

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 74884

AT AUCKLAND

Before: AN Molloy (Chairperson)
S Murphy (Member)

Counsel for Appellant: Claudia Farry

Appearing for NZIS: No Appearance

Date of Hearing: 21, 22 October and 7 November
2003

Date of Decision: 18 February 2004

DECISION

[1] This is an appeal from a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of Sudan.

INTRODUCTION

[2] The appellant arrived in New Zealand on 28 July 2003. He applied for refugee status while at the airport. He was interviewed by a refugee status officer on 19 August 2003, and a decision declining his application was published and forwarded to his then solicitor under cover of a letter dated 10 September 2003. He appeals from that decision to this Authority.

[3] Counsel filed submissions prior to the hearing. At the conclusion of the third day of the hearing, leave was given for additional submissions and country information to be filed. The additional material was received on 1 December 2003. The submissions and country information have all been taken into account for the

purposes of this decision.

[4] The Authority will first summarise the appellant's case, before assessing his credibility.

THE APPELLANT'S CASE

[5] The appellant is a 33 year old married man from the village of T, in Sudan. T is approximately two hours travelling time from Khartoum, by motor vehicle. His wife remains in T, as do his parents and the wives and families of his two older brothers. His brothers have recently fled to another African state for reasons similar to those which the appellant advanced in support of his own decision to leave.

[6] The appellant's father is of Arab ethnicity. He is Muslim, and Arabic speaking, as is the appellant. The appellant's mother is a Muslim from one of the tribes collectively referred to as Nuba, from the Nuba mountain area in the southern central part of Sudan. Her ethnicity led to some problems for the appellant while he was a school pupil. Like many of the other people of Nuba extraction in his village, the appellant was teased and harassed about his ethnicity. However his problems never rose above that minor level of concern at that time.

[7] The appellant's father and uncle each inherited farms from the appellant's grandfather. The family farms were relatively large, and his family was comparatively wealthy as a result. That economic status enabled the appellant to obtain a private secondary school education which would not otherwise have been available to him.

[8] Apart from the teasing he had to endure, the only other difficulty the appellant experienced while at school occurred when he refused to join the Muslim Brotherhood group in 1987. However, the members of that group were in the minority, and his disinterest in joining that group never caused him any problems after he left school.

[9] After graduating from secondary school in 1988, the appellant enrolled in a one year course in computer studies at a college in Khartoum. He then returned

to T and taught Arabic at the private secondary school which he had previously attended as a pupil. He continued teaching there until the end of the academic year in 1993.

[10] Although there has been a civil war in Sudan since the early 1980s, the appellant did not personally experience any significant problems as a result of the conflict until June 1992, when he was summoned to attend a military training camp by the People's Defence Army (PDA). The summons was communicated via the headmaster of the school where he was teaching. The appellant wanted no part in fighting the civil war against his fellow countrymen. He told the Authority that he had no philosophical opposition to military service per se, and added that if it were to be performed in defence of his country, it "would be an honour". However, he was particularly opposed to the fighting because one of the geographical locations in which the war was being fought most severely was the southern part of the country, where his maternal family originated.

[11] He had no intention of complying with the summons and made his defiant intentions clear. Within a fortnight he was seized from his home by five members of the PDA. They manhandled him into a motor vehicle and drove him to one of the notorious "ghost houses" somewhere in Khartoum. He was detained for six weeks. During that time, he was kicked and beaten, continually harassed, deprived of sleep and denied access to toilet facilities for protracted periods of time. In addition, water was poured over him, and he was interrogated about his loyalty to the regime which was in power.

[12] The appellant was finally released due to the intervention of his paternal uncle, a wealthy man with substantive contacts. He eventually learned where the appellant was being held and paid bribes to have him freed.

[13] The appellant returned home and resumed his teaching. Life continued as before until mid 1993, when the appellant and several other teachers at his school were directed to perform their military service. The army sent letters of demand to the school's headmaster in early June 1993, making it clear that the teachers were expected to report for military service once the school's exams had been completed and marked.

[14] The students sat exams in July. After assisting with marking, the appellant and two or three of his colleagues absconded. He claimed that if he had remained at home, he would have been arrested and forced to commence his military training. Shortly after he left, the army came to his family home and questioned his parents as to his whereabouts.

