IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2012] NZIPT 800200**

AT AUCKLAND

Appellant:	**AB (Chad)**
Before:	S A Aitchison (Chair) V J Vervoort (Member)
Counsel for the Appellant:	C Curtis
Counsel for the Respondent:	No Appearance
Date of Hearing:	21 November 2011
Date of Decision:	20 January 2012

DECISION

INTRODUCTION

[1] This is an appeal pursuant to sections 195(1)(a) and 194(1)(c) of the Immigration Act 2009 (the Act) against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour declining to grant either refugee or protected person status to the appellant, a national of Chad.

[2] This is the third time the appellant has claimed refugee status in New Zealand, and the first time he has made a protection claim. The RSB declined the appellant's third refugee claim on 27 June 2011 on the basis that there was no jurisdiction to consider his claim. The RSB then considered the appellant's protection claim and dismissed it on its merits. While the appellant acknowledges, on appeal to the Tribunal, that there is no significant change of circumstances material to his refugee claim, and asserts that he appeals only on protected person grounds, in accordance with the requirements of the Act as set out below, the Tribunal will consider first of all, whether there has been a significant change in circumstances material to the appellant's refugee claim since the previous claim was determined and, secondly, whether the appellant is a protected person.

[3] The appellant claims he was born in Saudi Arabia, to Chadian citizens, where he lived most of his life. Following the expiry of his household residence permit in Saudi Arabia, he made arrangements to travel to New Zealand as a student on a Limited Purposes Visa (LPV). To conceal his illegal status in Saudi Arabia, he departed on a false Sudanese passport containing an Umrah exit re-entry visa, and entered the Sudan. He carried with him his Chadian passport (issued in his true identity, but unregistered), which included his LPV for New Zealand, a false exit/re-entry visa for Saudi Arabia, false exit stamp for Saudi Arabia, and false Sudanese entry stamp. He used this passport to gain board the aircraft to New Zealand, and destroyed both passports prior to arrival.

[4] The appellant fears being deported to Chad as an undocumented person. He claims that his attempts to obtain a new Chadian passport have been denied by Chadian embassy staff in Saudi Arabia, which he attributes to his father's involvement in opposition politics in Chad and his Gorane ethnicity. Upon arrival in Chad, he claims that he will be detained, tortured, and questioned concerning his identity and his father's background, and be subjected to torture, arbitrary loss of life, or cruel, inhuman, or degrading treatment or punishment as a consequence. He fears that the Chadian authorities may perceive him to be a Saudi Arabian or Sudanese national and deport him to either country, or perceive him to have dual nationality and revoke his citizenship. He also fears that they may discover his commission of immigration and passport fraud and deport him for this reason to Saudi Arabia to face prosecution.

[5] The appellant states he will be without any family or financial support in Chad. He is unable to speak the Arabic dialect spoken in Chad, and will be discriminated against as a Gorane. He states that Gorane are denied medical care and an education, and are killed on account of their ethnicity. He will be required to perform military service and fight against his own people.

[6] The primary issue in this appeal is whether there are substantial grounds for believing that the appellant would be in danger of being subject to torture, arbitrary loss of life, or cruel, inhuman, or degrading treatment or punishment upon return to Chad.

JURISDICTION ON SUBSEQUENT REFUGEE CLAIM

[7] Where a refugee and protection officer has refused to consider a subsequent claim, section 195(1)(a) of the Act provides that the person may

appeal to the Tribunal. Here, the officer refused to consider the subsequent refugee claim (it will be recalled that this is the first protection claim the appellant has made and so the 'subsequent claim' jurisdiction does not apply to that part of the appeal).

[8] The Act provides that where the decision to refuse to consider the subsequent claim was made under section 140(1) (on the grounds that there is no significant change in circumstances) and the person has then appealed under section 195(1)(a), then section 200(1) is applicable and it provides:

> " Where an appeal is brought under section 195(1)(a), the Tribunal must first consider —
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> (a) whether there has been a significant change in circumstances material to the appellant's claim since the previous claim was determined; and
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> (b) if so, whether the change in 1 or more of the circumstances was brought about by the appellant —
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> (i) acting otherwise than in good faith; and
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> (ii) for a purpose of creating grounds for recognition under section 129."

[9] If these requirements are met then, pursuant to section 200(6) of the Act, the Tribunal will conduct its enquiry into whether to recognise the appellant as:

(a) a refugee under the Refugee Convention (section 129); and

(b) as a protected person under the Convention Against Torture (section 130); and

(c) as a protected person under the ICCPR (section 131).

[10] The provisions of the Act dealing with subsequent claims are different from those in the Immigration Act 1987 in various ways. First, an appellant is no longer required to establish that the change of circumstances occurred in his or her home country. Section 200(1)(a) of the Act simply requires the Tribunal to focus upon whether there has been a change in circumstances that is significant, post-dates the determination of the previous claim and is material to the claim.

[11] If these criteria are met, section 200(1)(b) of the Act provides that the Tribunal must then address whether the change in circumstances was brought about by the claimant acting other than in good faith and for the purpose of creating grounds for recognition as a refugee under section 129 of the Act.

[12] Because the 'changed circumstances' assessment requires the Tribunal to compare the various refugee claims made by the appellant, it is necessary to provide a summary of the appellant's previous refugee claims and the findings thereon, before turning to the present claim.

[13] Before doing so, however, it is relevant to note that section 226 of the Act provides:

> "It is the responsibility of an appellant or affected person to establish his or her case or claim, and the appellant or affected person must ensure that all information, evidence, and submissions that he or she wishes to have considered in support of the appeal or matter are provided to the Tribunal before it makes its decision on the appeal or matter."

[14] Further, the Tribunal may rely on any finding of credibility or fact by the Tribunal or any appeals body in any previous appeal or matter involving the person and the person may not challenge any finding of credibility or fact so relied upon – see section 231 of the Act.

BACKGROUND

First Refugee Claim

[15] The appellant lodged his first claim for refugee status on 9 June 2006. He claimed that he was a Chadian national of Gorane ethnicity, born and living his entire life in Chad. He stated that he had recently escaped the Chadian authorities who perceived him to be involved, as was his father, in political opposition activities in Chad. He stated that he had travelled to New Zealand on a false Chadian passport containing a valid residence permit for Saudi Arabia, which he had obtained in the Sudan. He also claimed to fear persecution as a Gorane in Chad and that he would be forced by Chadian authorities to perform military service against his own people. This claim was dismissed by the RSB, and subsequently by the Refugee Status Appeals Authority (the RSAA); see *Refugee Appeal No 76048* (20 November 2007).

