

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

**REFUGEE APPEAL NO 76446**

**AT AUCKLAND**

**Before:** C M Treadwell (Member)  
**Counsel for the Appellant:** E Griffin  
**Appearing for the Department of Labour:** No Appearance  
**Date of Hearing:** 25 January 2010  
**Date of Decision:** 10 February 2010

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**DECISION**

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**INTRODUCTION**

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

[2] This is the third time that the appellant has claimed refugee status in New Zealand.

[3] On 21 November 2007, the Authority (differently constituted) delivered its decision on the appellant's first appeal – see *Refugee Appeal No 76098* (21 November 2007). At that time, the appellant claimed to be a national of Chad who had been born to Chadians living illegally in Saudi Arabia. Without any right to return to Saudi Arabia, or to reside there, the appellant's first claim was assessed in terms of his Chadian nationality. Aspects of his claim were disbelieved and it was determined that so much of the claim as was accepted as truthful did not establish a well-founded fear of being persecuted in Chad.

[4] On 12 February 2009, the Authority (again differently constituted) delivered its decision on the appellant's second appeal – see *Refugee Appeal No 76229* (12 February 2009). The appellant still maintained that his mother was Chadian but claimed to have learned that his father's nationality was unknown. His mother had then married a Sudanese man to hide the fact that the appellant had been conceived out of wedlock. The shame which his illegitimacy would cause if he returned to Chad formed the plank of his second claim. The Authority did not accept his credibility, accepting only that he was of Chadian nationality. It declined the second appeal.

[5] The crux of the third appeal is that the appellant says he has now learned that his Sudanese stepfather is, in fact, his father – a fact previously hidden from him by his mother. Thus, the appellant claims, his nationality is, in fact, Sudanese. He claims to be at risk of harm in Sudan because of his father's history of anti-government activity and because he is at risk of conscription into the army, which would force him to fight against his own people in Darfur. The central issues are whether the account of the appellant is credible and, if so, whether he is at risk of serious harm in Sudan.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[6] Second or subsequent refugee claims (including appeals to the Authority) are subject to jurisdictional limitations. Section 129O(1) of the Immigration Act 1987 ("the Act") provides:

"A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[7] It follows that it is necessary to consider the appellant's original claims and his further claim, as presented at the third appeal hearing, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the third appeal and, if so,
- (b) whether he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[8] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act involves a comparison of the claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the new claim is based, when compared with the previous claims, there is no jurisdiction to consider the subsequent claim. See *Refugee Appeal No 75139* (18 November 2004).

[9] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and gives the Authority a discretion as to whether to rely on any such finding.

### **THE APPELLANT'S FIRST CLAIM**

[10] What follows is a summary of the appellant's evidence at the first appeal hearing. It is recorded in detail in *Refugee Appeal No 76098* (21 November 2007).

[11] The appellant's first claim was that he was born and had lived his whole life in Saudi Arabia, but could not return there because he is not a national of that country and does not have a right of residence there. He claimed, however, to be a national of Chad because both his parents were Chadian.

[12] The appellant claimed to have a well-founded fear of being persecuted in Chad because he had never lived there, had no support network there, would enter the country as an undocumented national and was Gorane, a tribe oppressed by the ruling Zaghawa. He also said that his father has been killed in Chad in inter-tribal fighting and his tribe would require him to avenge his father's death. He also claimed to be at risk because he would be forcibly conscripted into the Chadian army. Finally, he claimed to be at risk of arrest for assaulting an official at the Chad embassy in Saudi Arabia.

[13] The panel of the Authority hearing the first appeal accepted the appellant's biographical details, but it disbelieved his claim to have assaulted an embassy official. It found that he did not have an adverse profile with the authorities in Chad, that being Gorane did not put him at risk, that there was no evidence that he would be compelled to avenge his father's death and any prospect of his forced conscription was no more than speculative.