[15] For the next five years, he and his friends regularly fled to a remote rural area to hide as the need arose. They obtained menial work on farms to support themselves. He returned home intermittently for short periods in order to see his family, but whenever there was any suggestion that the military service authorities were likely to resume a recruitment campaign, he returned to the farms area to hide. He managed to avoid performing his compulsory military service by these means until mid 1998.

[16] During that time, he considered his options. He had hoped to pursue his academic studies in Sudan, but this was not possible while his military service obligations were outstanding. He set his sights on studying at a particular university in India, which a friend of his had attended. The appellant's father undertook to meet his living expenses if he could secure a position at the university, which he managed to do for the 1998 academic year.

[17] Before leaving, he had to obtain a passport. This did not prove difficult. He filled out an application form, in which he admitted that he had not performed his military service. He was not questioned further about this, and no check was done to see whether he had actually been summoned to do so. He believes that the passport was not difficult to get firstly because there is no cohesion between government departments in Sudan, and secondly because departing Sudan required not just a passport, but an exit permit. It is when applying for the latter that more enquiries are made.

[18] The appellant then set about obtaining an exit permit. He did so by signing a written undertaking that he would perform his military service upon returning to Sudan after the completion of his course. He was then granted an exemption under the National Service Act, and an exit visa was endorsed in his passport, enabling him to leave Sudan lawfully and without difficulty.

[19] The appellant remained in India from the beginning of August 1998, until he completed his degree course in March 2001.

[20] He did not encounter any difficulties upon arriving back in Khartoum, and returned home to his village. It did not take long before he was approached by the headmaster of his local primary school, because there is a perennial shortage of experienced teachers in Sudan. He taught Arabic and English for four months from June to September 2001. At that point the appellant received a further summons from the military authorities with regard to his national service, and decided to abscond once more.

[21] For the next year or so, until his departure from Sudan in October 2002, the appellant lived with various friends in other towns and cities in order to evade the military authorities. He took care to avoid main roads, which were frequently the site of military checkpoints. Even so, he was stopped at such checkpoints at least five times over the years.

[22] The checkpoints were erected by the military for various reasons. They used them to monitor whether men had performed their military service. They also used them to demean and intimidate people. Often men who were stopped were taken directly to military camp to commence training, although this did not happen to the appellant. He was, however, mistreated at the checkpoints. On one occasion, for example, the appellant was forced to stand in the sun for several hours, much of that time on one leg.

[23] The appellant's older brothers have also been stopped at checkpoints on numerous occasions. On one occasion one of his brothers was taken to training camp, only to break his leg and have his military service deferred. On another occasion, in 1998, both brothers were taken to a military compound, only to escape as part of a larger group who were assisted in doing so by sympathetic locals.

[24] The appellant became deeply unsatisfied with having to resume the existence of a fugitive and, after discussing his future with his family, he decided that he had to leave Sudan. To do so, he needed another exit visa. These are not available to men who had not performed their military service, unless they fell within a narrow category of exceptions provided for within the relevant Sudanese

legislation. An example of such exceptions was the overseas study option which he had already used.

[25] His uncle helped him to obtain an exit visa fraudulently, by bribing a contact in the relevant government department. The appellant was therefore able to leave Sudan in November 2002, from the international airport at Khartoum. His first destination was Malaysia. While there he purchased a false British passport, which he used to enter New Zealand in July 2003. He no longer has his Sudanese passport.

[26] The Authorities have been in contact with the appellant's school and with his parents since his departure, in connection with his continuing failure to respond to the draft. His parents have informed the authorities that the appellant has left Sudan, and that he does not intend to return. The appellant has also heard from his parents that his two older brothers have also left Sudan in order to avoid their military service obligations. They apparently made their way overland to an adjacent country.

[27] The appellant fears that if he were to return to Sudan he would be persecuted because he is part Nuba. He also believes that he would be located by the authorities. He fears that they will punish him and torture him because he has continually absconded and avoided his military service obligations. If he survives, he believes that he will be forced to carry out his military service, and therefore to participate in breaches of human rights against his own people.

THE ISSUES

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

"... owing to a 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."

[29] 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

[30] Before considering either of the issues so framed, it is necessary to assess whether the appellant's account is credible.

