

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76074

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	13, 14 & 15 August 2007
<u>Date of Decision:</u>	22 November 2007

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Department of Labour, declining the grant of refugee status to the appellant, a national of Sudan.

INTRODUCTION

[2] The appellant claims to be at risk of being persecuted in Sudan by reason of his having escaped from the custody of the Sudanese General Security Unit (GSU) for whom he had been tortured into agreeing to spy. He also claims to be at risk of being persecuted by reason of his objection to the performance of compulsory military service in Sudan.

[3] What follows is a summary of the appellant's evidence before the Authority. An assessment will follow thereafter.

THE APPELLANT'S CASE

[4] The appellant was born in 1978 in X, a sub-settlement of Y village in the Mornei area of Western Darfur. The appellant is one of six children born to his parents, two of whom died as children from natural causes. Of the four remaining siblings, the appellant is the youngest.

[5] X comprised of somewhere between 100 to 140 inhabitants, no more than 34 to 40 households. The primary occupation of most of the inhabitants of X was farming and the appellant's father farmed two pieces of land growing various crops. X was situated in a remote location. There was a dirt road that connected it to Y that vehicles could pass along in the dry season. In the rainy season the road became impassable.

[6] In approximately 1982, the appellant was sent to live with his sister who had married and established a home with her husband in Khartoum. The appellant's sister was heavily pregnant at the time and, as her husband was fully occupied with his tailoring business, the appellant was sent Khartoum so as to be able to assist her as needed. After the birth of the appellant's sister's first child the appellant continued to live with his sister and her family. He attended primary, intermediate and secondary school in Khartoum between 1984 and 1996.

[7] The appellant wanted to attend university to study economics. However, he decided that he should work for a year to try and save sufficient funds to support himself during the period of his degree. In fact, the appellant worked for the next three years but still did not have the money he needed to sustain himself throughout his proposed course of study. By 2000, the appellant came to realise that his dream of going to university was beyond his financial means.

[8] Also, after completing high school, the appellant became involved in a community organisation in his neighbourhood that was promoting the interests of people from his tribe. The appellant is from the *Tonjur* tribe. The *Tonjur* people are a medium-sized African tribe in Sudan. Most are rural inhabitants living in the Darfur region, although *Tonjur* people can be found in most parts of Sudan and some are occupied in positions in trade and commerce. The appellant became involved because he wanted to do something to help his people. He became an active member in this organisation and helped with its various activities as regards the *Tonjur* youth. The organisation arranged specific activities for youths, took

part in religious festivals and ensured there was a *Tonjur* youth presence at anniversary celebrations organised by the central government.

[9] The organisation ran a number of out-reach programmes and the appellant became involved in these. In particular, in the late 1990s he became involved as a voluntary teacher in a local school which was predominately but not exclusively attended by *Tonjur* youths. The appellant also attended other courses.

[10] In 2000 the appellant married his sister's friend. After their marriage, the appellant and his wife discussed where they would live and agreed to return to X on a trial basis. As things turned out, the appellant and his wife found life in X very agreeable. His wife quickly became accepted by everybody in the settlement and the couple decided to stay.

[11] By the time of the appellant's return to X in late 2000, his two brothers were already farming the family land. His father had become very ill. However, the family land was not large enough to provide the appellant with sufficient work and could not, on a long-term basis, provide sufficient produce to sustain both his own family together with the families of his brothers and his parents. He was therefore looking for other ways to earn a living in the village. The couple's only child, a daughter, was born in X in 2002.

[12] On one occasion, the appellant travelled to Al-Geneina, the regional capital of Western Darfur. He went to visit a relative of his mother ("the uncle") who ran a wholesaling business. From there, the appellant brought back some commodities that the villagers needed in their daily lives. He quickly realised that here was an opportunity for a business to develop. The appellant began purchasing commodities from his uncle and distributing them as a business. Over time, the appellant's business diversified from foodstuffs into essential medical supplies and clothing.