### **CLAIM UNDER THE CONVENTION AGAINST TORTURE**

[14] On 14 January 2008, the appellant lodged with the Department of Labour a claim under the 1989 Convention Against Torture, arguing that his removal to Chad would contravene the *non-refoulement* obligations of Article 3.

[15] It is not necessary to traverse the details of that claim. It suffices to record that the Department declined it on 21 February 2008, on the ground that it repeated the first refugee claim, on which the Authority had already ruled that the appellant did not have a well-founded fear of being persecuted in Chad. Finding that it should rely on the decision of the Authority, the Department concluded that the appellant had not established he was at risk of torture or other cruel, inhuman or degrading treatment and thus no *non-refoulement* obligation was established.

[16] It is now possible to turn to the second refugee claim.

### **THE APPELLANT'S SECOND CLAIM**

[17] The appellant's evidence at the second appeal hearing is recorded in detail in *Refugee Appeal No 76229* (12 February 2009). The following is a summary.

[18] The appellant told the second appeal panel that, while in prison awaiting removal from New Zealand, he telephoned an aunt in Saudi Arabia. She informed him, he said, that his real father was, in fact, not known and that his mother had pretended that he was from Chad and had been killed as a result of tribal conflict, in order to hide her shame at the appellant's illegitimacy.

[19] The aunt informed the appellant that his mother had then married a Sudanese man, also illegally in Saudi Arabia, to hide the family's shame. The appellant produced copies of his step-father's Sudanese passport, property ownership documents from Sudan and a letter (untranslated) from his aunt.

[20] The appellant claimed that his mother's family would create difficulties for him if he returned to Chad, because of the disgrace of his illegitimacy.

[21] The second appeal panel disbelieved the appellant's claim to have received this new information. His aunt had been aware of his first claim and it was implausible that she would have withheld such important information. It also noted that his second claim had been lodged the day after a claim under the Convention against Torture had been declined, and was silent as to the new evidence. The

Authority also noted that the name of the appellant's stepfather was the same as the name given in his first appeal for his biological father – a coincidence which he could not explain. It found that the claim that his father's identity was unknown had been fabricated.

[22] The Authority accepted only that the appellant was a young male Chadian of the Gorane tribe who travelled to New Zealand on a false Saudi Arabian passport and who had never lived in Chad. He had no right of return to Saudi Arabia, had never had a Chad passport and would likely have to enter Chad as an undocumented national. These facts, however, did not give rise to a well-founded fear of being persecuted.

### **THE APPELLANT'S THIRD CLAIM**

[23] The following is a summary of the appellant's evidence on the third appeal. The question of jurisdiction and the assessment of the third claim follow.

[24] The appellant's second appeal was declined on 12 February 2009. Approximately a month later, he spoke by telephone with his stepfather, who informed him, for the first time, that he is in fact the appellant's biological father. This had been kept secret, his father explained, because the appellant had been conceived out of wedlock and the pretence that he was not the father cast him in an honourable light, as one rescuing the virtue of the appellant's mother.

[25] The appellant's (newly-found) father told him that he had separated from the appellant's mother when the appellant was an infant and had returned to Nyala, in Sudan. There, he had two other wives, by whom he had a further ten children. When the appellant had been about 16 years old, his father had returned to Saudi Arabia because, in 1993, he had been in a group caught trying to smuggle arms into Sudan in order to defend their village against attack by government forces. Escaping from custody, the appellant's father had hidden in the mountains for two years before escaping to Saudi Arabia with most of his family in 1996. The appellant's grandfather and a half-brother, AA, had been among the few remaining family members in Sudan.

[26] The appellant's father regretted denying his paternity for so long and told the appellant that he now wanted to help him. He gave him AA's telephone number in Khartoum and said that AA would help him to get papers to prove the appellant's Sudanese nationality.

[27] In due course, AA applied to the Sudanese authorities for an emergency travel document for the appellant. One was issued to him in August 2009, valid for three weeks only.