[16] The RSAA accepted the appellant's evidence as to his Chadian nationality only, and rejected the remainder of his evidence as non-credible. It found that he had presented a false identity, and that while a Chadian national, he was, in fact, a resident in Saudi Arabia, who had travelled to New Zealand on a genuine Chadian passport with an LPV to enter New Zealand. The Authority had before it a copy of an LPV application in the name of one SS, which had been submitted to the New

Zealand Embassy in Dubai on 15 February 2006. Affixed to the application was a photograph of the appellant. On the basis of this application, and interactions between the New Zealand Embassy and SS's mother in Saudi Arabia concerning SS's recent arrival in New Zealand and questions about claiming refugee status, the RSAA concluded that SS and the appellant were the same person and that the appellant had presented a false identity in his refugee claim. The RSAA concluded that the evidence did not establish that there was a real chance of his being persecuted in Chad or in Saudi Arabia.

Judicial Review – High Court

[17] The appellant applied to the High Court for judicial review of the findings of the RSAA. On 26 August 2008, Priestley J dismissed the application, finding there was no basis to challenge the lawfulness of the decision, given its thorough and comprehensive nature.

Removal Review Authority (RRA)

[18] On 13 February 2008, the appellant appealed to the RRA against the requirement to leave New Zealand (pursuant to section 47 of the Immigration Act 1987). Initially, before the RRA, he maintained his false identity and the basis of his first refugee claim. On 22 October 2008, his counsel disclosed that his claim, including his identity, was false. A new statement of the appellant, dated 21 October 2008, was submitted. This set out his new claims and evidence, which he has maintained in his second and third refugee claims.

[19] The RRA dismissed the appeal on 17 November 2008.

Second Refugee Claim

[20] The appellant lodged his second claim for refugee status on 26 November 2008. The RSB declined this application on the basis that it had no jurisdiction to hear his claim. The appellant appealed to the RSAA.

[21] In his second claim, the appellant stated that he cannot return to Chad because his father and various other relatives have long been associated with the political opposition in Chad and he would be subject to serious harm there as a consequence.

[22] As to Saudi Arabia, the appellant stated that has no right to live there and would be deported to Chad. Further, he risks prosecution for immigration and/or passport fraud in Saudi Arabia as he left there on false travel documentation.

[23] The RSAA considered the question of whether the appellant met the jurisdictional threshold of establishing that circumstances had changed in Chad to such an extent that his second claim was based on significantly different grounds to his first claim. It found that there had been no change in circumstances in Chad such that the second appeal was based on significantly different grounds.

[24] Although it was not strictly necessary to consider, given the above finding, the RSAA went on to outline the credibility concerns that undermined the appellant's second claim. These included finding his account of his father's political difficulties in Chad not to be credible. The RSAA also rejected his claim that other relatives were involved in the political opposition and that the appellant would suffer harm as a result.

Third Refugee Claim

[25] On 27 June 2011, the RSB dismissed the third refugee claim on the ground that there was no jurisdiction. It considered whether the appellant was a protected person and dismissed this application as well. The appellant appealed to the Tribunal on protected person grounds only.

THE APPELLANT'S CASE

[26] The account which follows is that given by the appellant at the appeal hearing before the Tribunal. It is assessed later.

[27] The appellant was born in Saudi Arabia to parents who are citizens of Chad. His parents migrated to Saudi Arabia approximately 45 years ago, where they have remained. Their status on arrival was unlawful. Over the years, they acquired forged residence permits to facilitate their stay in Saudi Arabia. Approximately ten years ago, the appellant's father obtained a valid residence permit on the basis of his employment. The residence permit included his wife, the appellant, and the appellant's three siblings. Both parents hold Chadian passports in their true identity. The appellant is not sure if the passports have been registered through official channels, and suspects that his parents have paid bribes to obtain them.

[28] The appellant has no family remaining in Chad. A number of his paternal and maternal relatives are members of the opposition party in Chad and travel between Chad, the Sudan, and Saudi Arabia where they are based.

[29] The appellant is a Chadian national, a status which he has acquired through birth to citizens of Chad. He is of Gorane ethnicity, and speaks formal Arabic, and the Arabic dialects of Saudi Arabia and the Sudan. He can also speak some Gorane.

[30] The appellant attended primary and secondary school in Saudi Arabia. In approximately 2003, a year after graduating from secondary school, he went to the Sudan and studied computer science at a university there. He was unable to obtain admission to a university in Saudi Arabia.

[31] The appellant travelled to the Sudan on an unregistered Chadian passport issued in his true identity. His father obtained this passport for him shortly prior to his travel. The appellant was unable to obtain a Chadian passport through official channels because of his father's political background in Chad. The appellant returned to Saudi Arabia on two occasions during the course of his university study. Due to political difficulties in the Sudan, and protests involving students, the university closed several times during the course of his study. Each time he departed Saudi Arabia for the Sudan he had an exit/re-entry visa placed in his passport, valid for one year. He did not experience any difficulties travelling on this passport to and from the Sudan.

[32] In approximately 2005, the appellant returned to Saudi Arabia during the university holiday period and remained. He could not return to the Sudan as the family's residence permit (which included him) expired soon after his return and the authorities were no longer renewing or issuing residence permits to Chadian nationals. At the same time, Chadian students were expelled from schools in Saudi Arabia and Chadians were refused medical treatment.

[33] The appellant worked illegally as a secretary in Saudi Arabia for a year, and made plans to travel to New Zealand. He applied to the New Zealand Embassy in Dubai for a student visa and was issued an LPV in May 2006. He submitted his unregistered Chadian passport with his application and the LPV was entered into it. He also submitted a number of false documents with the application, including a letter from his and his father's employers attesting to their earnings, and a travel itinerary depicting a travel route from Saudi Arabia to Dubai and on to New

Zealand. He did not provide a copy of any residence permit in Saudi Arabia, nor was he asked to supply a copy.

