**HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062**

**Asylum and Immigration Tribunal**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated on** |
|---|---|
| **On 20 and 21 June 2006** | **3 August 2006** |

**Before**

**THE HONOURABLE MR JUSTICE HODGE OBE, PRESIDENT**
**SENIOR IMMIGRATION JUDGE STOREY**
**SENIOR IMMIGRATION JUDGE LANE**

**Between**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

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|---|---|
| For Appellant H: | Mr A. Mahmood, Counsel, instructed by Messrs Blakemores Solicitors |
| For Appellant G: | Mr B. Ali, Solicitor, of Messrs Aman Solicitors |
| For Appellant M: | Mr C. Jacobs, Counsel, instructed by Messrs White Ryland Solicitors |
| For Appellant O: | Ms L. Brakaj, Solicitor, of Messrs Halliday Reeves Solicitors |
| For the Respondent: | Ms L. Giovannetti, Counsel, instructed by the Treasury Solicitor |

*(1) This case gives country guidance in relation to the removal to Khartoum of certain Sudanese nationals. It replaces as country guidance the cases of AE (Relocation-Darfur-Khartoum an option) Sudan CG [2005] UKAIT 00101 and MH (Darfurians: relocation to Khartoum?) Sudan CG [2006] UKAIT 00033.*

*(2) Neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum.*

*(3) A person will not be at real risk on return to Khartoum solely because he or she is of Darfuri origin or non-Arab Darfuri origin. Neither at the airport or subsequently will such a person face a real risk of being targeted for persecutory harm or ill treatment.*

*(4) A person of Darfuri origin or non-Arab Darfuri origin can in general be reasonably expected to relocate to Khartoum. If that person were in practice compelled to live in an IDP camp or a squatter area in Khartoum, this would not expose the person concerned to a real risk of serious harm or ill treatment contrary to Article 3 or conditions which would be unduly harsh, according to the legal tests in Januzi [2006] UKHL 5, since there is no marked difference between conditions in such camps and squatter areas and the living conditions for most persons living in Sudan.*

*(5) In any event, it cannot automatically be assumed that a returnee who is of Darfuri origin or non-Arab Darfuri origin will be reasonably likely to have to live in such a camp or area – it will be for an appellant to prove this in his or her case.*

*(6) An appellant will be able to succeed on the basis of medical needs only in extreme and exceptional circumstances.*

*(7) There will, nevertheless, be limited categories of Darfuri returnees who will be at real risk on return to Khartoum. Each case will need to be considered on its own individual merits, taking account of all relevant circumstances, considered individually and cumulatively. The Tribunal considers that the following can be said to constitute particular risk categories (see further paragraph 309 of the determination):*

*a) persons of non-Arab Darfuri origin from one of the villages or areas of Darfur which are "hotspots" or "rebel strongholds" from which rebel leaders are known to originate;*
*b) persons (including certain students) whose conduct marks them out as oppositionists or anti-government activists;*
*c) tribal leaders;*
*d) persons who whilst in the United Kingdom have engaged in activities which the Sudanese government is likely to know about and regard as significantly harmful to its interests;*
*e) female returnees, if they are reasonably likely to be associated with a Sudanese male of adverse interest to the authorities or if it is reasonably likely that they would have no alternative but to become a female-headed household in an IDP camp or squatter area.*

Determination and Reasons

1. This determination deals with a number of issues relating to the return of Sudanese nationals, including those of non-Arab Darfuri origin, to Khartoum. On 15 February 2006 the House of Lords remitted the appeals of the first three appellants (hereinafter referred to as appellant H, appellant G and appellant M) to the Tribunal for reconsideration (*Januzi v. Secretary of State for the Home Department* & Ors [2006] UKHL 5).

2. The appeal of the fourth appellant comes before us as a second-stage reconsideration, a panel having found on the last occasion that there was a material error of law on the part of the adjudicator in allowing his appeal.

3. All four appellants are members of black African non-Arab tribes who reside in the western part of Sudan known as Darfur. All four were found to face a real risk of persecution in Darfur.

4. As stated at paragraphs 59 and 60 of the opinions in *Januzi*, the nature of the reconsideration in the first three appeals must take the form of a reassessment of the internal relocation alternative (within the context of the 1951 Geneva Convention relating to the Status of Refugees) that may be available to a person originating from Darfur, and the humanitarian considerations under Article 3 of the European Convention on Human Rights that may be raised by requiring a person who has fled persecution in Darfur to relocate to Khartoum. In our view the same must apply to the reconsideration of the fourth appellant's case (but see paragraph 352).