[28] The appellant says that the application for the travel document has now put him at risk. When AA disclosed to the relevant officials that he was from Nyala, he was told to go there to obtain a police clearance. On doing so, it was realised that he (AA) was the son of a wanted fugitive. He was told that he must produce his father (who AA pretended was still living in Nyala) to the authorities.

[29] Eventually, AA was able to obtain the appellant's travel document, on the giving of undertakings that:

- (a) he would assist in bringing their father to Court;
- (b) the appellant would obey Sudanese law and perform military service;
- (c) their grandfather would undertake not to help or support the rebels;
- (d) he would go to Nyala to assist the *janjaweed* arrest rebels; and
- (e) he would appear in court to swear before a judge that his father had told him that he had a half-brother, born in Saudi Arabia.

[30] Following the issue of the emergency travel document to the appellant, AA immediately sent their grandfather and his own wife to live in a refugee camp in Darfur and then left Sudan for Saudi Arabia, where he now resides illegally.

[31] The appellant says that he is now at risk of being seriously harmed in Sudan because of his father's profile there and also because he will be forced to undertake military service.

[32] As to the first reason, he says that the government's desire to arrest his father means that he (the appellant) faces arrest, detention and mistreatment so as to force him to reveal his father's whereabouts.

[33] As to the second reason, the appellant says that he now knows that he is from Nyala, a settlement which has long been harassed by soldiers and the Janjaweed militia. He is opposed to undertaking military service because the Sudanese army commits atrocities in Darfur and he believes they would send him there to fight against his own people.

## **Documents and submissions**

[34] In support of the third claim, counsel has tendered opening submissions dated 18 January 2010 and, by way of country information, refers the Authority to the Amnesty International Report on Sudan for 2009, the United Kingdom Home Office's "Operational Guidance Note: Sudan" of 2 November 2009 and the United States Department of State *Country Reports on Human Rights Practices: Sudan* (25 February 2009).

[35] The Authority and the appellant have each been provided with a copy of the Refugee Status Branch file in respect of the appellant's refugee claims in New Zealand.

[36] At the conclusion of the hearing, counsel was given leave to lodge written closing submissions by 9 February 2010. An extension of that time was then sought but, given the conclusions which follow, it is not considered necessary to delay the delivery of the decision further.

## **CONCLUSION ON JURISDICTION**

[37] As noted in *Refugee Appeal No 75139* (18 November 2004):

"[51] Jurisdiction under s 129J(1) is determined by comparing the previous claim to refugee status against the subsequent claim. It is clear from the definitions in s129B(1) that the exercise requires the refugee status officer and the Authority to compare the claims **as asserted by the refugee claimant**, not the facts subsequently found by [the Refugee Status Branch] officer or the Authority."

[38] Here, the Authority is satisfied that the jurisdictional threshold is met. The appellant's third claim is predicated upon circumstances in Sudan, a claim not made in either of his first two refugee applications. Further, he says that he only learned of his Sudanese nationality after his second claim had been declined.

[39] These new aspects of the third claim cross the jurisdictional threshold of "changed circumstances". It follows that the substantive merits of the third claim must be considered.

## **THE ISSUES**

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

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

[41] 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**

[42] As to the question of credibility, the Authority has a discretion to rely upon findings made in relation to earlier claims. Section 129P(9) of the Act provides:

"... the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding."

[43] Save as noted hereafter, the Authority finds the reasons for the first and second appeal panels' findings of credibility and fact to be cogent and persuasive.

[44] The second appeal panel declined to accept the appellant's claim that his stepfather (as he then claimed his father was) was Sudanese. Since then, the appellant has produced to the Authority the Sudanese emergency travel document which was issued to him in August 2009. A letter dated May 2009 from the Sudanese Ministry of the Interior authorised the issue of the travel document and noted that AA had produced, in support of the application, their grandfather's passport and their father's identity card.

[45] This new information satisfies the Authority that the appellant's right to Sudanese nationality is recognised by the Sudanese authorities. The finding by the first appeal panel that the appellant is Chadian is not relied upon.