[31] The Authority had reservations in connection with various aspects of the appellant's account. For example, there were some apparent inconsistencies between the account he gave to the Authority and that which he gave during his interview with the RSB. After consideration, however, the Authority accepts that these can be adequately explained by the fact that the questioning to which he was subjected by the Authority was more detailed, which in turn lead to more detailed answers. We are also mindful of the fact that many of the events in question took place some years ago, and that parts of his account, for example in connection with the experiences of his brothers, were related second hand.

[32] His evidence as a whole also disclosed a series of coincidences and instances of good fortune over a period of some years, which enabled him to avoid performing the military service he seeks to escape.

[33] One such instance relates to his claim that, after some years spent evading the draft, he was still able to obtain an exit visa from the authorities, and enrol in a degree course at a university in India. The Authority was initially sceptical about this claim. However, it is clear that Sudanese legislation allows students to suspend their military service while studying offshore. Therefore his account is not inherently implausible. Further, at the Authority's request, Counsel obtained written verification of the appellant's attendance from the university concerned.

[34] It has long been accepted that the peculiar difficulties faced by applicants for refugee status means that a generous approach is adopted when assessing the evidence which they adduce in support of their claims. The very circumstances which lead an applicant into exile will often prevent him or her from having access to evidence which can corroborate the account. The Authority has accordingly given appellants the benefit of the doubt in circumstances where the inability to provide corroborative or documentary evidence gives rise to doubts about that appellant's account. The basis for doing so has recently been the subject of scrutiny by the Court of Appeal in *Jiao v Refugee Status Appeals Authority* [2003] NZAR, 647.

[35] The Authority found that this appellant's evidence was given in a manner that was fluent and spontaneous. His demeanour was calm and he did not appear to be devious, evasive or defensive. He has also been able to corroborate parts of his account. We find that it is appropriate to grant him the benefit of the doubt where any such doubts arose. His account is accordingly accepted in full.

Appellant's claim for refugee status

[36] The appellant advanced two bases for his claim for refugee status. First, he said that he is Nuba, and that as a member of that ethnic minority he has been, and will continue to be, subjected to persecution by the state. Second, he says that he does not wish to perform the military service which is compulsory for males in Sudan. He says that his objection is based on his opposition to the regime in power there, and upon his abhorrence of the atrocities committed by the armed forces against citizens of Sudan during the civil war which has spanned several decades.

[37] The Authority will deal with each of these grounds in turn. Before doing so, it is appropriate to place the appellant's claim within the context of Sudan's recent past.

Background to the Civil War

[38] Sudan has been rent by civil war since the mid-1950s, apart from a period of eleven years from 1972. Since it erupted again in 1983, the conflict has been fought by two factions: the government, dominated by Arab Muslims from the north of the country, and the Sudan People's Liberation Movement, (SPLM), predominantly peopled by black Africans from the south, who are either Christians or members of Animist sects.

[39] The period of more than two decades which has followed has given rise to atrocities perpetrated by both the government forces and the SPLM, and has also given rise to widespread famine throughout various parts of the country. According to the United States Department of State *Country Reports on Human Rights Practices – 2002, Sudan*, (31 March 2003), more than 2 million people have been killed, and over 4 million displaced since hostilities resumed in 1983.

[40] International initiatives aimed at bringing the factions together grew in response to the ongoing humanitarian crisis. That process culminated in an agreement being reached in 2002, referred to as the Machakos Protocol, so named after the place in Kenya where the agreement was forged. Under the Protocol the factions have agreed in principle to a period of peace for six years once a comprehensive peace agreement is signed. At the end of that period there is to be a referendum by which the people of the south can determine whether they will become independent or remain part of Sudan.

[41] The peace process was augmented on 25 September 2003, when the government and the SPLM signed a framework agreement relating to security arrangements. That agreement provides that Sudan will have two separate armed forces during the interim period, meaning that the SPLM would not be conceding the existence of its armed forces pending the overall resolution of the dispute. The government has agreed that it will withdraw nearly 90 percent of its' troops from the south, and a new joint force is to be established; International Herald Tribune online, *Sudan and rebels take big step to peace*, Friday 26 September 2003.