## *The cases of Appellants H, G and M*

5. At paragraphs 35 to 43 of the opinions, Lord Hope set out the nature of the claims of appellants H, G and M, the response of the Secretary of State to those claims and the findings of the adjudicator or Immigration Judge who heard the respective appeals:-

> "*…* ***[Appellant H]***
>
> *35. [Appellant H] is a citizen of Sudan. He was born on 1 July 1972. He seeks asylum on the ground that he has a well-founded fear for reasons of race. He claims that he is a member of the Zaghawa tribe from the village of Oro in west Darfur. He says that in November 2003 his village was attacked by the Janjaweed militia. His father and brother were killed in this attack. He and his mother went to stay with his uncle in the village of Taweela. But in October 2004 this village too was attacked by the Janjaweed and his mother was killed. He then went to the village of Al Shyria where he met an agent who arranged for him to leave the country, which he did in October 2004. He reached the United Kingdom and claimed asylum on his arrival here on 22 November 2004.*
>
> *36. The Secretary of State resisted [appellant H's] claim by letter dated 19 January 2005 on the ground that the responses he gave to questions when he was interviewed indicated to the asylum caseworker that his account of his place of origin was not genuine. The caseworker did not believe that [appellant H] was from Darfur. So she did not accept that he would be at risk of being killed or subjected to any other ill-treatment if he returned to Sudan. She held that he did not have a well-founded fear of persecution in Sudan on the grounds of his race.*
>
> *37. [Appellant H's] case was reconsidered by an adjudicator on 16 March 2005. She accepted his account of his origins and background and of what had happened to him in Sudan. She concluded that he had established that he had suffered persecution because of his ethnicity and that he would be at risk if he were to return to his home area. But she said that if he were to be returned to Sudan he would arrive at Khartoum. In her opinion he could remain there, as this was an area of his country where he would not have a well-founded fear of persecution. In reaching this decision she followed the reasoning of the Immigration Appeal Tribunal in MM (Zaghawa – Risk on Return – internal Flight) (Sudan*) [2005] UKIAT 00069. *She relied on the fact that he had no history of political involvement and was not a student. She said that, given the numbers of displaced people in Khartoum and their diverse ethnicity, there was no reason to think that he would be treated with suspicion and prejudice by the local security forces and there was no real likelihood of a risk of persecution or of treatment contrary to article 3 of the European Convention on Human Rights. She accepted that he had lost his family in Darfur and had had to flee the Janjaweed. But there was no evidence that he faced any health issues and, as he was aged 32, he was neither very young nor old. So, while it might well be difficult and even harsh for him to relocate*

*in Sudan, it would not be unduly harsh for him to do so in the circumstances. His appeal to the Asylum and Immigration Tribunal was rejected by the immigration judge.*

6. It is convenient to interpose at this point two matters. In June 2005, after the adjudicator had heard appellant H's appeal there was published a report by the Aegis Trust entitled "Lives in our Hands: Darfuri asylum seekers facing removal to Khartoum". Appellant H is one of the 26 people mentioned in the report as having been interviewed by the Trust. The report recites the basic facts of what happened to him in Darfur (which, as we have noted, were accepted by the Immigration Judge). The current status of his case is said, somewhat prematurely as it turned out, to be "closed", given that his "appeals have been refused". Secondly, in connection with the reconsideration, appellant H served a copy of a letter dated 17 June 2006 from a Mr Mohamed Norsal, General Secretary of "The Union of the People of Darfur in U.K. & N. Ireland". This letter asserts, on the basis of a "thorough interview" by a panel of office holders in the Union, that appellant H "is Darfurian, born in uruoo village". Attached to the letter is a colour photocopy of two photographs, showing a person (presumably appellant H) in a crowd of what appear to be demonstrators. Appellant H is holding a placard bearing words that are critical of what is happening in Darfur.

7. As has already been noted, the adjudicator who heard appellant H's appeal found that he had suffered persecution in Darfur. Before the adjudicator appellant H said that his village was "Oro", which would appear to be the same place as that transliterated in the letter from the Union as ""uruoo". Before us Mr Mahmood did not seek to rely on the letter or the photographs, properly mindful of the fact that no challenge had been made to the adjudicator's case-specific findings of fact earlier in the appeal process. We have, nevertheless, approached our assessment of the risk to this appellant on return to Sudan on the basis, that he appears in the 2005 Aegis Trust report, is mentioned in the letter from the Union of the Peoples of Darfur in the United Kingdom and N. Ireland and may have attended a demonstration whilst in the United Kingdom at which he carried the placard which we have just described. Otherwise, the specific facts of appellant H's case are as found by the adjudicator.