[46] For reasons which follow, the Authority has determined that the appellant's claim should succeed. Before addressing those reasons, however, it is necessary to briefly record that, *inter alia*, the account of the appellant's father having had difficulties with the Sudanese government in the mid-1990s is not believed. It is



yet a further embellishment which the appellant has invented to try to bolster his claim.

### **Aspects of the third claim which are disbelieved**

[47] Several aspects of the third claim are rejected as not credible.

#### *Timing of the third claim*

[48] The fortuity involved in fresh grounds for a third refugee claim becoming available after the decline of the appellant's second appeal is implausible. The second appeal was declined on 12 February 2009. It is suspicious that the news that he is, in fact, Sudanese should come to his notice a month later, when his father suddenly felt that he should help him, not having done so when the appellant's first claim was declined in November 2007, or when his claim under the Convention Against Torture was declined in February 2008.

[49] There is a strong flavour to the appellant's various claims that they have rapidly evolved to counter their successive rejections. The Authority has no doubt that he has known of his Sudanese ethnicity from the outset.

#### *Whereabouts of the appellant's father*

[50] The appellant says that his father fled Sudan in 1996. Asked to explain why the May 2009 letter from the Sudanese Ministry of the Interior records AA's advice that their father "works in the farms and lives in Nyala", the appellant claimed that AA had said this to conceal their father's whereabouts. Asked why AA could not simply have said that their father was in Saudi Arabia, where there is a significant Sudanese migrant community working, the appellant asserted that "agents" might track their father down there if that was revealed. He could not explain, however, why they have not done so in fourteen years.

[51] The appellant has produced no corroborative evidence to establish that his father (or his brother AA) is in Saudi Arabia. To the contrary, the evidence on which the Sudanese authorities have issued a travel document to the appellant records that the father is in Nyala and AA in Khartoum, and states that both the grandfather's passport and the father's identity card were produced.

*Half-brother's occupation*

[52] Initially, the appellant told the Authority that he knew nothing of his half-brother AA's employment, or of his life at all. He stated that he had only come to know AA over the telephone and there had been no chance to ask him questions or have a conversation with him.

[53] Noting that the translation of the letter of May 2009 from the Ministry of Internal Affairs records of AA that:

"His tribe is Quran and he works in the Popular Policing at the District of [X] as a (Positioned)"

the Authority had the sentence re-translated by the interpreter at the hearing. The interpreter advised that the sentence more correctly states:

"His tribe is Quran and he works in the local police at the District of [X] as a Constable."

[54] Confronted with this, the appellant denied that AA is a police constable. According to the appellant, he is employed by the police as a volunteer police informer. He was compelled to become one, the appellant said, because his life would have been in danger if the authorities had discovered that he was actually from west Sudan. That claim must be contrasted with AA's obvious willingness to disclose his origins to the Ministry of the Interior.

[55] Further, reminded that he had just claimed to know nothing of AA's employment or life because he had not even had time to have a conversation with him, the appellant stated that he knew this because he had expressly asked AA about the reference to his employment in the Ministry's letter. If it were true, however, that he had expressly asked AA to clarify his employment only a few months earlier, his initial claim to know nothing of AA is hard to understand.

*The father's difficulties in Sudan in 1993*

[56] It will be recalled that the appellant says that AA told him that their father was one of a group caught trying to smuggle weapons across the border. He is said to have escaped from custody and to have lived in the mountains for two years before leaving Sudan for Saudi Arabia.

[57] Quite apart from the fact that AA must have had a substantial conversation with the appellant to impart such information (contrary to his claim that they did not), Nyala, the capital of South Darfur, is a substantial town. It is implausible that

Sudanese officialdom in Khartoum would not have known that the appellant's father was a fugitive until after AA had been sent to Nyala to obtain a police certificate. The seriousness of the appellant's father's actions (smuggling arms) makes it unlikely that Khartoum records would fail to record him as a wanted man.

[58] Further, it is surprising that AA would have been willing to share such sensitive information with the appellant, a person he had never met, by telephone.