[42] More recent reports show that progress continues to be made. On 7 January 2004 the parties to the conflict signed an extensive pact by which the government in the north will share oil revenues proportionately with a proposed

governing authority in the South; *High hopes for peace in Region as New Year begins*, African Church Information Service, 12 January 2004, www.allafrica.com/stories/printable/200401120884.html. There are also reports of an agreement in principle relating to the disputed areas of the Southern Blue Nile and the Nuba mountains, albeit that the talks on the more difficult, oil-rich, area of Abyei remain fraught: *Progress at peace talks, says Gov't*, UN Integrated Regional Information Networks, 14 January 2004, www.allafrica.com/stories/printable/200401140127.html.

Nuba

[43] According to the ICG report *Sudan's other wars*, dated 25 June 2003, the people of the Nuba Mountains are culturally diverse, and the collective term "Nuba" refers to a multiplicity of tribes with varying cultures and beliefs. It is suggested elsewhere that the term refers generically to the non-Arab people of the area, who between them speak more than 100 discrete languages; JS Olson, *The Peoples of Africa: an ethnological dictionary*, Greenwood Press, Connecticut, 1996, 447.

Persecution

[44] Under New Zealand refugee law, persecution has been defined by the equation: persecution = serious harm + failure of state protection; see *Refugee Appeal No 71427/99*. While we will not attempt to define exhaustively what might amount to serious harm, this Authority has previously found that refugee law ought to concern itself with actions which deny human dignity in any key way, and that the sustained or systemic denial of core human rights is the appropriate standard. See *Refugee Appeal No 2039/93*, (12 February 1996). The Authority also found in that decision that discrimination in itself will not amount to persecution.

Whether Appellant Will Face Persecution for Reasons of His Being Nuba

[45] The appellant is half Nuba. He gave evidence with regard to this at various different times prior to and during the hearing before the Authority. Invariably he referred to instances of disadvantage which were comparatively low level.

[46] In his original written application for refugee status, dated 28 July 2003, he claimed that he and his family had been considered second class citizens because of his mother's Nuba ethnicity. He repeated this in his first written statement, dated 9 August 2003, which he provided in advance of his interview with the RSB. That statement records simply that "my family suffered a lot of racial discrimination, because my mother was originally from the Nuba." During the hearing before the Authority, the appellant said that fellow school students and neighbours harassed him and called him names. He confirmed that his mother also faced this type of harassment, but said that she did not have any other problems related to her race, and nor did he during his school years.

[47] The appellant also claimed, when interviewed by the RSB, that he had not been accepted for places at universities to which he applied. However, he was able to obtain a place on a computing diploma course after he graduated from high school, and he subsequently obtained teaching positions with schools in Sudan, and a degree from a foreign university.

[48] In submissions filed on 1 December 2003, counsel stated that it is "well established" that Nuba face persecution in Sudan. In support of that assertion she cited the following extract from a paper prepared by Suleiman Musa Rahhal for presentation at the Italian Forum Sudan, *Peace Perspectives in Sudan. A rebirth of Civil Society*, held in Milan on 17-18 September 1999:

"A pitiless "scorched earth" policy has brought ethnic cleansing to the Nuba Mountains, tearing the Nuba from their land, cultures and traditions with the intent of eradicating their cultural identity. Denied the right to be Nuba, with all their rich political, religious and cultural diversity, the Nuba have been pushed to the margins of Sudanese society."

[49] It is clear from more contemporary country information that the circumstances referred to in that extract have now altered for the better. A report from IRINNEWS.ORG, *Sudan: Nuba Mountains ceasefire extended until January*, 25 June 2003, www.irinnews.org/print.asp?ReportID=34988, confirmed that a ceasefire signed in January 2002 by the Government and the SPLM in respect of

the Nuba mountains had been extended, for the third time, until 19 January 2004. The report indicated that there had been no major violations of the ceasefire, and that living and working conditions had improved significantly for the people of the Nuba Mountains during that period.

[50] In its report dated 7 July 2003, *Sudan Endgame*, the International Crisis Group, (ICG), indicated that the people of that region have taken advantage of the ceasefire to consolidate their political views, and to reach a consensus on the future of the peace process (page 27).