8. These are the facts of appellants G and M:-

> "**…** ***[Appellant G]***
>
> *38. [Appellant G] too is a citizen of Sudan. He was born on 13 January 1973 and is a member of the black African Muslim Al Berget tribe. He seeks asylum on the ground that he has a well-founded fear on grounds of race and because of his family's links with the Sudanese Liberation Movement ("the SLM"). His home village of Tawila is in north Darfur. On 7 March 2004 it was attacked during the night by the Janjaweed militia. Three people in his village were killed and many were injured. Crops and property were destroyed or stolen, some of the dwellings were burned down and his own home was looted. His village was attacked again by the Janjaweed militia during the night of 22 November 2004. They began looting property and killing people at random, so he fled from the village with other members of his family. On 27 November he heard that security agents had arrested his father and brother from their home in Sawar near Al Fashir in north Darfur to which they have moved after the attack on 22 November 2004. He was told that the security agents believed that they and the appellant had links with and were supplying weapons to the SLM. His uncle warned him that the security agents were looking for him too. He went into hiding, and was taken to the city of Al Kofra from where he travelled to the United Kingdom. He arrived here on 9 December 2004 and claimed asylum the next day.*
>
> *39. The Secretary of State refused [appellant G's] claim by letter dated 27 January 2005. But there was no challenge in the refusal letter to the account that he had given of his ethnicity and tribal membership. His case was reconsidered by an immigration judge on 13 April 2005. She found that he*

*was a displaced black African who had fled internally within north Darfur. But she rejected his account of what had taken place with regard to his father and brother, and she did not accept his claimed fear of return on the basis of political or imputed belief associated with his family. This left his fear of return on the basis of the treatment by the State of members of a black sedentary tribal minority, assuming that he was someone who had no political profile.*

*40. Having reviewed the Secretary of State's decision in the light of AB (return of Southern Sudanese) Sudan* CG [2004] UKIAT 00260*, the immigration judge concluded that, as a minority African tribe member, [appellant G] could be returned as an internally displaced person to live in a camp in or near Khartoum without any real risk of treatment of a severity that would breach article 3 of the European Convention on Human Rights. She accepted that Sudanese of non-Arab Darfurian background faced a heightened risk of scrutiny by security agents on their return to the country and that internally displaced persons often face forced relocation and return to their home areas. But she found that the treatment of black African Sudanese was the result of land reclamation and tribal warfare, not because there was a policy or desire to eradicate the black African tribal groups on the part of the Sudanese government. She said it would not be unduly harsh for him to move into a camp for internally displaced persons on his arrival at Khartoum airport as he would be one of thousands of such persons who are members of a black African tribe, and he was an adult male who was able to fend for himself and had no political profile. His appeal to the Asylum and Immigration Tribunal was rejected."*

***[Appellant M]***

*41. [Appellant M] is a citizen of Sudan also. He was born on 1 January 1970 and is a member of the Zaghawa tribe. He seeks asylum on the ground that he has a well-founded fear for reasons of race and because of his political opinion in that he is a member or at least a supporter of the Sudanese Liberation Army ("the SLA"). His home is in the village of Abogamra in Darfur. He claims that in March 2003 his village was attacked by armed Arab militia. He helped to defend the village, but eight people from his village were killed and many people were injured. In April 2003 he relocated to the city of Nyala where his sister lived. He remained there for about a year. He claimed that during his time there he became involved with a group of Zaghawans who were engaged in raising money and recruiting members for the SLA. In March 2004 he was told that three of his colleagues had been arrested and had informed on him. Fearing arrest, he fled first to Omdurman and then to Khartoum. He stayed in Khartoum for six months with a relative and continued with his SLA activities. On 10 September 2004 an SLA meeting which he was attended was raided. He escaped by jumping over a wall and went into hiding. On 29 September 2004 he left Sudan. He claimed asylum on his arrival in the United Kingdom on 1 October 2004.*

*42. The Secretary of State refused [appellant M's] claim by letter dated 1 December 2004. His case was reconsidered by an adjudicator who on 9 March 2005 dismissed the appeal. The adjudicator was invited by the Secretary of State to make adverse findings on [appellant M's] credibility, and he did so. He said that he did not find [appellant M's] evidence that he had been involved with the SLA or in political activities to be credible. He accepted that he had left Darfur in some way because of the conflict, but much of his evidence was in his judgment implausible, inconsistent and vague. He gave some examples of this, among which was the fact that his knowledge of the SLA's policies was particularly vague and limited. He declined to find that he was even involved in politics either in Darfur or in Khartoum or that the authorities ever targeted him or were ever interested in him because of his SLA activities. But he was prepared to find that if he were to return to Darfur he would, like many others of his tribe, be persecuted there because of his ethnicity.*