*The issue of the travel document*

[59] As to why the Sudanese authorities would issue a travel document to the appellant if his father was viewed as a wanted fugitive, the appellant claimed that they had done so because they wanted to detain him and use him as "bait" to force his father to surrender. That is implausible. Had they wished to do so, the authorities could simply have detained AA. In fourteen years, they did not.

**Summary of facts accepted**

[60] It is accepted that the appellant is recognised as a Sudanese national by the government of that country. The foregoing concerns, however, taken cumulatively, satisfy the Authority that his claim to be at risk because his father is a wanted fugitive following an arms-smuggling incident in the 1990s, is untrue.

[61] Recognition of refugee status, however, is not determined by whether, or why, a claimant tells lies but by whether the facts as found disclose a real chance of the person being persecuted for a Convention reason. The Sudanese travel document establishes, independently of the appellant, a number of facts to which it is possible to give weight.

[62] The Authority accepts that the appellant is a Sudanese of ethnic-African descent, recognised by the Sudanese authorities as a Sudanese national, aged 26 years, of the Islamic faith and the Quraan tribe and that Sudanese records describe him as the son of a man from Nyala, but living in Khartoum (as stated on the travel document). The same records also note him as having been born in Saudi Arabia, where he grew up.

[63] It is against these facts that the appellant's claim is to be measured.

**Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Sudan?**

[64] “Being persecuted” comprises two elements – serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard is a sustained or systemic violation of core human rights. See *The Law of Refugee Status*, J C Hathaway (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[65] Given the finding that the appellant is not at risk of being detained as “bait” to force his father to return to Sudan, the only remaining limb of his claim requiring consideration is his claim to be at risk of serious harm in being required to undertake compulsory military service.

[66] Three issues arise:

- (a) The circumstances in which objection to military service can ground a claim to refugee status;
- (b) whether military service in Sudan provides such circumstances (requiring consideration of the country information as to the conflict in Darfur and the nature of military service) ; and
- (c) whether the appellant would, in fact, be compelled to undertake military service in such circumstances.

*Objection to military service as grounds for a claim to refugee status*

[67] The question of objection to military service has been considered by the Authority on a number of occasions. A recent instance, appropriately also in the context of Sudan, was *Refugee Appeal No 75968* (19 February 2007). There, noting an earlier decision on point, the Authority held, at [87]:

“The Authority adopts the useful analysis in *Refugee Appeal No 75378* (19 October 2005) [42](4) of the circumstances in which refugee status can be established on the basis of conscientious objection:

- (a) Where conscription is conducted in a discriminatory manner in relation to one of the five Convention grounds;
- (b) Where prosecution or punishment for evasion or desertion is based in relation to one of the five Convention grounds; and
- (c) Where the objection relates to being required to participate in military action where the military engages in internationally condemned acts. In such cases it is necessary to distinguish between cases:

- (i) Where the internationally condemned acts were carried out as a matter of government policy. If so, all conscripts face a real chance of being required to so act; and
- (ii) Those where the state encourages or is unable to control sections of its armed forces. In such circumstances a refugee claimant is required to show that there is a real chance he/she will be personally involved.”

[68] In the present case, the appellant points to the third category. He submits that the conflict in Darfur, in which the Sudanese Army has been engaged in a decade-old conflict with several south-Darfurian tribes, is one in which the army regularly carries out internationally condemned acts by way of gross human rights violations, including the murder, rape and forced displacement of civilian populations, as a matter of Sudanese government policy. He objects to serve in an army engaged in such acts and says that to be compelled to do so would constitute “being persecuted”, in the context of the Convention.

[69] To address this assertion, it is necessary to consider the country information.

*Country information – the conflict in Darfur*

[70] The conduct of the Sudanese army in Darfur has been considered by the Authority in a number of decisions in recent years. Of particular relevance are *Refugee Appeal No 75655* (29 September 2006), *Refugee Appeal No 75968* (19 February 2007) and *Refugee Appeal No 76173* (5 May 2008).