[34] To conceal his unlawful status in Saudi Arabia on departure, and prevent prosecution or deportation to Chad, he contacted an agent who provided a Sudanese passport, issued in the name of another person, and containing an Umrah exit/re-entry visa. The appellant used this passport to depart Saudi Arabia and enter the Sudan. He was fingerprinted on departure. He carried with him his unregistered Chadian passport, into which false stamps had been entered, including an exit/re-entry visa for Saudi Arabia, an exit stamp for Saudi Arabia, and an arrival stamp for the Sudan.

[35] The appellant arrived in New Zealand in mid-2006. Since his arrival he has learnt that his father has managed to renew his Saudi residence permit, subsequent to a law/policy change, and include his immediate family members in it. The residence permit was renewed approximately two years ago. His father also arranged for a relative to obtain a residence permit on the appellant's behalf to account for him, presenting himself as the appellant and being fingerprinted. This residence permit includes a portion of the appellant's name (omitting his surname, which is a customary feature in documents issued in Saudi Arabia), his photograph, a false date of birth, and provides no date of issue.

[36] The appellant has attempted, unsuccessfully, to obtain a new Chadian passport since arriving in New Zealand. He has called the Chadian Embassy in Beijing, but no one answered the telephone. On 9 November 2010, he faxed a letter to the Chadian Embassy in Riyadh stating that he had lost his passport and requesting a replacement. A copy of this letter, written in Arabic, and translated by the appellant, was tendered in evidence. He has received no response from the Embassy. He has called the Embassy several times but each time he is told that the person in charge is not available. He believes that he is being denied a passport because of his father's background in opposition politics in Chad and because he is Gorane.

[37] The appellant received a copy of an email, dated 5 November 2008, from a contact in New Zealand, who had received the email from a former asylum seeker in New Zealand (of unknown nationality, formerly resident in Saudi Arabia), who was deported to Chad. In the email, the person claims to have been arrested and ill-treated upon arrival, before managing to escape.

[38] The appellant fears torture, arbitrary loss of life, or cruel, inhuman, or degrading treatment or punishment upon deportation to Chad or Saudi Arabia. As to Chad, he fears that he will be harmed because of his father's involvement in opposition politics in Chad and his Gorane ethnicity.

[39] The appellant also states that, in Chad, Gorane are killed on account of their ethnicity. He will be without any family or financial support there and is unable to speak the Arabic dialect spoken in Chad. He states that Gorane are denied medical care and an education. He also states that he will be required to perform military service and fight against his own people.

[40] As to Saudi Arabia, the appellant fears that the Chadian authorities may perceive him to be a Saudi Arabian or Sudanese national and deport him to either country, or perceive him to have dual nationality and revoke his Chadian citizenship. He also fears that they may discover his commission of immigration and passport fraud and deport him for this reason to Saudi Arabia to face prosecution.

Witness AA

[41] The appellant called a witness, AA, to give evidence before the Tribunal. Subsequent to the hearing, counsel filed a written statement for the witness, dated 18 November 2011, and responses to additional questions sought by the Tribunal post-hearing.

[42] AA was a national of Sudan, who arrived in New Zealand over eight years ago. He previously worked for a period of three months at the Saudi Arabian Consulate in New Zealand as an Arabic translator. He holds a certificate in advanced interpreting and a certificate in liaison interpreting from the Auckland Institute of Technology (AUT). Uncertified copies of these certificates were tendered to the Tribunal.

[43] He stated that Arabic is spoken in 22 countries around the world, and while the core language is the same, Arabic dialects vary according to country. For example, the Arabic dialects in Chad, the Sudan and Saudi Arabia, are all different, however it would be possible to communicate in Arabic across these countries and understand one another.

[44] AA came to know the appellant approximately four years ago. He knows that the appellant speaks the Arabic dialects of Saudi Arabia and the Sudan, and

that he belongs to the Gorane tribe in Chad. He is able to discern this as there are Gorane in the Sudan, and some originate from Chad. Gorane also have a different physical appearance to other tribes, and may be characterised as tall, with large noses and thick lips. The Zaghawa tribe in Chad, by comparison, are short and solid. The appellant is identifiable as Gorane by his physical appearance, because he is tall. While AA could not identify the appellant as a Gorane from Chad by his Arabic accent (the appellant being born and residing most of his life in Saudi Arabia), he could identify him as such through other mannerisms of speech, for example, the appellant would often repeat phrases expressed in conversation, a characteristic typical of Gorane.

[45] AA is concerned that the government in Chad is a dictatorship represented by persons from the Zaghawa tribe. He believes that Goranes, not belonging to the government tribe, risk being killed in Chad.

Material and Submissions Received

[46] Counsel filed submissions with the Tribunal on 22 July 2011. Amended submissions were filed on 18 November 2011.

[47] At the hearing on 21 November 2011, a copy of the appellant's birth certificate was tendered, and the Tribunal provided the appellant with the following country information:

(a) Royal Embassy of Saudi Arabia *Exit/Re-Entry Visa* www.saudiembassy.net;

(b) Saudi e-government National Portal *Iqama - Requirements and Forms* www.saudi.gov.sa; and

(c) Ministry of Interior, Kingdom of Saudi Arabia, General Directorate of Passports, *Passports: Violation & Penalties* www.moi.gov.sa.

[48] On 28 November 2011 and 5 December 2011, the Tribunal wrote to the appellant disclosing further country information with additional questions. On 9 December 2011, the Tribunal received two sets of submissions from counsel, dated 5 December 2011 and 8 December 2011, that included country information and other material.

ASSESSMENT OF THE JURISDICTIONAL QUESTION

[49] The appellant acknowledges that there is no significant change of circumstances material to his third refugee claim since the second claim was determined.

[50] In his third claim to refugee status, the appellant maintains the same grounds as he did in his second claim, namely, that he cannot return to Saudi Arabia and has no right to live there, that he risks prosecution for immigration and/or passport fraud in Saudi Arabia as he left there on false travel documentation, that he will be deported to Chad, that country conditions in Chad have worsened since the second claim, that his father and various other relatives have long been associated with the political opposition in Chad and that he would be subject to serious harm as a consequence, and finally, that on the basis of a recent email from another Chadian returned to Chad concerning his ill-treatment by authorities, he will face serious harm there. He concedes, properly, that these do not constitute changed circumstances since the second claim.