[13] The appellant was unique amongst the inhabitants in X in that he could read and write Arabic. People began coming to him to have him read letters and other documents that they had received. As time went by, the appellant realised that it was the children who had a greater need to learn to read and write and he therefore began encouraging people to have their children educated. Initially one or two parents agreed and the appellant began to teach their children on a semi-regular basis. Over time, more parents in the village came to want to have their

children educated and the number of students being taught by the appellant increased to over 20. Initially, the teaching had no set structure but became more formalised as the numbers increased and, by the time the numbers were in their 20s, the appellant was teaching the children six days a week and giving them tuition in Arabic, maths, history and science.

[14] Alongside these lessons the appellant also taught up to 10 adults although their lessons were limited to reading and writing Arabic and maths. The appellant was not paid for this work but rather received donations from the parents and the adults. It was the appellant's intention that he would start a small school in the village and he began thinking about how this could be achieved. However, the appellant's dream of starting the school never came to fruition. This was because at the beginning of 2004, X was attacked by the *Janjaweed* militia.

[15] The appellant was asleep at the time and woke up when he heard the sound of people shouting hysterically. The appellant went outside his house and saw a house on fire. As he went towards the house he noticed that other houses were also on fire. He also heard yelling and screaming and shots being fired. He then saw people on horseback who were firing weapons. The appellant quickly realised that far from being a domestic fire as he originally thought, this was an attack on his village.

[16] He saw that his mother, two brothers and their families were running towards him. Once assembled in a group, they realised that the appellant's father had not made it out of the house. They ran back to the appellant's parents' house which was located nearby but saw by the time they got there that the roof had collapsed. The appellant and his eldest brother ran into the house and managed to evacuate his father from the burning house but he died shortly after. The appellant's mother told him and his brothers that they should flee; she would stay behind and bury their father. It was common knowledge that the primary target of the *Janjaweed* militia was the male members of the village. The appellant and his two brothers agreed. They ran into the surrounding bush and managed to evade the militia. After a while, they stopped running and, after a brief discussion, agreed to split up to maximise their chances of escape. They agreed to meet at the uncle's home Al-Geneina.

[17] The appellant, not being familiar with the surrounding countryside, took a circuitous route travelling via a number of outlying villages. Approximately one and

a half days after the attack he arrived at a village and spoke to the village *sheik* (elder) who he knew from his journeys to and from Al-Geneina. The *sheik* already knew about the attack on the appellant's village as other people had passed by the *sheik's* village following the attack. However, he told the appellant that neither the appellant's brothers nor any other member of his family had passed by this village. After five days waiting, the appellant continued his journey towards Al-Geneina, eventually arriving approximately 10 days after the attack on X.

[18] The appellant went to the uncle's house but was dismayed to find that he was the first of his family to arrive there. His brothers knew the surrounding area far better than he did and he had expected that they would have reached Al-Geneina before him. However, displaced people were continuing to regularly arrive Al-Geneina from the outlying areas as a result of attacks on other villages by the *Janjaweed* militia. The appellant waited in Al-Geneina hoping that in one of the groups of people would be a member of his family. When this did not eventuate, the appellant and the uncle went to a local market where displaced persons congregated to see if anybody had information as to the whereabouts of any of his family. Eventually, four months after he arrived in Al-Geneina, the appellant learnt that his mother was in a nearby village called T. The appellant travelled to T and was reunited with his mother. However, neither of his brothers, their wives, or his own wife and daughter, were there.

[19] The appellant's mother told him that after the appellant and his two brothers had fled the village, the *Janjaweed* had loaded the appellant's mother, his wife and daughter onto one truck and the appellant's brothers' wives were loaded into another truck. They were then driven away. The appellant's mother told him that she became overwhelmed by fumes from the diesel engine of the truck and was sick on a number of occasions. Eventually, the men driving the truck unloaded her from the truck and drove off without her, leaving her on the side of the road. She was found by people from a nearby village who took her in.

[20] The appellant and his mother returned to Al-Geneina where they continued to wait for the remaining family members. He knew that his other family members would come to the uncle's house rather than go to a camp for displaced persons. Also it was too dangerous to travel to outlying villages to search for them. After two months neither the appellant's wife and child nor any other member of the family had arrived in Al-Geneina. At this time, the appellant and his mother went

to Khartoum. The appellant's mother was not well and the appellant's sister had been pressuring him to bring his mother back to Khartoum so that she could look after her.