*43. Turning to the situation in Khartoum, the adjudicator said he was not satisfied that [appellant M] had had any problems there. He found that when [appellant M] was living in Khartoum he was able to stay with a relative there. He was on the face of it a fit and healthy young man. He acknowledged that it might be difficult for many people from Darfur to settle in Khartoum and that [appellant M] might find it necessary to go to a camp. But he was not satisfied that it would be unduly harsh for him to do so. He noted that Darfurians suspected of political activities did appear to be targeted by the authorities, but he was not satisfied that [appellant M] had a profile that would make him in any sense the target of the authorities. In his opinion there was a viable internal relocation option for him in Sudan. He added, with regard to his human rights appeal, that it had not been proved to the necessary standard that he would have to stay in the refugee camp were he to return to Khartoum, or that even if he were to have to stay in one that this would lead to treatment which would breach his rights under article 4 of the*

*European Convention on Human Rights. His appeal to the Asylum and Immigration Tribunal was refused.*"

Paragraph 44 of the opinions describes what happened next:-

"*44. On 10 June 2005 Elias J referred all these cases to the Court of Appeal pursuant to section 103C of the Nationality, Immigration and Asylum Act 2002. On 25 October 2005 the Court of Appeal (Lord Phillips of Worth Matravers CJ, Maurice Kay LJ and Sir Christopher Staughton) held that no error of law had been identified in the determinations and dismissed the appeal:* [2005] EWCA Civ 1219. *In paragraph 42 of the court's judgment Maurice Kay LJ said, on the issue of asylum, that there was no general principle or presumption that persecution by or on behalf of the state is incompatible with acceptable internal relocation. The court held that on both asylum and human rights grounds the decisions were entirely compatible with the country guidance contained in AE (Relocation – Darfur – Khartoum an option) Sudan* CG [2005] UKAIT 00101."

9. Although Mr Jacobs indicated on 20 June 2006 that he wished to call appellant M to give further oral evidence, he informed the Tribunal on 21 June that he would not be pursuing this matter. The case–specific findings of fact in relation to appellant M are, accordingly, those made by the adjudicator who first heard his appeal. The Tribunal has, however, taken into account, *de bene esse*, the following matter. Appellant M has, in an unsigned statement dated 19 June 2006, referred to his having taken part in meetings and demonstrations for the SLM (Sudanese Liberation Movement) and being a representative for that organisation in West Yorkshire.

## *Case of Appellant O*

10. The reconsideration of the Tribunal's decision on the appeal of appellant O was ordered by a Senior Immigration Judge on 31 August 2005 under section 103A of the Nationality, Immigration and Asylum Act 2002. The reconsideration first came before the Tribunal on 28 March 2006 (Senior Immigration Judge Barnes; Senior Immigration Judge McKee; Ms C. St Clair). The Tribunal decided that there was a material error of law in the determination of the Immigration Judge who had heard the appellant's appeal. It is not necessary that we set out the Tribunal`s decision on this matter since, following the conclusion of the hearing before us, the respondent`s decision in respect of appellant O was withdrawn and hence his appeal is deemed to be withdrawn (see paragraphs 351-2).

## *The hearing*

11. On 20 April 2006 the Tribunal ordered that the reconsiderations of the appeals in the cases of appellants H, G and M and the second stage of the reconsideration of the decision in the appeal of appellant O should be heard together on the basis that common questions of law and fact arose in each of them (Rule 20(a) of the Asylum and Immigration Tribunal (Procedure) Rules 2005).

12. The hearing of these appeals took place over two days. Due to practical problems in finding a third day suitable to all in the near future, it was agreed by the parties that they would make their closing submissions in writing and our deliberations have taken account of those submissions.

13. At the hearing we heard evidence from three expert witnesses.

## The expert evidence

### Peter Verney

14. The first witness was Mr Peter Verney. He has worked for twenty-five years on Sudan-related issues. His recent work has included being commissioned as a special adviser to Darfur to assist the House of Commons' International Development Committee and the Overseas Development Institute from December 2004 to March 2005. He last visited Khartoum in 1989, although he had been to the South in 1998. One reason he had not been back was that threats had been made against his late wife who was Sudanese. He is the Editor of Sudan Update, an independent monitoring and information service which reviews current affairs in Sudan.

15. His written report for the Tribunal was dated 7 June 2006. It was prepared in respect of the first of the appellants but addressed a range of issues common to all four appeals before us.

16. His report considers that in order to understand properly the situation for displaced persons in Khartoum, one has to recognise that the central government has played a major role in the Darfur conflict. Between 2001 and 2005, 97% of the attacks on Darfur villages were by Sudan government forces and/or their proxy Arab militia (the Janjaweed). Two-thirds involved government helicopter gunship and bomber aircraft. The Janjaweed are supported by the Regional Government of Sudan and operate under the command of senior figures in the regime's security forces and the entire campaign is remarkable for its explicitly racist political ideology. This conflict represented the regime's attempt to punish an entire group of people.

17. In his report he explains that someone trying to live in Khartoum after being displaced from a conflict zone would face three possibilities. He could try and go to an IDP encampment on the periphery of the capital. But that would be a place of last resort. Such camps have frequently been demolished and their inhabitants moved to new camps out in the desert periphery, often with grossly inadequate provision of water and other basic essentials.