[51] It is not overlooked that the appellant has tendered new evidence in his third claim, including a copy of a Saudi Arabian residence permit (which he submits his family obtained by fraudulent means in his name since his arrival in New Zealand), and a letter he wrote in Arabic (translated by himself), requesting a Chadian passport, which he claims to have faxed to the Chadian Embassy in Riyadh in November 2010, the same month as his third refugee appeal hearing without any response. This new evidence does not, however, demonstrate a significant change in circumstances since determination of the second claim, nor is it material. The residence permit simply constitutes further evidence of the same claim, namely, that the appellant was unlawfully residing in Saudi Arabia, and that he and his family engaged in falsifying immigration and/or travel documents. The handwritten note requesting a Chadian passport relates to the appellant's earlier claim to having no genuine, valid travel documentation, and falls well short of constituting a significant change in circumstances material to the appellant's refugee claim since the previous claim was determined.

[52] The submissions of counsel that the appellant may lose his Chadian nationality, if the Chadian authorities consider he has dual nationality, on the basis of his commission of immigration or passport fraud, or that his nationality may otherwise be revoked, again, do not meet the jurisdictional standard. Such submissions stem from claims the appellant has advanced previously, and which have been rejected by the RSAA. Finally, the appellant's claim to be Gorane

simply repeats his previous first claim, and there is no evidence that any relevant country conditions in Chad, including civil conflict, have worsened such as to constitute a significant change of circumstances since the last refugee determination material to his claim.

[53] The Tribunal is satisfied that the appellant's third refugee claim does not assert a significant change in circumstances material to the appellant's claim since the previous claim was determined. The jurisdictional threshold is not crossed and, pursuant to section 200(2)(a) of the Act, the refugee appeal must be dismissed.

[54] That is not, however, an end to the appeal. It will be recalled that, while this is the appellant's third refugee appeal, it is his first protected person appeal. Although the third refugee appeal must be dismissed for the reasons already given, pursuant to section 198 of the Act the Tribunal must still determine whether to recognise the appellant as:

(a) a protected person under the Convention Against Torture (section 130); and/or

(b) a protected person under the International Covenant on Civil and Political Rights (section 131).

ASSESSMENT OF PROTECTION CLAIM

Credibility

Nationality and travel documents

[55] The Tribunal accepts the appellant's evidence that he is a national of Chad who was born in Saudi Arabia to citizens of Chad. The Tribunal does not, however, accept as credible his evidence that both he and his parents were unable to obtain Chadian passports through official channels, of his having travelled to New Zealand on an unregistered Chadian passport, and to have been unable to obtain a new Chadian passport from Chadian embassy officials subsequent to his arrival in New Zealand.

[56] In making these findings, the Tribunal relies on the determination of the RSAA in *Refugee Appeal No 76048* (20 November 2007), in accordance with

section 231 of the Act. The RSAA had before it evidence of the appellant's LPV application which he submitted to the New Zealand Embassy in Dubai while he was living in Saudi Arabia, along with his valid, genuine Chadian passport.

[57] The appellant has not provided any credible evidence to cause the Tribunal to depart from these findings. The appellant's claim that both he and his parents have been unable to obtain valid, genuine Chadian passports through official channels is implausible and is undermined by his mobile evidence before the Tribunal. The reasons the appellant advances for their being unable to obtain genuine Chadian passports is his father's political involvement in the opposition in Chad, and their Gorane ethnicity. These claims have been rejected by the RSAA as non-credible on two occasions, a finding upheld by the High Court upon being called to review the finding of the RSAA on the first claim. Given these findings, it is implausible that the appellant and his parents would be unable, as citizens of Chad, to obtain valid, genuine passports.

[58] The appellant's evidence of the nature of his parent's Chadian passports was mobile. Initially in evidence before the Tribunal, he stated that he did not know whether his parents travelled to Saudi Arabia on Chadian passports, but that he knew that they later obtained "genuine" Chadian passports. Later in evidence, however, he stated that he guessed his parents had been unable to obtain their passports through official channels, that they were unregistered, and that they had paid bribes to obtain them. When reminded that he had stated earlier in evidence that his parents possessed genuine passports, he stated that he had not been asked whether they were registered. He added that he thought the Tribunal's earlier questioning related to his parents first passports. The Tribunal rejects this explanation as the appellant had made no claim of his parents possessing earlier passports when questioned directly on what documentation they used to travel on to Saudi Arabia and when they obtained Chadian passports. The appellant had previously stated that he did not know if his parents arrived in Saudi Arabia on Chadian passports, then advised that they had obtained genuine Chadian passports while living there.

[59] Further, the Tribunal does not accept that the appellant has been denied a Chadian passport by authorities or that he made any genuine or concerted attempt to obtain a Chadian passport from any Chadian Embassy since his arrival in New Zealand. The appellant presented a copy of an undated letter that he claims to have faxed to the Chadian Embassy in Riyadh on 9 November 2010**.** The letter is written in Arabic and the appellant has translated this letter himself. No official

translation is provided. The appellant's translated version to this letter is rudimentary and essentially states that he has lost his Chadian passport and would like a new one. In addition, the fax number on the transmission record does not correspond to the fax number of the Embassy recorded on various internet websites including www.embassyconsulates.com. When asked to comment on this point, the appellant stated that he had used a facsimile number found on the internet at the time he made the transmission. Counsel submits that, subsequent to the hearing, she was unable to fax the Embassy successfully on the facsimile number provided on the above website, and had spoken to a new arrival in New Zealand from Saudi Arabia who told her that "the embassies have all recently relocated". The Tribunal finds it unnecessary to engage in a search of facsimile numbers by process of elimination. There is no evidence the appellant has made concerted efforts to obtain a passport from the Chadian authorities.

[60] The appellant also claimed for the first time at the Tribunal hearing that he had made several telephone calls to the Chadian Embassy in Riyadh to enquire about obtaining a new passport. These claims were not referred to by his counsel in the two sets of submissions filed with the Tribunal, or in opening submissions at the Tribunal hearing, where counsel referred to the appellant's failed attempt to obtain a passport through the sole means of faxing the Embassy on one occasion. When asked why he had not mentioned the telephone calls to Saudi Arabia to his counsel, he stated that he had been unrepresented during the time that he made these further enquiries. That does not explain why he would not have mentioned them to his present counsel, once she had been instructed.