[21] While in Khartoum they stayed with the appellant's sister. The appellant helped his brother-in-law in his business. The appellant encountered no particular difficulty in Khartoum although, being of military service age, he had to be careful to avoid the Sudanese authorities who often conducted searches on public transport and elsewhere to capture young men of fighting age who were yet to undertake their military service. The appellant managed to avoid being caught and forcibly conscripted.

[22] Throughout the next few months, people came to Khartoum from the Darfur region. After he had been in Khartoum for five months he met someone who told him that a number of people had recently arrived in Al-Geneina from outlying areas. Hoping that his wife and child would be among those people, he returned to Al-Geneina and stayed with the uncle. He began looking for the rest of the family. Despite making a number of inquiries he did not manage to locate his wife, daughter or other relatives.

[23] In July 2005, approximately six months after returning to Al-Geneina, the appellant was arrested, with seven other male guests while talking outside as a group after attending a wedding celebration. Two vehicles arrived without warning and a number of armed men alighted from the vehicles and circled the group. The appellant and others were grabbed by their collars and had their arms twisted behind their backs. They were forcibly placed in the vehicles and driven towards a building occupied by the People's Defence.

[24] At the People's Defence building the appellant was separated from the other men and taken into an office. Two men who had been waiting for the appellant as he arrived then came into the room and began questioning him as to what their gathering was about and what he was doing there. The appellant replied that he had simply been attending a marriage ceremony and that the other men he was with were fellow guests. His interrogators replied that this was not so and that they wanted the truth from him. The appellant was asked the same questions repeatedly but each time the appellant continued to protest his ignorance of any other reason for the gathering, the interrogators' tone became increasingly more agitated.

[25] From time to time one of them would go out of the room and return a short while later. Eventually, one of his interrogators told him that some of the other men who had been arrested with him had confessed and that information the officer had gained from them contradicted what the appellant had said. When the appellant continued to maintain his innocence, his interrogators became violent towards him. He was verbally abused and assaulted with fists and with their belts. He was also kicked while on the floor. The appellant was asked where he was from and he told them that he had come from X village in the area of Mornei. He explained that he was a businessman and a teacher and that he had been in Khartoum but had returned to his village after he got married and set up his business. His interrogators, who were all Arabs, told him that they did not believe this was his real purpose for being in the village. They told him that they had information about him and that they knew that the gathering was for a specific purpose. They accused him of being an agent for outside forces and for spying against the government.

[26] The appellant is unsure how long he was interrogated for. He had been arrested in the early evening and the interrogation lasted for some hours. He was not allowed to sleep but was made to stand against a wall. Eventually, the next morning, he was taken to another building located just outside the airport in Al-Geneina. As he entered this compound he saw a sign indicating that it was the premises of the GSU.

[27] He was taken immediately into a building where he was interrogated by other plain clothes officials. One of these officials said that they heard that he was being stubborn and resisting telling the truth. This person said it was better for him to admit the truth now. He said that the others had already told the truth and that they had already been allowed to go home. The appellant repeated what he had said before. At this point the officer became angry and began hitting him. Two other officers who were in the room joined in beating the appellant. He was punched, whipped with a belt and kicked while on the ground. In addition, a glass soft drink bottle was placed behind his knee, and his lower leg then forcibly bent backwards and tied to his upper leg so that extreme pressure was exerted in the knee joint. All the time while this mistreatment was taking place, the appellant was being questioned and told to tell the truth.

[28] Although uncertain, the appellant believes he was detained in this place for approximately one week. He was interrogated repeatedly throughout that period of detention and subjected to the same form of mistreatment. He was not allowed to remain asleep and was made to stay awake by having cold water poured over him or being made to talk continuously. From time to time unknown persons were brought in to the appellant's cell and asked to identify him. Eventually a man who the appellant did not know identified him and said that he was part of a large spy network. After that, the interrogation of the appellant ceased and two days later he was placed on a military cargo plane and flown to a detention centre just outside Khartoum.

[29] On the first day of his detention in this facility the appellant was interrogated again regarding his 'real' presence in Al-Geneina. He was now questioned in much more detail about his connection with the other people who were at the gathering.