[71] In the last-mentioned decision, the Authority drew the threads of previous decisions together. The passage is lengthy but it is convenient to repeat it:

“[47] The conflict in Darfur has historical origins but the modern crisis escalated in February 2003, when rebel groups from the Fur, al-Mesalit, and Zaghawa tribes, demanded an end to chronic economic marginalisation in the Darfur region and sought power-sharing with the Arab-ruled government. In particular, they rose up against the encroachment of Arab farmers who were driven onto traditional African land by climatic change.

[48] The government’s response was to target the civilian populations from which the rebels were drawn. It engaged in ethnic manipulation by organising a military and political partnership with the nomadic Arab militia known as the *janjaweed*, whom it armed, trained, and gave impunity for all crimes committed. See *Human Rights Watch* “Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan”, May 2004 Vol 16, No 6(A).

[49] 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 in Sudan and in Chad. It is estimated that by November 2004, some 70,000 people had been killed and 1.5 million civilians displaced. See *Freedom House* “Sudan – Country Report, 2004”.

[50] On 25 January 2005, the UN International Commission of Inquiry on Darfur reported to the UN Secretary-General that, while the Sudanese government did not pursue a genocidal policy directly or through the militias under its control, it committed violations of humanitarian and international law which could be considered war crimes. See [www.ohchr.org/english/docs/darfurreport.doc](http://www.ohchr.org/english/docs/darfurreport.doc). In particular, it recorded:

"...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...."

The above conclusion that no genocidal policy has been pursued and implemented in Darfur by the Government authorities, directly or through the militias under their control, should not be taken as in any way detracting from, or belittling, the gravity of the crimes perpetrated in that region. As stated above genocide is not necessarily the most serious international crime. Depending upon the circumstances, *such international offences as crimes against humanity or large scale war crimes may be no less serious and heinous than genocide*. This is exactly what happened in Darfur, where massive atrocities were perpetrated on a very large scale, and have so far gone unpunished."

[51] More recently, in September 2007, *Human Rights Watch* published its report "Chaos by Design: Peacekeeping Challenges for AMIS and UNAMID" Volume 19, No 15(A) noting, at pp 29-34:

"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...."

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."

[52] In *Refugee Appeal No 76074* (22 November 2007) the Authority concluded, drawing on this information:

"[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)."

[53] Current conditions in Sudan have not changed. The Authority has also had particular regard to the following more recent reports:

- (a) the *UN Human Rights Council* report "Human Rights Situations That Require The Council's Attention – Final Report on the Situation of Human Rights in Darfur..." A/HRC/6/19, 28 November 2007;

- (b) "Lives We Throw Away: Darfuri Survivors Tortured in Khartoum Following Removal From the UK", *Aegis Trust* report, October 2007;
- (c) "Darfur's New Security Reality", *International Crisis Group*, 26 November 2007; and
- (d) "Displaced in Darfur", *Amnesty International*, January 2008

[54] The picture remains bleak. Amnesty International record that more than 90,000 people are believed to have been killed in Darfur since 2003, with a further 200,000 having died from conflict-related causes. Over 2 million have been forced from their homes. The main target of government and militia hostility continues to be the African Fur, al-Mesalit, and Zaghawa tribes."

[72] There has been no significant improvement in the conflict in Darfur since that assessment. The United States Department of State *Country Reports on Human Rights Practices: Sudan* (25 February 2009) recorded:

"Conflict in Darfur continued despite the 2006 Darfur Peace Agreement (DPA) between the government and Minni Minawi's faction of the Sudan Liberation Movement/Army (SLM/A). Civilians in Darfur continued to suffer from the effects of genocide. Government forces bombed villages, killed civilians including internally displaced persons (IDPs), and collaborated with janjaweed militias and tribal factions to raze villages and perpetrate violence against women. The government supported Chadian rebel groups. During January and February, violence in West Darfur displaced tens of thousands of persons; approximately 12,000 persons were displaced to Chad.... According to the UN, nearly 2.7 million civilians have been internally displaced, and approximately 250,000 refugees have fled to neighboring Chad since the conflict in Darfur began in 2003. During the year approximately 315,000 civilians were displaced within Darfur and to Chad. Estimates on the number of deaths vary. In 2006 the UN estimated that 200,000 persons had died as a result of the conflict."