18. A second possibility would be to try and go to the unofficial squatter areas, but these areas too have been subjected to clearances and demolitions.

19. A third possibility would be to try and go to an existing social network or better established community of his or her kinfolk in various parts of the city.

20. However, it had to be understood that *all* areas of Khartoum were subject to considerable police and security police monitoring and intervention. This had a political and ethnic dimension. Even in times of peace, when starving Darfuris came to Khartoum seeking respite from famine in the mid-1980's, they were treated as undesirable aliens rather than as fellow Sudanese. But the eruption of conflict in Darfur from 2003 had intensified ethnic divides. Internally displaced persons (IDPs) from Darfur in Khartoum face not merely "difficult living conditions" but also politically driven antagonism by the authorities. The central government's security apparatus in Khartoum was pursuing a clampdown on civil society organisations assisting the

victims of the Darfur conflict. The regime's treatment of displaced persons in and around Khartoum was directly related to its deliberate obstruction and threatening of humanitarian workers, human rights defenders and the media in the Darfur region itself and had many of the same elements. The government is reluctant to allow UN intervention in Darfur and the threat of prosecution for war crimes hangs over named senior figures in the Sudanese regime; these senior figures have become alarmed at the prospect of trial before the International Criminal Court and are keener than ever to silence potential witnesses and to maintain surveillance and control of all possible sources of embarrassment, protest or unrest over the Darfur crisis.

21. A further factor affecting the situation of displaced Darfuris in Khartoum was that the government was very aware that they, together with other displaced persons and 'street' people, played a role in sparking the April 1985 popular uprising which brought down the dictatorship of General Numeiri. It therefore regards the influence of Darfur IDPs as a potential threat to its stability and treats those attracting the attention of the authorities as likely seditionaries.

> 'The Darfur IDPs represent a potential catalyst for the downfall of the regime, and while it cannot detain or relocate them all, every effort is made to stifle their attempts at organisation or self-help and to obstruct assistance to them.'

22. The general picture was that in Khartoum forced mass removals, the destruction of homes, and arrests of IDPs, on combined racial and political grounds, were frequent occurrences. The risk of being picked on was quite strong.

23. At paragraph 91 Mr Verney concluded that the actions of the Sudanese government against occupants of IDP camps included forced mass removals, racially motivated arrests and the destruction of homes, 'all of which could well be described as inhuman and degrading'.

24. In his view, whilst it was true that the most publicised cases of arrests outside Darfur have been those of persecuted students, community leaders, traders, lawyers and others with some access to human rights bodies, less prominent individuals have simply disappeared without a trace. His report cited with approval the statement in the 2005 Aegis Trust report "Lives in Our Hands" that "[i]n Khartoum now if even two or three people identified as being from Darfur or talking about Darfur are seen talking by the authorities, they can be in very serious trouble. And anyone who the authorities think is supplying information to any outside organisation about Darfur will be in trouble".

25. The start-point for any consideration of the situation for Darfuris if returned by the UK to Khartoum was, wrote Mr Verney, that they would face an "elevated risk" as compared with displaced Darfuris already in Khartoum. There were two dimensions to the risks that would face them. First they would be identified by a combination of their appearance and dialect as being from Darfur. This identification would lead to their being interrogated. Those authorities would start with the assumption that the person was an opposition sympathiser because of his ethnic background. The onus would be on the returnee to demonstrate loyalty to the regime, and prove he was not an opposition sympathiser. Deeply embedded racist attitudes mean that ethnic origin alone is often sufficient to trigger a cascade of worsening persecutory activities against a particular individual. Second, there was an elevated risk of this adverse attention and

subsequent harm, as compared with the Darfur population already in the capital, because he will be known to have returned from the UK. He could also be suspected of having passed on incriminating evidence against the Khartoum regime relating to its atrocities in Darfur whilst abroad. If adverse interest in an individual was triggered by his or her ethnic origin in this way, he or she would then face detention in 'ghost houses' and all that was known about such places suggested frequent maltreatment.

26. Even if a person managed to get through the airport, he or she faced a risk of monitoring and surveillance. Even if a person went to Khartoum, wherever he went he would soon be identified by the authorities as someone who originated from Darfur and who had gone abroad and was now returning. He would be highly conspicuous.

27. At paragraph 13 Mr Verney wrote:

> 'Returned Darfuri asylum seekers – the genuine ones – would risk being subjected to a cascade of adverse treatment by the security police, triggered by their ethnic identity and linked automatically to suspicion of sympathy with the rebels. This is just as likely to happen in the capital Khartoum as in Darfur region: it is essentially part of the same "collective punishment" process, reflecting the same government mindset and aims.'