[30] Again, he was punched, whipped with a belt, and kicked. However, on this occasion he was subjected to a new form of ill-treatment which comprised his being suspended on metal bars in a crucifix position against a wall. When the officers noted that the appellant was tending to ease the pressure on his joints by bending his knees he was kicked in the knees and the shins. The officers also stood on his toes with their boots. Also, his hands were placed through rings attached to the bars. Ropes which were tied to each of the rings were then pulled in opposite directions to stretch him. The appellant remained in this crucifix position all that night and the next day.

[31] The appellant was subjected to repeated ill-treatment on a number of occasions throughout his detention in this facility, which lasted for approximately one month. In particular, he recalls being suspended in the crucifix position on approximately six or seven occasions. He was not given anything to eat or drink as a matter of routine, but told that he would have to "talk" to earn his food and water. He was also told that he had to stand, was not allowed to sit or lie down nor was he allowed to sleep.

[32] Over time, the appellant's resistance weakened and he found himself agreeing with whatever statement was made by his interrogators in order to obtain food and water. In this way the appellant answered "yes" when an officer asked him whether or not he had been conspiring with foreign agents in Chad. The

appellant also 'confessed' to smuggling money back into Darfur and being associated with the rebellion in Western Darfur. He was made to sign on each occasion. After the appellant had made these confessions he was photographed and fingerprinted. He was now told that, having made his confessions, the officers did not want more harm to come to him. They said that the information they had against him was now very strong and that they did not want to send him to jail but instead wanted to help him. The officers told him that they wanted him to return to Al-Geneina to spread government propaganda. They also wanted him to recruit others to do so and to spy and pass on information about anti-government activities in the region. In return, the officers said they would help him locate his missing family. The appellant inferred from the officer's statements that if he did not agree to do whatever they wanted he would be put on trial. The appellant felt he had no choice but to agreed to do so.

[33] By this time, the appellant was in a bad state of health. He had a high temperature and had broken bones in both big toes and in his left index finger. After agreeing to help the GSU, he was taken to a nearby military hospital to recover. He was visited by GSU agents for the first day or so. One of the nurses who attended him was a black African who asked by him how he had got his wounds. The appellant, at first, gave innocent replies. After further discussions with this nurse he learned he was also a *Tonjur* person from Darfur. The nurse became more open towards the appellant and the appellant told him the true circumstances in which he had sustained his injuries. He asked the nurse to help him escape and, two days later, the nurse told the appellant that he would help him. The nurse said that he was working a double shift on a particular day and that this day happened to be a visitation day. The nurse said that he would bring the appellant some civilian clothes and that the appellant should simply walk out of the hospital with the other civilian visitors.

[34] On the appointed day the appellant was brought traditional female clothing which showed only the eyes. The appellant went to the bathroom and changed into the clothing. Although there was a reception area attended outside the appellant's rooms and the bathroom where he changed he managed to pass by without being challenged. The appellant walked out of the hospital via the main gate dressed as a woman. He was not stopped or challenged by any of the soldiers guarding the main gate. Once outside the main gate he was again met by

the nurse who hailed him a taxi which took him to his sister's house, arriving there in the evening.

[35] When he arrived at his sister's house a meeting was called of all her family members. It was agreed that it was too dangerous for the appellant to try and obtain a passport as the authorities had his fingerprints and photograph. It was agreed that the best option was for the appellant to travel to Port Sudan as there was an established network of agents who smuggled people into Saudi Arabia without passports using boats. In the early morning no more than six or seven hours after being at his sister's, the appellant left for Port Sudan.

[36] Upon reaching Port Sudan, the appellant began looking for someone to assist him. Eventually he met a person who put him in touch with some people smugglers and three days after arriving there he left Port Sudan in a boat loaded with Sudanese goods and 25 other undocumented Sudanese. The agent in Port Sudan had arranged for one of the three people smugglers also in the boat to put the appellant in contact with a man called MM who was the owner of the goods being taken to Saudi Arabia. Upon reaching Jeddah this was done and the appellant, along with three other men, was taken by MM to his house. The appellant remained with MM for approximately one month doing odd jobs in the Jeddah area. MM then arranged for him to have employment as a camel herder in the rural areas outlying Jeddah. The appellant worked in this capacity for the next 10 months. The appellant earned approximately 1,900 Saudi riyals per month and, after deducting what he needed for his living expenses, gave his earnings to MM to keep.