Residence in Saudi Arabia

[61] The Tribunal accepts that the appellant has no current residence permit in Saudi Arabia or valid exit/re-entry visa for that country and, as such, has no rights of residence or nationality in Saudi Arabia. This is supported by country information from the Embassies of Saudi Arabia in Washington, DC and in Canberra, which provide that the Consulate does not have the authority to extend an exit/re-entry visa if the applicant stays outside the country in excess of seven months or, for students, thirteen months. Further, non-citizens of Saudi Arabia must have an *Iqama,* or residence permit, which is renewed every one or two years to remain in Saudi Arabia, which can include dependents up until the age of 18 years; see Saudi Arabian National e-Government portal www.saudi.gov.sa.

Gorane

[62] The appellant has claimed to be of Gorane ethnicity. On his first appeal, the RSAA rejected this claim as non-credible. The RSAA reasoned that given its earlier conclusions that the appellant's account was entirely fictitious, it did not accept his uncorroborated claim to be a member of the Gorane tribe. Despite this, the RSAA found there was no country information to suggest Gorane would face any real chance of being persecuted in Chad. At most, they could face some minor discrimination from their traditional rivals (the Zaghawa tribe). At paragraph [69] the RSAA concluded:

> "Given our earlier conclusions that the appellant's account is entirely fictitious, the Authority also does not accept his otherwise uncorroborated claim to be a member of the Gorane tribe. Beyond accepting that the appellant is a national of Chad the Authority does not accept that he is Gorane. In any event there is no country information of which the Authority is aware that suggests that the Gorane although facing some minor discrimination from their traditional rivals, (the Zaghawa tribe) face any real chance of being persecuted in Chad."

[63] The Tribunal heard the evidence of one witness from the Sudan, AA, resident in New Zealand, who claimed that the appellant was from the Gorane tribe in Chad. His basis for concluding this was that he knew Gorane people in the Sudan. He considered that the appellant's physical appearance (being tall) and the fact that he repeated segments of speech, were typical characteristics of the Gorane. The Tribunal was unable to find any country information in support of these general assertions. Rather, the Tribunal located reports that many of the Gorane have facial features associated with Caucasians, and that the Zaghawa preserve their African features and physical characteristics; Joshua Project *Tubu, Daza of Chad* (no date) www.joshuaproject.net and Issam Abdalla Ali "Culture: Zaghawa Language and History" *Sudan Vision* (20 September, no year) http://sudanvisiondaily.com. When invited to comment on these reports, counsel submitted photographs of various persons belonging to the Gorane and Zaghawa ethnic groups, which she asserted challenged the "generalised and unsupported" assertions in the reports.

[64] The Tribunal finds that there is no evidence of any particular physical characteristics being a reliable indicator of Gorane ethnicity. The witness's assertions that he can identify the appellant on this basis are given no weight.

[65] At the hearing, the witness made no claim that the appellant spoke the Gorane dialect. When asked how he knew the appellant was Gorane he stated that he knew this through his appearance, his different accent (that he spoke

Arabic with a Saudi Arabian accent) and his way of speaking (which he described as exhibiting mannerisms of speech that resembled those of Gorane, namely, the repetition of phrases of speech). However, in a statement tendered post-hearing, he states that the appellant "looks like a Gorani and he speaks the Gorani dialect." No explanation is given for how he knows that the appellant speaks the Gorani dialect.

[66] The Tribunal finds that the limited generalisations made by the witness, as a friend or acquaintance of the appellant, who is not a qualified expert and does not have the proximity of either originating from Chad or being a member of the Gorane community, are insufficient to cause the Tribunal to depart from the findings of the earlier RSAA decision.

Military service

[67] The Tribunal relies upon the credibility findings of the RSAA in *Refugee Appeal No 76048* (20 November 2007), concerning the appellant's claims to fear compulsory military service in Chad and his unwillingness to act contrary to his beliefs by fighting against his own people. It accordingly finds his professed fear of military service to be untrue. For clarity the findings of the RSAA paragraphs [61-68] on this point are reproduced below.

> "[61] At the eleventh hour, the appellant has added to his refugee claim the assertion that he is at risk of being press-ganged into military service.
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> [62] The appellant claims that he will, as a *Gorane,* be forced into military service and be made to fight other *Gorane* who are opposed to the current *Zaghawa* dominated regime.
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> [63] To the questions contained in the Confirmation of Claim to Refugee Status form, however, the appellant responded that all issues regarding military service were not applicable to him. In his statement dated 17 July 2006 prepared with the help of his lawyer, he again did not raise any fear about being coerced into military service. Nor did he mention military service amongst fears he held on return to Chad where this issue is raised on the same form.
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> [64] To the Refugee Status Branch at interview he said that he had heard that some people of his age and younger were forced to join the military and taken to the front and killed because they did not have any military experience but he did not state that forced conscription to the army was something he feared on return to Chad. The Refugee Status Branch interview report sent to the appellant for his comments does not mention military service as a prospect feared by the appellant. In her 20 page reply to the interview report, his counsel does not mention fear of military service or comment on its absence in the interview report.
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> [65] The first time this fear of military service is directly raised is in counsel's written opening submissions (dated 27 June 2007) where she states that the appellant is "terrified at this prospect and opposed to the return of fighting as a child for a government that he does not support".

> [66] During the course of the appeal hearing the appellant discussed this newly-emerged fear of being made to serve in the Chadian Army. He attempted to explain his earlier omission of it by differentiating between voluntary and compulsory military service, implying that he had no objection to voluntary military service and this was what he thought the Confirmation of Claim form was referring to.
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> [67] The Authority does not accept this explanation for the appellant's failure to mention the prospect of military service as an eventuality he faces on return to Chad. The Confirmation of Claim form was completed by the appellant with the assistance of an interpreter, a refugee status officer and a responsible adult provided because he claimed to be 16 years old. The form clearly refers to compulsory military service and explicitly invites the refugee status applicant to note any objections to this. None are noted.
>
> [68] Having entirely rejected the basis of his claim on the grounds that his story is untrue, the Authority finds that the professed fear of military service is also untrue. It finds that the appellant's professed aversion to military service is no more than another specious ground belatedly advanced in order to obtain the benefits of refugee status in New Zealand."

[68] The appellant has presented no new evidence or claim to cause the Tribunal to reconsider these credibility findings. Counsel's submission that the situation for Gorane has worsened in Chad, is not a relevant consideration given the Tribunal's finding that the appellant is not from the Gorane tribe (or of Gorane ethnicity).