[73] Human Rights Watch, in its *2009 World Report: Sudan* (14 January 2009), similarly observed:

"In Darfur hundreds of thousands remain internally displaced as the Sudanese government uses indiscriminate bombings and attacks on civilians by ground forces and allied Janjaweed militias in counterinsurgency."

[74] See also, the United Kingdom Home Office's *Country of Origin Information Report: Sudan* (October 2009) at 10.33-10.44.

[75] As to evidence of continuing gross human rights abuses by the army, in the course of the conflict in Darfur, the United States Department of State notes:

"Government forces bombed villages, killed civilians including internally displaced persons (IDPs), and collaborated with *janjaweed* militias and tribal factions to raze villages and perpetrate violence against women....

In Darfur and other areas of conflict government forces, rebel groups, and tribal factions committed torture and abuse....

In Darfur, government forces, government-aligned militias, rebel groups, and tribal factions killed, injured, and raped civilians."

[76] Against this backdrop, it is necessary to also consider the question whether military service is compulsory and the nature of any military service which the appellant would be likely to encounter.

*Country information – military service*

[77] In the 1998 *War Resisters International* survey “Refusing to Bear Arms” it was noted that the National Service Act 1992 requires all males aged between 18 and 33 to undertake national service for 24 months (18 months for high school graduates, and 12 months for university graduates). Those called up for military service are not allowed to follow an education or work. Men of conscription age are forbidden to leave the country for any reason.

[78] The Danish Immigration Service’s *Report on fact-finding mission to Cairo, Khartoum and Nairobi, August-November 2001*, assessed the issue of military conscription and recorded:

“Besides the regular Sudanese army the National Congress (NC) party has its own military branch called the Popular Defence Forces (PDF).

Despite the fact that the PDF is officially a political fighting force, PDF forces are also deployed at the front in the fighting against the rebels. The EIU states that in the period 2000 to 2001 there were approximately 15 000 active soldiers in the PDF and 85 000 reservists. By way of comparison the ordinary state National Army consists of approximately 100 000 soldiers, of which 20 000 are conscripted....

[A]ll those who had completed secondary school were meant to perform Compulsory National Service (CNS). This happened by means of arbitrary recruitment in the form of "round-ups" in the towns, in which military personnel in civilian dress even stopped cars and buses. The authorities forced those passengers who were believed to be the right age for conscription and who could not prove that they had in fact already performed their military service to go with them to military training camps.

Many of those who were recruited did not even have an opportunity to contact their parents or relatives to inform them of what had happened. It was particularly those from the more vulnerable social groups who were at risk of being recruited in this manner....

The source added that any recruit risked being sent on active service in Sudan.”

[79] As to the composition of the army, *Jane’s Sentinel Country Report: Sudan*, dated 12 May 2009, records:

“Over the years the Sudanese Army has been beset by recruitment problems as northern Sudanese became increasingly reluctant to fight in the civil war in the south of the country. The ranks of the army are believed to have been swelled with southerners pressed into service.”

[80] According to the Jamestown Foundation’s *Terrorism and Violence in the Sudan: The Islamist Manipulation of Darfur* (1 June 2005):



“For decades the regular Sudanese army has been largely formed (60-65%) from Kordofan Nubas and recruits from Darfur. Despite the civil war, the Sudanese army also relies on a large number of troops from the south. For all the rhetoric of jihad in Khartoum, service in the military appeals to few of the Nile-based Arabs who control the political process. With the Darfur troops considered politically unreliable in fighting their kinsmen, the government sought [in the janjaweed] an alternative fighting force in Darfur that could be motivated by racial hatred.”