[37] While in Saudi Arabia the appellant kept in contact with his family on a regular basis. He used payphones to telephone a neighbour who took their telephone to his sister. In these telephone conversations, the appellant learned that at lunchtime on the day he left for Port Sudan, the authorities had come to his sister's house looking for him. The authorities thoroughly searched her house and demanded to know his whereabouts. His brother-in-law was taken away for further questioning and made to sign a statement before being released.

[38] In his subsequent telephone conversations while in Saudi Arabia he has learnt that there have been periodic visits to his sister's home enquiring after him. Although the house has been searched on these occasions these searches are of a more cursory nature simply to check that he is not obviously hiding there. He

has received no news, however, as to the whereabouts of his missing family members.

[39] In mid-2006, the Saudi police forces raided the area in which the appellant was working looking for illegal immigrants. Some of the herdsman working for other camel owners were caught. When the appellant's employer discovered this he immediately returned the appellant to MM in order to avoid problems with the authorities. The appellant had saved some money by now and asked MM for his help. MM told him that the only solution was for him to leave Saudi Arabia. Although hesitant, concerned about being caught and returned to Sudan, the appellant agreed to this plan. A few days later, MM asked the appellant to dress in Saudi attire and have a photograph taken. The appellant did so. Approximately one month later the appellant was supplied with a Saudi identity card. This document had his photograph attached to it but false particulars. MM then provided the appellant with two further forms relating to an application for a Saudi passport. He then asked the appellant to obtain more passport photographs dressed in Saudi attire and the appellant did so. A few weeks later the appellant was provided with a Saudi passport.

[40] Some three or four days later the appellant was provided with an airline ticket travelling from Saudi Arabia to Dubai and Cairo. The appellant left Saudi Arabia in early October and travelled to Cairo. He stayed in Cairo for one week before travelling back to Dubai and staying for a further few days. He then left Dubai and travelled to Singapore where he transited before arriving in Auckland in late October 2006. The appellant did not stay in Cairo or Dubai because he would have faced the same problems as he had in Saudi Arabia as an undocumented worker. The appellant claimed refugee status on arrival in New Zealand.

[41] The appellant has maintained contact with his family since being in New Zealand. In this time he has learnt that his family had heard rumours that many people displaced from his area had ended up in refugee camps in Chad. In one telephone call he learnt that someone had told his family in Khartoum that they had seen his eldest brother in a camp. He understood that his younger brother was to travel to Chad along with his brother-in-law to try and locate his elder brother.

[42] He also learnt that shortly after he escaped from Sudan the appellant's younger brother was advised to also flee to Saudi Arabia. The family was

concerned that his younger brother, who had by now been located, might be taken away by the authorities. The appellant understood from his family that the younger brother had tried to make contact with MM but MM had refused to help him because the appellant had told MM in a telephone conversation he had with him from New Zealand that he had mentioned his name to the New Zealand authorities. MM became angry with the appellant for doing so and has refused to have any further contact with him or his family.

[43] The appellant fears being returned to Sudan for two reasons. First of all he has fled the custody of the GSU after agreeing to become a spy with them. He is undocumented with no current Saudi passport. The authorities have his photograph and fingerprints. He believes he will be arrested at the airport, detained and subjected to further ill-treatment for disobeying their wishes to become their spy. He believes he may be killed.

[44] The appellant also fears being conscripted into the Sudanese Army. The appellant claims to be of an age where he is liable to perform military service. His being questioned on arrival at the airport will reveal that he has not done military service and he will be forcibly conscripted. The appellant objects to this because he does not wish to be part of the Sudanese Army when it is engaged in the killing of fellow Sudanese. He believes that it is legitimate to fight in order to defend your country from outside aggression but that it is not right that the state use the army to kill and attack its own people. The appellant does not wish to have any part of this.

Submissions

[45] On 10 August 2007, the Authority received a written memorandum, of counsel's submissions. Attached to this was a supplementary statement from the appellant, together with witness briefs from three persons, two of whom originated from West Darfur, the other from Khartoum. All three have arrived in New Zealand as United Nations quota refugees and who all met the appellant at the Mangere Detention Centre. All three state their belief that having seen the appellant's physical appearance and heard him speak, he is from the West Darfur region of Sudan.