Family relatives

[69] The appellant's evidence before the Tribunal concerning the whereabouts of his extended family was inconsistent and mobile. Before the Tribunal, the appellant claimed that he had no relatives living in Chad. He stressed further that no relatives of his had any existing connection with Chad. When referred to his statement, dated 31 May 2011, in which he claimed that his maternal and paternal relatives were members of the political opposition in Chad, he stated he had meant that they were members of the political opposition outside Chad. He added that they were located on the border of Sudan and Chad, and travelled in between the countries. When reminded that he had also stated that no relatives of his had any existing connection with Chad, he changed his evidence again and stated that his relatives were resident in Saudi Arabia.

[70] The Tribunal rejects this evidence and finds that there is no credible evidence upon which to conclude the whereabouts of the appellant's extended family.

Illegal departure

[71] Contrary to the appellant's claim, the Tribunal has found that the appellant had a valid, genuine Chadian passport containing a limited purpose visa for New Zealand. The question arises as to whether it should accept the appellant's evidence that he was living unlawfully in Saudi Arabia at the time of his departure (having no valid residence permit), which led to his illegal departure through the means of a false Sudanese passport and false immigration stamps in his Chadian passport.

[72] The RSAA held in *Refugee Appeal No 76048* (20 November 2007), that the appellant's passport contained a valid residence permit at the time he made his application for the LPV and arrived in New Zealand. If the Tribunal relies on this finding it would, of necessity, reject the appellant's abovementioned claims as being inconsistent with his having lawful, residence status in Saudi Arabia at the time of his departure. In other words, there would be no need for the appellant to conceal his illegal status in Saudi Arabia through false travel documentation, if he was indeed lawfully present there.

[73] The source of the RSAA's finding appears to be the LPV application form which notes that a passport was attached at the time the application was made. No copy of the passport was available to the RSAA. It is not, therefore, possible for the Tribunal to sight whether the passport contained a valid residence permit. In addition, the appellant claims that residence permits are not, in fact, contained in passports, a point which the Tribunal has verified through country information; see Ministry of Interior Kingdom of Saudi Arabia *Residence Permit (Iqama)* at www.moi.gov.sa and US Department of State *Saudi Arabia Country Specific Information* (15 November 2011).

[74] Further support for the appellant's claim to have been illegally in Saudi Arabia at the time of his departure is found in country information that records that between 2004 and 2006, Saudi Arabian authorities stopped renewing residence permits for Chadians, including those born in Saudi Arabia, a time which would correspond with the appellant's claim to have an expired household residence permit; see Human Rights Watch 2007 *World Report 2007 – Saudi Arabia* (11 January 2008).

[75] Notwithstanding that, the Tribunal finds this evidence is far from conclusive of the appellant's status in Saudi Arabia at the time of his departure (the claimed impetus for his travelling on a false Sudanese passport containing an Umrah visa

and having false immigration stamps entered into his Chadian passport). As there is also a history of fabrication of evidence by this appellant, the Tribunal would be slow to depart from the findings of the RSAA, as upheld by the High Court. Further, there remain credibility concerns with this aspect of the appellant's evidence.

[76] The appellant claims to have been fingerprinted upon departing Saudi Arabia, a special procedure he submits related to those travelling on Umrah visas. Were such a procedure in operation at the time of his departure, it would be surprising that the appellant was not questioned or subjected to immigration control procedures when his fingerprints failed to match those taken on entry of the person with the visa to Saudi Arabia. However, country information indicates that it was not until July 2007, a time subsequent to the appellant's departure, that a system of fingerprinting of all visitors and expatriates residing in the country was implemented. Further, it was reported that from Haj season the following year (2008), the system would apply to all pilgrims entering the country; see *Khaleej Times* "Saudi to fingerprint all Hajis from this year" (26 August 2008). It appears from this article that the appellant departed before the system of fingerprinting those travelling on Umrah visas was in operation.

[77] In support of the appellant's claim, counsel submits that Saudi Arabia had the technology to conduct fingerprinting at the time of the appellant's departure, referring to a Response to Information Request from the Immigration and Refugee Board of Canada that in November 2003 Saudi Arabia introduced new residency permits enhanced with a photo and a thumbprint. She also states that there was widespread corruption in the government at the time, and a lack of administrative continuity, making it difficult to be sure about what was happening in Saudi Arabia.

[78] With respect, these submissions do not allay the Tribunal's concerns, the issue of residence permits being a separate matter to fingerprinting at the border, and a general assertion of corruption do not counter country reporting of the timeframe or process for implementing a fingerprinting system for those entering the country on Umrah visas. Counsel's further submission that the process referred to in the *Khaleej Times* article included retinal screening in addition to fingerprinting, a different system to that referred to by the appellant, namely, that of random fingerprinting, is not accepted. The appellant was clear in evidence that he was subjected to a special procedure of fingerprinting implemented for those travelling on Umrah visas, and in addition, the process of random fingerprinting referred to by counsel, in accordance with country information, was not

implemented until November 2006, a time subsequent to the appellant's departure from Saudi Arabia; *Arab News* "Saudi Arabia to Implement Fingerprint System" (2 November 2006).

[79] The Tribunal is not satisfied on the evidence provided that the appellant's account of his illegal status and means of departure from Saudi Arabia is truthful and relies upon the prior finding of the RSAA. It is also relevant to note, as will be seen from the reasoning that follows, that whether or not the appellant departed illegally from Saudi Arabia on a false Sudanese passport and/or carried false Saudi Arabian immigration stamps in his Chadian passport, ultimately, has no bearing on the outcome of this appeal.

Conclusion on credibility

[80] The Tribunal finds as credible only that the appellant is a Chad national, aged 25 years, born in Saudi Arabia, who, apart from several years spent studying in the Sudan, has lived his entire life in Saudi Arabia. At the time of his departure for New Zealand, he held a valid Chadian passport which contained an Limited Purpose Visa for entry to New Zealand. His appeal falls to be considered on this basis.

Nationality

[81] Sections 130(2) and 131(2) of the Act provide:

> "Despite subsection (1), a person must not be recognised as a protected person in New Zealand under the [Convention Against Torture / Covenant on Civil and Political Rights] if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence."

[82] The appellant is a national of Chad. He has no rights to residence or nationality in Saudi Arabia. His claim, therefore, falls to be considered in relation to Chad only.

[83] The Tribunal turns now to assess the appellant's claim first under the Convention Against Torture, followed by an assessment of the claim under the ICCPR.