At paragraph 84 Mr Verney stated:

> 'In my opinion the ethnic identity of Darfuri asylum seekers is in itself a strong indicator of likely persecution if returned to Sudan via Khartoum. There are many categories of persons of Darfuri ethnicity likely to be subjected to persecution. Not only students and conventional political activists are at risk; the dangers are just as great for farmers, doctors and a spectrum of ordinary citizens caught up in the conflict and suspected of aiding the rebel movements in any way.'

28. In oral evidence Mr Verney amplified a passage in his report where he described his sources of information, in particular his 'off the record' interviews with half a dozen field workers acting for major British aid agencies in Sudan, regarding the likely treatment of returnees from Sudan. All had spoken to him 'off the record' because it would place their work in jeopardy if there comments were known publicly. In terms of written sources, he considered that the most well-researched, detailed and authoritative evaluation of the situation in Khartoum was that by the UNHCR in its recent position paper: it was the UNHCR's first paper since 2001 and was in very strong terms. The other main written sources, on which he set much store, were the two Aegis Trust reports, the 2005 Report, 'Lives in Our Hands' and their very recent June 2006 'Safe as Ghost Houses - Prospects for Darfur African Survivors Removed to Khartoum' report. Hitherto the Home Office had taken the line 'we don't have the evidence', yet now the position was different.

29. Mr Verney put the number of recently arrived Darfuris in Khartoum as being between 100,000 to 200,000. Asked about conditions in IDP camps and the unofficial or semi-official squatter areas, he said there had been government bulldozing of many of the spontaneous settlements and forcible relocations to desert areas where conditions were quite appalling and where people were cut off from the local informal economy and prospects of earning money from work. The further from the capital such people were, the more vulnerable, because they were out of the public gaze. The most notorious forcible relocations which had taken place had been in May 2005 in the squatter areas of Soba Aradi, which left sixteen police and six civilians dead while several thousand

people were thrown in jail but in his view there would soon be a repeat of something similar in the near future, probably worse.

30. The official explanation for these relocations was urban planning, but there was a repeated pattern of (i) complaints by aid agencies to the Commissioner of Khartoum about the arbitrary manner of the relocations and of the sending of people to places where there was no adequate provision; (ii) promises to give prior notice and ensure adequate provisions; and (iii) those promises being ignored. In his view there was a ruling group strategy behind this of keeping IDPs constantly 'on the run' so as to disrupt their lives and disperse them, rendering them incapable of fending for themselves. In his view conditions in the camps had become progressively worse. There was a regular obstruction of aid bodies. The Sudanese government had become sophisticated about appearing to go along with international agencies and their work, only to act in practice according to their own racist agenda.

31. Asked about the security dimension to the position of displaced persons in Khartoum, he said it had to be understood that there was extensive monitoring and surveillance by the police and security police. They operated through an unseen informer society**.** It would be impossible for someone from Darfur to go to any place in Khartoum without their presence being brought to the attention of the authorities. He likened the position of an ethnic Zaghawa to someone in London from Highland Scotland, recognisable by appearance and dress.

32. Asked what would make the Sudanese authorities suspicious of failed asylum seekers, he said that the ruling elite is particularly nervous of facing prosecution by the ICC for war crimes and tends to assume that anyone from Darfur going abroad and claiming asylum will have given evidence about atrocities.

33. He was asked to clarify what he meant in his report about 'genuine' asylum seekers. He said that his work had involved him in interviewing (with help from two colleagues with language skills and knowledge of geography) a significant number of persons claiming to be asylum seekers from Darfur. In his view only about half were genuine. The others were simply opportunists jumping on the Darfur bandwagon. Of the opportunists, a significant number turned out on his own examination to be not from Darfur. But there were some from Darfur but who gave untrue accounts of their home areas and past experiences. There were also some members of the black African tribes such as the Zaghawa who were on the government side; that was an inevitable fact of life. A particular concern he had was that the Home Office did not seem to have a reliable way of identifying genuine Darfuri cases: he knew of instances of members of the Janjaweed militia whose true identity had not being picked up.

34. People who were not genuine would not in his view face a genuine risk on return. He reiterated the view set out in his report that whilst there were certainly categories of person from Darfur who would be at special risk – students, members of opposition/rebel groups and merchants for example – even ordinary farmers could have a political opinion imputed to them.

35. As regards risk of adverse treatment at the airport, he accepted that ethnic identity was not a sole indicator, but it was a major factor and one that could trigger a cascade of persecutory activities. Not everyone of adverse interest would be immediately arrested;

it might also depend on how well-placed a person was in society; they might instead simply be placed under surveillance.