Documentary material

[46] In addition to the above material, also attached to counsel's submissions dated 10 August 2007 was a bundle of further copies of documents that had been provided to the Refugee Status Branch together with:

- (i) A copy of a volunteering certificate dated 23 November 1998 issued by an adult Education Centre in Khartoum confirming the appellant's volunteer work there in 1997;
- (ii) A letter dated 27 July 2007 from a *Tonjur* civil society organisation in Khartoum confirming the appellant was a member of that organisation between 1996 and 2000. The letter states the appellant "left us to go to the West of Sudan";
- (iii) An Age Estimation Certificate issued in 1993 by the Sudanese Ministry of Health office in Al-Geneina confirming the appellant's date of birth.

[47] On the morning of the hearing on 13 August 2007, the Authority received from counsel:

- (i) A copy of a page from a Human Rights Watch report *Darfur Destroyed: Ethnic Cleaning by Government Forces and Militia Forces in Western Sudan* Vol 16, No 6 (May 2004) (the Darfur Destroyed report);
- (ii) A copy of Amnesty International *Sudan: Deliberate and Indiscriminate attacks Against Civilians in Darfur* AI Index AFR/54/034/2004 (April 2004);
- (iii) A copy of a medical report dated 10 August 2007 from Dr Tony Wansbrough with attached diagram of scarring to the appellant's body; and
- (iv) A copy of the appellant's Auckland Regional Public Health Service Refugee Medical record dated 23 April 2007.

[48] During the hearing, the Authority served upon counsel various items of country information relating to settlements in West Darfur and attacks on those settlements in 2003 and 2004.

[49] At the conclusion of the hearing leave was given to counsel to file further written submissions by 3 September 2007, on the material disclosed by the Authority and further submissions relating to military service. Counsel's submissions were not received until 25 September 2007. Further items of country information as per the schedule of documents attached to counsel's submissions were submitted.

[50] This, and all other material on file and received has been taken into account in reaching this decision.

THE ISSUES

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

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

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

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

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[53] The appellant's account was spontaneously given for the most part and broadly consistent with his previous evidence in his statement and Refugee Status Branch interview. Witness statements have been filed by three persons with no pre-existing connection to the appellant. Two of them are from West Darfur and

have stated their belief that based on their observation of, and communication with the appellant, the appellant originates from that area.

[54] Weighing all these matters, the Authority is persuaded that the appellant is from West Darfur as he claims. While some credibility issues arose in the hearing, particularly in relation to the appellant's evidence as to the location of his village and his efforts to find his wife and daughter, after carefully reflecting on this matter, and noting the totality of the oral and documentary evidence provided, the Authority finds that the appellant has satisfactorily addressed these issues. The Authority therefore accepts the appellant's credibility.

A well-founded fear of being persecuted

Country information

The conflict in Darfur

[55] The origins and nature of the conflict in Darfur have been explained in *Refugee Appeal No 75665* (29 September 2006) where it was stated:

“[79] The deteriorating human rights situation in the Darfur region since early 2003 is well documented. The conflict has historical roots but escalated in February 2003, when two rebel groups, the Sudan Liberation Army/Movement (SLA/M) and the Justice and Equality Movement (JEM) drawn from members of the Fur, Masalit, and Zaghawa ethnic groups, demanded an end to chronic economic marginalisation and sought power-sharing within the Arab-ruled Sudanese state. They also sought government action to end the abuses of their rivals, Arab pastoralists who were driven onto African farmlands by drought and desertification - and who had a nomadic tradition of armed militias.

[80] The government responded to this armed and political threat by targeting the civilian populations from which the rebels were drawn. It engaged in ethnic manipulation by organising a military and political partnership with some Arab nomads comprising the Arab militia (*Janjaweed*); armed, trained, and organised them; and provided effective impunity for all crimes committed - Human Rights Watch, *Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan*, May 2004 Vol 16, No 6(A).

[81] By early 2004, government and *Janjaweed* attacks against villages in Darfur had caused massive displacement and casualties and forced hundreds of thousands of people into makeshift camps both within Sudan and across the border as refugees in neighbouring Chad. It is estimated that by November 2004, some 70,000 people had been killed and 1.5 million civilians displaced - Freedom House, *Sudan - Country Report*, 2004.