[51] Although 19 January 2004 has now passed, the Authority is not aware of any information which suggests that the conflict has resumed in that area. In any event, the problems of the people in that region have little relevance to the experiences reported by the appellant. He has never lived in that area, his father is not Nuba, he speaks Arabic fluently, and he has enjoyed access to education, jobs, and international travel, (the Authority here refers to his time in India, rather than his subsequent departure for New Zealand).

[52] The appellant has also enjoyed an extensive and international education to graduate level, with prospects of further study being hampered by the domestic political situation rather than by financial constraints or apparent racial barriers. Further, his brothers have been successful merchants, and he has given no evidence of any loss of land or cultural identity as a result of being Nuba.

[53] Finally, the Authority notes that the appellant has a relative who works for the government department which coordinates the People's Defence. That relative is also Nuba, which suggests that there is no blanket employment related discrimination even in government jobs.

[54] It is quite clear that any difficulties which the appellant has faced as a result of his race have amounted to no more than discrimination. The appellant's personal circumstances are not commensurate with a finding of persecution based on his race, whether past or prospective. The Authority has not received any evidence or country information which suggests that the treatment he is likely to receive if he were to return to Sudan would amount to persecution for reasons of his race.

[55] Accordingly, the Authority finds that the appellant's claim for refugee status on this ground is not well-founded. We turn to consider the other basis upon which the appellant relies.

Compulsory Military Service – circumstances in which objections may afford a basis for refugee status

[56] Some of the circumstances in which an appellant's objection to performing compulsory military service might afford him a claim for refugee status were considered by the Authority in *Refugee Appeal No. 70472/97* (28 January 1999), where the Authority stated, at pages 12-13, that

“The general principles relating to conscientious objections as ground for refugee status has been discussed in previous decisions of the Appeals Authority. In most countries, evasion of compulsory military service or desertion attracts penalties of varying degrees of severity but because punishment is generally in accordance with laws of universal application, evasion or desertion will amount to persecution for a Convention ground in only limited circumstances. One such circumstance which has been recognised and which has been relied on by the appellant in this case, is when the refusal to perform military service -

‘Reflects an implied political opinion as to the fundamental illegitimacy in international law of the form of military service avoided’

See Hathaway *The Law of Refugee Status* 1991 at page 180. Also see paragraph 171 UNHCR Handbook which reads –

‘Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.’ (sic).

[57] The Authority then distinguished between the following two situations, (at page 14):

- i. where the conflict involves the perpetration of abuses of human rights as a matter of government or military policy, e.g. ethnic cleansing, genocide etc, in which case it can be accepted that anyone in the military stands a real chance of being involved and thus entitled to refugee status or;
- ii. where military units abuse human rights and the authorities either encourage such activities or are unable to control them in which case before refugee status is accepted, it is necessary that the facts disclose that there is a real chance that the appellant will be personally forced to participate in such activities”.

It is the first of these two categories which requires consideration in this appeal.

Sudanese Government-backed military action

[58] The country information available to the Authority indicates that over a period of twenty years successive governments in Sudan have been responsible for gross breaches of human rights in the manner in which they have conducted the civil war. These violations have been the subject of condemnation by the international community.

[59] The Authority refers to the *Statement by Mr Gerhart Baum, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan*, UNHCR Commission on Human Rights, 59th session, 28 March 2003, in which he made reference to the following matters:

- A report by the IGC of an offensive by the government in the Western Upper Nile as an extension of the government's long-term strategy to depopulate oil-rich areas by "indiscriminate attacks on civilians";
- Reports by the US-led Civilian Protection Monitoring Team, (CPMT), of numerous breaches of the agreed ceasefire and deliberate attacks against non-combatant civilians;
- Strong condemnation of violations of existing agreements;
- Reports that mass executions by armed forces, and aerial bombardment in areas of dense population, have been taking place in Darfur for the past few years.

[60] The Authority also notes the following instances of international condemnation:

- (a) Relief web; Source: Government of Norway, *Norway condemns attack by Sudan government on civilians*, 21 February 2002. The Norwegian government condemned an attack by a Sudanese government gunship on

civilians in the south of Sudan, and claimed that this is an example of an ongoing pattern of behaviour.