36. Asked whether he knew of any monitoring of returns carried out by any NGO or humanitarian agencies, he said he knew of none. It was absurd to think that such monitoring would be practically feasible, not least because one needed permission to visit Khartoum airport. Given that the number of returns from Europe was small, it was not surprising that there were no reports or only reports of problems faced in one or two cases.

37. It was important in his view not to over-estimate the number of persons from Darfur who had managed to seek asylum outside of Africa. Some 200,000 had fled to Chad. He estimated that there were only about 1,000 – 2,000 Darfuris in the UK – a very tiny proportion.

38. Mr Verney also dealt with medical facilities. His evidence on this matter is best noted separately later on.

39. In cross-examination by Miss Giovannetti, Mr Verney said that he had asked four international aid agencies contacts about their view on risk to Darfuris returned by the UK to Khartoum. None specified any particular numbers, but all four confirmed that such persons would face serious risks, because they had heard stories about people being taken away or disappearing.

40. He was asked why he had not addressed in his report the relevant evidence on returnees set out in the December 2005 Accord COI (Country of Origin) Seminar. He considered that the comments of the two experts set out in that report should be read as applying to persons from the political elites, not grass roots Darfuris. He accepted that arrests at the airport were not common now; the regime's approach was now more subtle, by way of monitoring and surveillance and adverse action taken later on.

41. He was asked whether it was consistent with the evidence available to him to have stated that the government had brought a complete halt to food distribution in every camp. He explained that he did not mean that the government had halted or would halt all food distribution at once, but the trend was to obstruct supplies.

42. Miss Giovannetti put to him that some sections of his report were overstated. She highlighted his citation of the 2005 "Lives in Our Hands" Aegis Trust report reference to persons from Darfur being at risk simply if two or three were seen together talking. He did not mean by citing this passage, he said, that such persons would be at risk if they were just talking about the weather. But they would if they were talking about incidents in Darfur.

43. He agreed that in terms of living conditions, those in the camps and squatter areas may not be worse off than in other large slum areas elsewhere in Sudan and in other African countries. But in Khartoum you could not separate living conditions from the political and security dimension, which includes the strategy of forced relocations and obstruction of humanitarian aid agencies.

44. He was asked why it was that the January 2005 inter-agency multi-sectoral Rapid Assessment Survey of IDPs in Khartoum State and related evidence tended to indicate

that persons from Darfur were in camps where there was some level of education for children and some provision of plots of land. He agreed he could not say for certain to what extent or how often persons in specific camps or settlements had been moved around, but he stood by what he said concerning overall trends.

**Mr Mohamed Boraka Bourain**

45. The next witness was Mr Mohamed Boraka Nourain. His written report was said to be of general application. He is a former judge and lawyer from Sudan. He is from Darfur and of the Fur tribe. He had subsequently served as an MP in the Sudanese Parliament from 2001 to 2005. During that time he was a member in Sudan of the Parliamentary Human Rights Committee and head of the Parliamentary Subcommittee for Human Rights complaints. He had been elected an a MP as a member of the ruling party, as it was the only way for a Darfuri to have a chance of election at that time and he had hoped to be able to influence the country more from within the ruling party. However, he had left Sudan in late 2005 and had recently been recognised as a refugee in the UK.

46. In his written report he states that his work as an MP required him to work closely with many of the most prominent international humanitarian organisations as well as with the US and UK embassies in Sudan. His work had also led him to meet and work closely with members of the Immigration and Intelligence services in Sudan. He had retained contact throughout all levels of these services since leaving the country. In order to protect their safety he could not name any except for a certain Lieutenant Colonel Mohamed Abdu (aka Mohamed Ibrahim), formerly of the General Security Services responsible for Darfur issues, as he had recently fled the country also (in March 2006).

47. Under a subheading 'Deportees to Sudan (Including Asylum Seekers)' he wrote that the Sudanese government had a policy of screening Sudanese nationals on return to the country and particularly members of the Zaghawa, Fur and Maseleit tribes who formed the largest resistance groups in Darfur. He had been informed by immigration officials that they would particularly focus on those who did not return on their own passports, but with travel documents, or those who had had their passports replaced while they have been away. They have also told him that such persons will inevitably be stopped and arrested on arrival:

> 'The fact that an individual does not hold their original passport will be taken as indicating that they left illegally and claimed asylum unless they can somehow prove that this is not the case. Claiming asylum abroad is perceived as a betrayal of Sudan and as tantamount to treason in and of itself and the authorities are inclined to punish this behaviour.'

48. This, he said, would apply even to those who had not been politically active in the past. Since the signing of the peace agreement, members of both the Fur and Midoup tribes are subject to increased scrutiny because, unlike Minni Menawi's Sudanese Liberation Army (primarily of Zaghawa ethnicity), they did not sign the peace agreement.

