unhappy times for the king of the ZZ tribe, with tens of thousands of his people killed, harassed or chased from their homes by fighting in Darfur.

[64] The same report goes on to note that more than 200,000 people have been killed in the ongoing fight and 2.5 million, many of them ZZ villagers, have become refugees.

[65] A United Nations report was also quoted. Under a section “In Darfur: summary executions and attempted summary executions” states:

On 9 June [2008] a 47 year-old ZZ man was arrested in Nyala after NISS had threatened to abduct his wife if he did not surrender himself. On 11 June, the police (not the NISS who arrested him) brought the body of the victim to his family ... the man was said to have been in good health before his arrest. The family is of the opinion that the arrest of their relative was related to the Omdurman attack [of

May 2008].

[66] The same report goes on to note that UNAMID attempts to gain access to detainees were denied by NISS and that the director of NISS told the Human Rights Council that the men were arrested following orders from Khartoum and therefore all requests including access should be directed at the Khartoum level.

### Assessment

[67] On the totality of the evidence, the Authority is satisfied that there is a real chance of this appellant being persecuted on his return to Sudan. That risk is at the level of a real chance upon the appellant's arrival at Khartoum airport, his presumed place of re-entry, because of the predicament he will present. This risk is as a non-Arab ZZ tribesman who, on the face of it, is still presumed to be in NISS detention. That detention had been directly related to his past refusals to cooperate with the NISS while he was working with AMIS, UNAMID and the two NGOs. In addition, the NISS have an imputed belief that he had been spying against the Sudanese government by passing on information to sources outside the country that were considered disloyal to the government.

[68] The past maltreatment of the appellant by the NISS rose to the level of a breach of core human rights. Their reported activities show they are notorious and act with impunity in torturing and maltreating those they detain. There is no independent judicial overview of them.

[69] The Authority is satisfied that the reasons for his risk of being persecuted are related to both his implied political opinion and his ethnicity.

### **CONCLUSION**

[70] The Authority accepts that the appellant has a well-founded fear of being persecuted and thus the first issue is answered in the affirmative. The Convention reasons are imputed political opinion and race. The second issue is also answered in the affirmative.

[71] For the reasons set out above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"A R Mackey"



A R Mackey  
Chairman