The Convention Against Torture

[84] Section 130(1) of the Act provides that:

> "A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[85] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

> "… any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Assessment of the Claim under the Convention Against Torture

[86] Many of the appellant's fears are premised on his claim that he will be deported to Chad without documentation, as he is unable to obtain a Chadian passport or identity documentation due to his father's political involvement in Chad and his Gorane ethnicity. The Tribunal has rejected the foundation to these claims as non-credible. In addition, the Tribunal has not been provided with any country information from the appellant, nor is it aware of any, to suggest that members of the Gorane tribe (even if the appellant were a member) are denied passports or identity documentation to travel to Chad.

[87] The appellant's claims that he will be arrested, detained and tortured for arriving in Chad undocumented, and owing to his father's political background, therefore, have no basis. Further, the appellant's claims that he will be prosecuted in either Chad or Saudi Arabia for commission of immigration and passport fraud, and subjected to ill-treatment that may include torture, are unfounded given that this assessment concerns his deportation to Chad only, which would be conducted on a valid, genuine Chadian passport, or at the very least, a New Zealand certificate of identity. Further, upon arrival, the appellant would have the means through his travel documentation and parent's citizenship to establish his identity.

[88] There are no substantial grounds for believing that the Chadian authorities will have, or will obtain, any information concerning the manner of the appellant's departure from Saudi Arabia, in view of his arriving in Chad on valid, genuine documentation. In addition, the appellant has destroyed the travel documentation that he used to depart Saudi Arabia and enter New Zealand. Counsel's submission that his nationality may be revoked because Chadian authorities

perceive him as having a dual nationality is, therefore, unfounded, as is the claim that the appellant's nationality will be revoked for commission of acts contrary to the state. There is no evidence to support these assertions.

[89] The appellant has presented an email, which he claims was sent by a failed asylum seeker in New Zealand who was formerly resident in Saudi Arabia, to a friend of the appellant's in New Zealand, following his being deported to Chad. In the email, the writer states that he was arrested on arrival, without charge, and ill-treated before he escaped. He states that he was told by authorities that he was not a citizen of Chad, that he was an asylum seeker, and was questioned about his uncle. The Tribunal did not have the benefit of questioning this witness to ascertain his full circumstances, including his nationality (which the appellant is uncertain of), and the circumstances of his uncle which appear to be at the centre of the authorities interest in the appellant. In this context, and given the appellant's history of fabricating evidence and falsifying documents, it is not possible to place any weight on this correspondence. There is no objective country information before the Tribunal that the returnees who have claimed asylum in another country are subject to serious harm or torture by authorities on deportation to Chad.

[90] What remains to be assessed is whether the deportation of a 25-year-old male, Chadian national to Chad, a country where he has never resided and may have no family support, would give rise to substantial grounds for believing that he would be subjected to torture. The Tribunal finds that there is no basis for such a conclusion in the appellant's circumstances.

Conclusion on the Claim under the Convention Against Torture

[91] For the reasons discussed above, the Tribunal finds the evidence does not establish that there are substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

The ICCPR

[92] Section 131(1) of the Act provides that:

> "A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

[93] Pursuant to section 131(6) of the Act, "cruel treatment" means cruel, inhuman, or degrading treatment or punishment.

Assessment of claim under the ICCPR

[94] The Tribunal must determine whether the deportation of a 25-year-old male, Chadian national to Chad, a country where he has never resided and may have no family support, would give rise to substantial grounds for believing that he would be subjected to arbitrary loss of life, cruel, inhuman, or degrading treatment or punishment.

Severity of Harm in the Context of Cruel Treatment

[95] Not all forms of harm, even if they come within colloquial notions of "cruel, inhuman, or degrading", will be of sufficient severity to engage the surrogate protection obligations of New Zealand. Put simply, the anticipated harm must be serious. See, in this regard, the discussion in *AC (Syria)* [2011] NZIPT 800035 at [85].

[96] It is necessary to refer briefly to a misapprehension of the Tribunal's decision in *AC (Syria)* [2011] NZIPT 800035 in a recent article by D Tennent, "Protected Person Status" [2011] NZLJ 416, before proceeding to determine the appellant's claims under the abovementioned sections. In that article, Mr Tennent suggests that *AC (Syria)* is authority for the proposition that "actions which should be deemed to come within the parameters of cruel, inhuman, or degrading treatment must be seen within the context of torture".

[97] This is mistaken. Read as a whole, the decision in *AC (Syria)* merely acknowledges that the anticipated harm must be of sufficient severity or seriousness to bring it within "cruel, inhuman, or degrading treatment or punishment" for the purposes of Article 7 of the ICCPR (and, thus, section 131).

[98] It was for this reason that the Tribunal, in *AC (Syria)*, noted the association of the prohibition of torture and the prohibition of cruel, inhuman, or degrading treatment or punishment in Article 7 of the ICCPR and stated at para [85] that:

> "[A]lthough Parliament clearly intended the CAT definition of torture to apply in relation to claims under s130 of the Act, this does not mean that torture is magically airbrushed out of Article 7 for the purposes of interpreting that article's scope of prohibited harm for the purposes of claims under section 131. Reflecting customary international law, Article 31(1) of the Vienna Convention on the Law of Treaties 1969 requires that... Article 7 is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in

> their context and in the light of its object and purpose. The context in which cruel inhuman or degrading treatment or punishment appears under Article 7 is in association with torture. This association gives hue to the words "cruel, inhuman or degrading treatment or punishment" and points towards [there] being some particularly reprehensible quality to [the] treatment or punishment in question."

[99] To suggest that this means that cruel treatment "must be seen within the context of torture" is to misread para [85]. Para [85] in fact stated "The context in which cruel inhuman or degrading treatment or punishment appears under Article 7 is *in association with* torture". That is not to say that cruel treatment "must be seen within the context of torture" at all. It is simply to say that the association of the notion of cruel treatment and the notion of torture in the one Article has an *ejusdem generis* quality, in that both require the relevant harm to be serious.

[100] A purposive reading of Article 7 of the ICCPR, in accordance with Article 31(1) of the 1969 Vienna Convention on the Law of Treaties, supports this shared aim to the prohibitions. The United Nations' Human Rights Committee, in *General Comment No 20*, sets out this aim (referring, it will be recalled, to *both* torture *and* cruel treatment) as follows:

> "The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual [...]."