- (b) Inter Press Service, *Rights-Sudan: Aid Agencies Condemn Government Bombing Campaign*, 9 August 2000. Non governmental organisations operating under the United Nations coordinated umbrella of Operations Lifeline Sudan, (OLS), condemned the Sudanese Government's bombing campaigns in the south of Sudan, which targeted civilians and aid workers. The OLS referred to thirty three bombing raids carried out in a single month, July 2000, most of which targeted humanitarian relief agency compounds. The incidents were confirmed by the UN Office of the Coordination of Humanitarian Affairs, OCHA.
- (c) UN Commission on Human Rights, *Commission on Human Rights Resolution 1997/59 on the Situation of Human Rights in the Sudan*, 15 April 1997. The resolution expressed deep concern about continued acts of "indiscriminate and deliberate aerial bombardment by the government of the Sudan of civilian targets in southern Sudan".
- (d) Relief Web, Government of the United States of America, *Clinton Letter to Congress, Sudan Sanctions*, 3 November 1997. This is a report of the decision of then President Clinton of the United States of America to impose sanctions on Sudan in response, *inter alia*, to the Sudanese government's continued prosecution of a "devastating civil war", and its "abysmal human rights record".

[61] The United States Department of State made the following observations in its *Country Reports on Human Rights Practices – 2002*, Sudan, 31 March 2003, ("The DOS Report");

"The Government's human rights record remained extremely poor, and...it continued to commit numerous, serious abuses...Government security forces were responsible for extrajudicial killings, and there were reports of government responsibility for disappearances...Government security forces and associated militias beat refugees, reportedly raped women abducted during raids, and reportedly harassed and detained persons on the basis of their religion. Government security forces and pro-government militias acted with impunity...The authorities did not ensure due process and the military courts summarily tried and punished civilians".

[62] It continued:

“During the year, there were numerous reports of extrajudicial killings. Government forces and allied militia still pursued a scorched earth policy aimed at removing populations from the areas of the oil pipeline and oil production. On numerous occasions, the government attacked civilian facilities and housing, which resulted in numerous civilian deaths, including of children”.

[63] Furthermore:

“The government continued to conscript forcibly men and boys. The government still did not fully apply the laws of war to the southern insurgency...”

[64] Similar occurrences were outlined by Human Rights Watch, (HRW), in its *World Report 2003, Sudan*. HRW reports that following the conclusion of the Nuba mountains ceasefire agreement in January 2002, and following the initial peace protocols signed in Machakos, Kenya, in July 2002:

“The government army strikingly lacked captured combatants, leading to a conclusion it had a forbidden “take no prisoners” order”.

[65] The report continued:

“The government continued to deny access by the International Committee of the Red Cross (ICRC) to anyone detained in connection with the conflict, despite an explicit provision in the Nuba mountains agreement for ICRC access to those persons”.

[66] The peace accord reached in July 2002 does not appear to have made the Government any more reticent about such practices. The Authority has also had access to a report of Amnesty International dated 16 July 2003, *Sudan: Empty Promises? Human Rights Violations in Government-Controlled Areas*. The following extracts appear at page 4 of the AI report:

“...in January 2003, the ceasefire broke down due to renewed military activity in the oil provinces of the *upper Nile*...South of Bentiu. The attacks were carried out by the Sudanese army and southern militias allied to it against towns and villages, particularly those along a road being constructed by the Sudanese government between Bentiu and Adok. These attacks were preceded by forced recruitment of young men in Khartoum in late 2002 and of men and children in Bentiu.

... On 4 February 2003, an addendum to the ceasefire agreement established the Verification and Monitoring Team (VMT) ... Its mandate is to investigate ceasefire violations and troop movements of both parties and monitor the return of civilians displaced since October 2002... In March 2003, the CPMT was unable to carry out further comprehensive investigations, reportedly because of a lack of cooperation by the government on security issues. In June, it investigated and reported the killings of some 30 civilians and destruction of civilian property by government-allied militia in Eastern Upper Nile...”

[67] The HRW *World Report 2003, Sudan*, states that as a precursor to the Machakos Protocol, the Government and the SPLM subscribed to four preliminary agreements, (the “Danforth agreements”, so named after the United States Special Presidential Envoy for Peace who proposed them). One concerned a

ceasefire in the Nuba mountains area which, as has been noted above, appears to have endured.