[81] Finally, there is no ‘conscientious objection’ alternative to military service in Sudan and the penalty for desertion or evasion is three years’ imprisonment. See Immigration and Refugee Board of Canada *Response to Information Request SDN102445.E* (28 February 2007).

*Whether a real chance of the appellant being conscripted*

[82] UNHCR has reported that forced return to Sudan entails risks for certain categories of Sudanese, regardless of their place of origin. UNHCR’s *Position on Sudanese Asylum-Seekers from Darfur*, February 2006, [para 3] states:

“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 officials to arrest returning Sudanese who left after the June 1989 coup and have stayed away for more than one year. Such individuals can be subject to “investigations” and “necessary security measures”. Currently the decree is applied selectively depending on the profile of the returning individual. Young men of a fighting age are particularly susceptible to be targeted.”

[83] While the appellant is not among those who “left after the June 1989 coup and have stayed away for more than one year”, he does not have the stability of a home, family or employment in Sudan and, given the targeting of “young men of fighting age”, the Authority cannot be certain that the fact that he did not leave after the 1989 coup will protect him from investigation. Indeed, he will not be able to point to any date of lawful departure.

[84] The Danish report also noted, at p55, that:

“A well-informed local source in Cairo said that Sudanese citizens in possession of a valid national passport could enter Sudan without any difficulty. However, if they only had a temporary travel document they would be questioned about their circumstances on arrival in Sudan.”

[85] Given the above, it is likely that the appellant’s profile and lack of a Sudanese passport will cause him to be detained and questioned on arrival. Even if he falls outside the 1993 decree, given his age, gender, African ethnicity and time out of Sudan, it is predictable that the issue of military service will arise. His Muslim faith is also a likely contributing factor to the interest of the authorities in forcibly conscripting him. As the 2001 Danish Fact Finding report noted:

“Idrees Ishag explained that ‘southerners’, which usually meant internally displaced Christians, were not being recruited to the same extent as before, as there was a great risk that they would desert and go over to the SPLA as soon as they had an opportunity to do so....

Lehne could not dismiss the possibility that people were sent into active war service against their will. However, it was particularly southern Sudanese who were sent south into the war zones.”

[86] The characteristics of the majority of conscripts sent to fight in Darfur are that, for the most part (60-65%), they are ethnic-African recruits from outside the Darfur region, but with Christians regarded as unreliable. The appellant’s African ethnicity, his origins (Quran tribe, with his domicile being given as Khartoum) and his Muslim religion suggest that he would be seen as suitable for active military service in Darfur.

#### *Conclusion on real chance*

[87] The United Nations’ International Commission of Inquiry on Darfur stopped short of accusing the Sudanese government of pursuing a genocidal policy in Darfur, but it found that its army and militias conduct indiscriminate attacks, including the killing of civilians, torture, enforced disappearances, destruction of villages, rape and other sexual violence, pillaging and forced displacement, throughout Darfur, on a widespread and systematic basis, amounting to crimes against humanity. Those atrocities are ongoing.

[88] The evidence establishes that there is a real chance of the appellant suffering serious harm at the hands of the state, in terms of forcible conscription in a military service (whether the regular army or the PDF) which engages, as government policy, in internationally condemned acts. Even if there was doubt as to whether such acts are Sudanese government policy, there is no doubt that they occur and, given his characteristics, there is a real chance of his own involuntary involvement.

[89] The appellant has a well-founded fear of being persecuted in Sudan.

#### **Convention reason**

[90] One reason for the risk to the appellant is his race (ethnic-African, of the Quran tribe, from Darfur). Other reasons may also exist, but it is not necessary to explore the matter further. The relevant Convention ground is race.

**CONCLUSION**

[91] It is concluded:

- (a) The Authority has jurisdiction to consider this third appeal.
- (b) For the reasons given above, the appellant is a refugee within the meaning of Article 1A(2) of the Convention.

[92] Refugee status is granted. The appeal is allowed.

"C M Treadwell"

C M Treadwell  
Member