[82] On 25 January 2005, the UN International Commission of Inquiry on Darfur submitted a report to the UN Secretary-General which concluded that, while the government did not pursue a genocidal policy directly or through the militias under its control, there were violations of humanitarian and international law that could be considered war crimes - <http://www.ohchr.org/english/docs/darfurreport.doc>.

[83] The Report found that

'...Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity. The extensive destruction and displacement have resulted in a loss of livelihood and means of survival for countless women, men and children. In addition to the large scale attacks, many people have been arrested and detained, and many have been held *incommunicado* for prolonged periods and tortured. The vast majority of the victims of all of these violations have been from the Fur, Zaghawa, Massalit, Jebel, Aranga and other so-called 'African' tribes.'

Recent developments in Darfur

[56] A recent comprehensive report by Human Rights Watch *Chaos by Design: Peacekeeping Challenges for AMIS and UNAMID* Volume 19, No 15(A) (September 2007) observes that, in relation to Darfur, the situation on the ground has become significantly more complex. It notes, at pp29-34:

“During the past three years, Darfur has experienced changes in the dynamics of the conflict, but there has been no dramatic or sustained improvement in security for civilians. Attacks may subside during the dry season, when farms are idle and nomads and farmers are in less contact with each other, and people have also learned to avoid provoking attacks by remaining indoors or travelling to and from markets at night. While this temporarily lowers the number of reported abuses, it does not indicate that the situation is improving.

...

Then, in October and November 2005, the SLA rebel movement, which constituted the main military rebel force on the ground, began to splinter significantly at a conference in the eastern Darfur village of Haskanita that was supposed to unify the movement—instead, it did the opposite. Abdul Wahid Mohamed al Nour, a prominent rebel leader with support from the Fur ethnic group, refused to attend and Minni Arku Minawi, who drew support mainly from the Zaghawa, was elected leader. Three months later, the resulting rift culminated in heavy fighting in North Darfur between SLA fighters loyal to these two leaders. Many civilians were killed in the fighting and others were forced to flee, as each group targeted not only fighters but also civilians from the opposing tribes.

The SLA fractured further in the run up to, and aftermath of, the signing of the Darfur Peace Agreement (DPA) between the government and Mini Minawi’s SLA faction (SLA/Minawi) in Abuja, Nigeria in May 2006. Thereafter, Minawi was appointed special assistant to the president of Sudan and moved to Khartoum. The DPA further inflamed relations among rival “signatory” and “non-signatory” rebel groups, and the government also escalated attacks against non-signatories. Since then a small number of other rebel leaders and their followers have entered into agreements with the government, including Abul Gassim Imam Elhag Adam, who was subsequently appointed governor of West Darfur

...

Since January 2007 Darfur has also been the site of intense inter-tribal fighting amongst members of various Arab groups, many of whom belong to Sudan’s security forces.”

[57] As to the splintering of the Sudan Liberation Army (SLA) surrounding the Darfur Peace Agreement, reference can also be had to the Amnesty International report *Darfur: 'When Will They Protect Us?' Civilians trapped by violence in Sudan* AI Index: AFR 54/043/2007 (September 2007) which also notes, at p1, the "dangerous fragmentation" of the conflict. It too paints a picture in which new conflict, often between former allies, has emerged and notes civilians are being targeted by all sides. See also in this context, observations in International Crisis Group Report *A Strategy for a Comprehensive Peace in Sudan* (26 July 2007) at p8 and International Crisis Group *Darfur's Fragile Peace Agreement Policy Briefing No 29* (20 June 2006) at pp11-13.

[58] What emerges from this confused landscape is that a significant change in the dynamic of the conflict in Darfur has taken place since the Authority's decisions in *Refugee Appeal No 74884* (18 February 2004) and *Refugee Appeal No 75655*. The conflict no longer resembles a simple bi-polar government/rebel conflict but rather has morphed into a multi-polar conflict. This multi-polar conflict is increasingly assuming an inter-tribal nature in which armed conflict arises out of *localised* disputes, sometimes between former allied groups, over land, cattle or other resources. These new conflicts take place alongside the pre-existing Arab/Non-Arab ethnic conflict described by the Authority in *Refugee Appeal No 75655* at paragraphs [79]-[81] in which the Sudanese armed forces, acting as an instrument of *state* policy, continues to be implicated in acts which amount to breaches of international humanitarian and human rights law - see, for example, Human Rights Watch Press Release *Sudan: New Clashed jeopardize civilians – Escalating Violence Highlights Need for Civilian Protection* (10 October 2007).