[68] Another called for an internationally monitored end to attacks on civilians and civilian objects. After initially balking at that agreement, the government finally agreed to sign it following international condemnation which arose from an attack by government helicopters on a food distribution unit in the Western Upper Nile. U.N. food monitors witnessed the attack. Despite then signing the relevant Danforth agreement, the government of Sudan continues to carry out attacks on civilians, for example in the western region of Darfur.

Conflict in Darfur

[69] Any optimism created by the considerable progress made towards a peaceful resolution of the civil war is necessarily tempered by the eruption and perhaps escalation of a separate conflict in the region of Darfur. In February 2003, two rebel groups in that area, the Sudan Liberation Army, (SLA), and the Justice and Equality Movement, (JEM), attacked government military installations to protest the government's ongoing failure to address longstanding grievances. The government's response has been uncompromising.

[70] Aspects of that conflict are covered in a report by the ICG *Sudan: Towards an incomplete peace*, 11 December 2003. That report refers to the "worsening crisis in Darfur", (page 19), and states that "violence against civilians has worsened, appearing to indicate a cynical shift in government strategy for containing the insurgency".

[71] That report outlines government use of local Arab tribal militia, called "janjaweed", who have effectively been promised the right of pillage in return for their suppression of opposition and violence in the area. The militias are given free reign to drive the locals off their land, and are allowed to retain the land which they clear, and the homes and goods which they overrun as a result. At page 19, the report states that:

"Militia atrocities included indiscriminate killing and mutilation, the burning alive of victims and the looting and destruction of food reserves and other property."

[72] This policy does not appear to be new, and appears to have contributed to the formation of the SLA and the JEM. An earlier IGC report, *Sudan's other wars*, dated 25 June 2003, makes it clear that tribes in the Darfur area have endured such raids for "the past few years", (page 11). Further, according to an ICG media release such attacks have continued despite, and in breach of, ceasefire agreements reached between the government and the SLA in September and again in November 2003; *Don't breathe a sigh of relief for Sudan just yet*, John Prendergast and Andrew Stroehlein, 20 January 2004, (The Observer).

[73] The Authority has also had access to ongoing reports of government planes bombing villages in Darfur; BBC News online, *Thousands 'flee Sudan bombings'*, 26 January 2004, www.news.bbc.co.uk/2/hi/Africa/3431279.stm. The BBC refers to a UNHCR estimate that approximately 100,000 people have fled the province since fighting began a year ago.

[74] The current extent of the conflict is the subject of closer analysis in the report by Amnesty International, *Darfur: "Too Many People Killed for No Reason"*, February 2004. Summarising its report in the introduction, AI states that the report catalogues the:

"Grave abuses of international human rights and humanitarian law...committed against civilians with impunity throughout 2003, by government forces and government-aligned militias in Darfur and the failure of the Sudanese government in protecting the lives of its own civilians".

[75] The Authority has already referred to the existing peace agreements which have been forged between the government and the SPLA. Nonetheless, in submissions filed on 1 December 2003, counsel submits:

"...With respect ... any assessment of the current situation in Sudan must take into account the ongoing conflicts in [*inter alia*, Darfur]. Furthermore, any assessment of the peace process must take into account the fact that these conflicts, and the concerns of the parties involved in them, are not being addressed by the Machakos Protocol."

The Authority agrees with that submission.

[76] In this regard, the Authority also notes that the JEM has claimed that the peace deal between the SPLA and the government will lead to escalated fighting in Darfur; *The marginalised majority to reject bilateral deal say Darfur rebels*, UN Office for the Coordination of Humanitarian Affairs, 26 November 2003, www.irinnews.org/print.asp?ReportID=38100.

Conclusion on Government military action

[77] On the basis of the country information available to it, the Authority finds that the Government of Sudan systematically conducts military action involving the perpetration of human rights abuses as a matter of government or military policy. It has been the subject of International condemnation as a result. This is well documented with regard to the conflict between the government and the SPLM. Current country information indicates that similar policies are now being followed with regard to the conflict in the west of Sudan, notably in Darfur.