[101] Nor can it be said that the association of the prohibitions of cruel, inhuman, or degrading treatment and torture together in Article 7 of the ICCPR is coincidental. It reflects customary practice in the drafting of international human rights treaties and international humanitarian law instruments, where prohibitions of a similar character (particularly in terms of nature and severity) are often associated or grouped together. As one example, Article 7 of the International Criminal Court Statute proscribes crimes against humanity, the underlying acts of which include torture and other inhumane acts. The elements of crimes for Article 7(1)(k), namely, the crime against humanity of "other inhumane acts", provides as follows:

> "Elements
>
> 1. The perpetrator inflicted great suffering or serious injury to body or to mental or physical health, by means of an inhumane act.
>
> 2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute."

[102] The decision in *AC (Syria)* recognises the shared character of these prohibitions. It notes that "[b]oth concern ill-treatment of a s*erious kind as* to which there is an absolute prohibition". The point being made in *AC (Syria) was* simply

that, in order to fall within the scope of Article 7, the anticipated harm must be of sufficient severity. As observed by the Tribunal at [82]:

> *"*...it is important to bear in mind that the level of harm required to constitute cruel, inhuman, or degrading treatment or punishment, whether for the purposes of the being persecuted analysis or as a stand-alone issue in the protected person jurisdiction, is a relatively high one. There is a broad acceptance in international jurisprudence and academic commentary that, whatever else may be required, the anticipated harm must be of sufficient severity or seriousness to bring it within the range of harm proscribed by the prohibition against cruel, inhuman, or degrading treatment or punishment. See generally, M Nowak and E McArthur *The United Nations Convention Against Torture: A Commentary* (Oxford University Press, Oxford, 2010) at p558; W Kalin and J Kunzli *The Law Of International Human Rights Protection* (Oxford University Press, Oxford, 2010) at pp 320-333; K Wouters *International Legal Standards for Protection From Refoulement* (Intersentia, Antwerp, 2009) at pp 381-391."

[103] The assessment of whether cruel, inhuman, or degrading treatment or punishment exists is not looked at through the prism of torture. *AC (Syria)* does not suggest that it should be. Rather it simply recognises that Article 7 of the ICCPR contains a group of connected rights (including torture), all of which are aimed at protecting the physical and mental integrity of the person. As such, they give each other context. That context includes the reality that cruel, inhuman, or degrading treatment or punishment, like torture, involves acts of a serious nature. Not all insults, injuries or humiliations will qualify as cruel, inhuman, or degrading treatment or punishment. No more was said.

[104] Bearing in mind that, as was held in *AC (Syria)*, the proper view of cruel, inhuman, or degrading treatment requires that the claimant establish serious harm, it is now possible to turn to the application of section 131 to the facts as found in the present appeal.

[105] The appellant claims that he will not be able to speak the Arabic dialect and support himself in Chad. The evidence of AA, however, was that persons speaking Arabic in Saudi Arabian, Sudanese or Chadian dialects would, essentially, be able to communicate and understand one another. The appellant has the further benefit of having conversed in the Sudanese dialect of Arabic, and in English, demonstrating that he has an affinity for learning and adapting to languages. He has completed several, albeit interrupted, years of a university education in computer science in the Sudan and has some experience working as a secretary in Saudi Arabia. He has also travelled alone to the Sudan, Dubai and to New Zealand where he has lived for the past five years. Even without family support in Chad, the appellant's cumulative circumstances do not demonstrate that he would be unable to find employment and support himself there.

[106] It is accepted that living conditions in Chad are difficult, and that the country has experienced a history of civil war (tensions on the eastern border with Sudan giving rise to a UN Mission in Chad (MINURCAT), which has only recently withdrawn). Such general conditions do not, however, establish substantial grounds for believing that the appellant would be subjected to arbitrary loss of life, or cruel, inhuman, or degrading treatment or punishment. The requisite severity of harm is not met, nor is there any treatment or punishment; see *AC (Syria)* [2011] (27 May 2011) at [82] and Manfred Nowak "UN Covenant on Civil and Political Rights: CCPR Commentary (2nd Rev ed, NP Engel, Kiehl 2005) pp 159, 160.

[107] Counsel submits that there is a general climate of impunity in the country as evidenced by the government's request for MINURCAT to leave the country. The Tribunal notes that, according to the United States Department of State *Country Reports on Human Rights Practices: Chad* (8 April 2011) in January 2010, the President of Chad announced that he would not support the renewal of MINURCAT. However, in May of that year, following subsequent discussions between the government and the United Nations, the mandate for MINURCAT was extended until 31 December 2010. While there is no denying that impunity exists for certain crimes in Chad, even a general climate of impunity does not satisfy the required standard where there is nothing of which the claimant is at risk in the first place.

[108] Even were the Tribunal to accept that the appellant was a member of the Gorane tribe, this characteristic, viewed in the full context of the accepted evidence, and the ongoing situation of intermittent civil unrest in Chad, would not give rise to substantial grounds for believing that the appellant would be subject to either arbitrary loss of life, or cruel, inhuman, or degrading treatment or punishment. The RSAA, considering the appellant's first refugee appeal, found that there was no country information to suggest that the Gorane "although facing some minor discrimination from their traditional rivals, (the *Zaghawa* tribe) face any real chance of being persecuted in Chad". A review of current country information is consistent with this position. Further, there is no evidence that the Gorane are specifically targeted by the government as the appellant suggests; see Refugee Review Tribunal *Country Advice Chad – TCD38688* (3 June 2011).

Conclusion on Claim Under ICCPR

[109] The claim under the ICCPR must fail. The appellant's assertions do not establish any substantial grounds for believing that he would be in danger risk of

suffering cruel, inhuman, or degrading treatment, let alone arbitrary deprivation of life if he is deported from New Zealand.

[110] The appellant is not a person in need of protection under the International Covenant on Civil and Political Rights.

CONCLUSION

[111] For the foregoing reasons, the Tribunal finds:

(a) as to the third refugee appeal, there has not been any significant change in circumstances material to the appellant's claim since the previous claim was determined;

(b) the appellant is not a protected person within the meaning of the Convention Against Torture; and

(c) the appellant is not a protected person within the meaning of the International Covenant on Civil and Political Rights.

[112] The appeal is dismissed.

"S A Aitchison"
S A Aitchison
Chair

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S A Aitchison
Member