The risk on return

[59] The situation for persons returning to Sudan from overseas was also considered by the Authority in *Refugee Appeal No 75665* where it was stated:

"Internal flight and risk for returning Sudanese nationals

[96] In the UNHCR's assessment, the threats from the authorities and non-state agents are so widespread that:

"... it cannot be said that there is an internal flight alternative anywhere in Sudan for asylum-seekers from Darfur, including for those who resided in Khartoum before the Darfur crisis. Sudanese of non-Arab Darfurian background returning to Sudan face a heightened risk of scrutiny by the security apparatus." (emphasis added)

[97] The UNHCR paper also addresses, specifically, the risks for Sudanese nationals who are forced to return to Sudan:

"Forced returns to Sudan entail risks for certain categories of Sudanese, regardless of their place of origin, including Darfurians. These categories include young men of fighting age who are regularly singled out for detention and interrogation. These arrests are often pursuant to an administrative decree dated 28 February 1993 which authorises border authorities to arrest returning Sudanese who left after the June 1989 coup and who have stayed away for more than a year. Such individuals can be subject to investigations and necessary security measures. Currently, the decree is applied selectively, depending on the profile of the individual returning. Young men of a fighting age are particularly susceptible to be targeted." (emphasis added)"

[60] The effect of this change in the underlying nature of the conflict as referred to in paragraph [58] for non-Arab Darfurians forcibly returned to Sudan is not clear. As far as the Authority is aware, no updated UNHCR position paper has been issued to suggest that the advice referred to in *Refugee Appeal No 75665* as to categories of returnees who face heightened risk of scrutiny has materially altered. Similarly the Authority knows of no country information to suggest that it has so altered.

Treatment of detainees

[61] The United States Department of State *Country Report on Human Rights Practises 2006: Sudan* (6 March 2007) notes, at section 1c:

"Although the Interim National Constitution, adopted in July 2005 and hereafter referred to as the "interim constitution," prohibits such practices, government security forces continued to torture, beat, and harass suspected political opponents and others.

...

Prison conditions remained harsh and overcrowded. Most prisons were old and poorly maintained, and many lacked basic facilities such as toilets or showers. Health care was primitive; prisoners usually relied on family or friends for food. Prison officials arbitrarily denied visits to prisoners. High ranking political prisoners reportedly often enjoyed better conditions than did other prisoners.

The government routinely mistreated persons in custody. There were credible reports that security forces held detainees incommunicado; beat them; deprived them of food, water, and toilets; and forced them to sleep on cold floors."

[62] The Amnesty International report *AI Report: Sudan (2007)* also notes the security forces, in particular the National Security Agency, arbitrarily detained people incommunicado and without charge or trial and that torture continued to be used systematically against certain groups, including students and detainees in Darfur.

Application to the appellant's case

[63] In light of the UNHCR assessment referred to above, the Authority accepts that, as a non-Arab from West Darfur, the appellant faces a heightened risk of scrutiny at the airport. The Authority also accepts that the appellant, now 29, is of fighting age. He has been away from Sudan for at least one year. As such, he belongs to the class of persons who are particularly susceptible to be investigated and subject to the necessary security measures. Accordingly, the Authority is satisfied that it is likely that he will be interrogated as to his background and activities outside Sudan.

[64] Such an interrogation would reveal that he had escaped from the detention of the GSU having agreed to be a spy and *agent provocateur* for them in the Al-Geneina region. This will expose the appellant to a real chance of suffering serious physical harm amounting to his being persecuted.

[65] The first principal issue is answered in the affirmative.

Convention ground and nexus

[66] The appellant's predicament is plainly contributed to by his West Darfurian ethnicity and the imputation of a negative political opinion to him by the Sudanese authorities. The second principle issue is also answered in the affirmative.

CONCLUSION

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

"B L Burson"

B L Burson
Member