The appellant's evidence

[78] The appellant's evidence is neatly encapsulated in the final paragraph of his second written statement, dated 15 October 2003, prepared for the purposes of his appeal hearing before the Authority;

“I cannot continue living my life in hiding to avoid being taken into military service. I am at risk of being arrested and being taken to do military service. I cannot be part of any human rights abuses and I would be forced to do this. In participating I would be killing my own people, not defending Sudan”.

Assessment of risk

[79] The appellant is now 33 years old, and is therefore at the upper end of the age range for which military service is prescribed in Sudan. However the Authority has seen one report which suggested that it is possible for people outside that age range to be recruited; Danish Immigration Service, *Report on fact-finding mission to Cairo, Khartoum and Nairobi, 8 to 19 August and 20 to 23 November 2001*, (“the Danish Report”), page 39. The *CIA World Fact Book 2002 – Sudan*, also suggests that men between the ages of 15-49 are liable to be conscripted. Accordingly the appellant is still of an age at which he could be called upon to perform his military service.

[80] According to the Danish Report, recruitment is often enforced through arbitrary “round-ups” in which military personnel in civilian dress went so far as to stop cars and buses to select men for service. The Report stated, at page 35 that the rules of military recruitment were ignored, and that those not covered by the

legislation were also at risk of enforced recruitment. This risk extended to people younger or older than the legislative age, and even foreigners. On occasion the Embassy of the Netherlands warned its own staff to remain within the Embassy compound, in order to avoid such a risk, (page 40).

[81] The Danish Report also stated, at page 55, that Sudanese citizens who had been away from the country for more than about two years were questioned by Sudanese Police upon returning to the airport at Khartoum. This is often related to potential tax liabilities rather than military service obligations, and staff from at least one Embassy, (The Netherlands), were not aware of harm being suffered by anyone questioned. However, the report also states that persons entering on a temporary travel document would be questioned about their personal circumstances upon arrival.

[82] As against that, the Authority has accepted the appellant's evidence that he spent significant periods of time in hiding from the authorities, that he departed from Sudan illegally, and that the authorities have displayed an ongoing interest in his whereabouts since his departure. Further, within a short period of his return from India in 2001, he received a further summons from the military. This was presumably issued in keeping with the undertaking which he signed in order to leave Sudan in 1998. The issue of that summons suggests that his movements have been monitored in the past.

[83] The Authority has also accepted that the appellant no longer has a valid Sudanese passport. He will presumably have to reapply for travel documents in order to return to Sudan. We have also accepted his evidence that the authorities have continued to look for him when he has failed to respond to summonses requiring him to report for his service. This includes the period after he left Sudan at the end of 2002.

[84] The appellant's claim can be considered to be at the margin of well-foundedness. He has managed to evade military service for some years and, while doing so, has managed to educate himself internationally, with the benefit of a dispensation given by the same government that has sought to recruit him. Moreover, if the peace accord reached with respect to the conflict in the south were to hold, there would probably be an attendant downscaling of military resources and a considerable reduction in the number of conscripts.

[85] However, the peace process remains just that; a process. Given the volatile history of Sudan since the 1950s, it is simply too early to predict the outcome of the peace process with any certainty, particularly given the current situation in Darfur. The Authority must deal with the circumstances which it is faced with at the time of its decision, rather than engaging in conjecture or surmising about the possible course of future events.

[86] In all of the circumstances of this case, the Authority finds that there is a real, as opposed to a remote, chance that the appellant would be required to perform military service if he returned to Sudan.

[87] The real chance arises from the combination of two coinciding factors. First, he is subject to an outstanding military summons. There is a real chance that he would come to the attention of the military authorities either at the border or within a short time of his return, and that they would locate him as a result. Second, the appellant is at continued risk of being conscripted as part of one of the random street 'round-ups' conducted by the military. We find that the appellant could not reduce these risks by relocating elsewhere in Sudan.

[88] As at this date, the military conflict in Sudan appears to continue to involve the perpetration of internationally condemned human rights abuses as a matter of government or military policy. As such, the Authority concludes that there is a real chance that the appellant would be involved in such abuses as a conscript.

CONCLUSION

[89] For the reasons given, the Authority finds that the appellant has a well-founded fear of being persecuted if he returns to Sudan. The persecution would be for reason of an adverse political opinion imputed to him by the Sudanese government, and is therefore for a convention ground.

[90] The appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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A N Molloy
Chairperson