49. His report states that if someone is returned to Sudan there is no procedure to notify any independent organisations or their relatives to expect them. Accordingly, if an individual is stopped and detained at the airport, there is no prospect of anyone informing the media or campaigning for their release.

50. The report states that the Intelligence and Security services in Sudan make widespread use of what are known as 'ghost houses', viz. illegal and unregistered prisons and detention facilities which are used to hold political enemies and torture them with impunity:

> 'It would be almost inevitable that a failed asylum seeker would end up either being summarily executed or being detained in a ghost house on return from the UK.'

51. The practice of irregular detention was compounded, according to this report, by the lack of any due process or right to legal representation if a person was detained by the Immigration Services.

52. Mr Nourain wrote in his report that he had information from security officials which enabled him to state categorically that the Sudanese authorities monitor political activists in Europe and use this evidence against deportees. These officials had described showing video recordings of demonstrations in Europe to persons on return to the country in the course of interrogation about their activities abroad. His understanding was that the Sudanese Embassy in the UK had a policy of filming demonstrations and trying to maintain records of those nationals of Sudan who actively campaign against them in other parts of the world:

> 'I understand that political groups such as the Justice and Equality Movement (JEM) and the Sudanese Liberation Army Movement and even simply community groups are monitored across Europe.
>
> If someone is returned from the UK having participated in demonstrations against the Sudanese government there is a very real risk that they would be identified on return as having been politically active. This would be regarded as treason.'

53. He said that one should not draw inferences that things did not happen to returnees from the lack of publicity, as the media, both domestic and international, is tightly controlled in Khartoum. The government actively take steps to exclude journalists from many areas and it interferes in international investigations.

54. In his oral evidence Mr Nourain reiterated that he had met and worked closely with members of the Immigration and Intelligence Service in Sudan when he was an MP and a human rights campaigner. He had been involved in raising issues with these departments. It was difficult to distinguish the work of these departments. He claimed he knew many people in these departments, but when challenged he returned to the same two individuals.

55. Most of the officers he knew are from his tribe (Fur); they knew the government is neglecting people and destroying family life but they had to do their job. As regards the only informant he could name, Lieutenant Colonel Abdu, he understood he was now in Eritrea. Since leaving Sudan he (Mr Nourain) had also contacted one person in the immigration department in Khartoum in charge of issuing passports.

56. He was asked to say more about the case of a person who, when returned to the airport in Khartoum was shown a video of a demonstration taken outside Sudan. The video was stopped at a particular point when an individual was shown demonstrating. The returnee was asked who that individual was, the implication being that it was the returnee himself, and that person could not say anything. Mr Nourain had been told

about this case when a MP, he thought it would have been in 2002. In oral evidence, this was the only example Mr Nourain gave of the knowledge of the Sudanese authorities of demonstrations abroad and the identity of a demonstrator. He gave no details of the location of the demonstration or its size or purpose.

57. He could not help with the periods of time over which he had had contacts with different officials in the passport and immigration service, but the officials were all officers.

58. He believed there were perhaps three ghost houses in Khartoum.

59. Cross-examined, he stated that the authorities were suspicious of all Fur, especially the young ones, but there was an exception for those who work in the government or who are in the ruling party.

60. Lieutenant Colonel Abdu was in charge of all enquiries about the tribes of Sudan, especially tribes from Darfur. He was an expert on tribal links and issues. They brought people to him when they detained them for his expertise on their tribes. He last spoke to the Lieutenant Colonel in March, when the latter was in Nairobi.

61. If a person was arrested and detained at the airport the family would not know the person was arrested. His information that detained failed asylum seekers would be executed was common knowledge in the security forces. It was something he had picked up.

62. He had not seen a ghost house first-hand knowingly, but sometime in 2001 he had been asked by a politician whether, when they had met the time before, this had been in a ghost house. Nor had Lieutenant Colonel Abdu mentioned having been in one.

63. In his opinion, if a member of the Fur, Masseleit, Zaghawa or Berti tribes is returned to Sudan, irrespective of whether he is a member of, or involved in, rebel groups or has been involved in a demonstration, he will be at risk.

64. Asked about his mention of a video being shown to a returnee, he had not been told what happened to the returnee.

65. In Khartoum Abdu had been a passport officer for a very long time. Asked by the panel whether his position was that all returnees were at risk or at least those without a passport, he said that all people sent back compulsorily would be at risk. Perhaps Arabs from northern Sudan would not be, unless they were involved with communist or anti-government opposition groups. Asked again to clarify his position, and in particular what would happen to a returnee who did not say he was anti-government he replied: 'If you claimed asylum anywhere, you are anti-government whether you are anti it or not'.

**Sarah Maguire**

66. The third witness was Sarah Maguire. She has a law degree and is a barrister. Her CV outlined her work as an independent human rights consultant since February 2003

with organisations, including the UN Development Program (UNDP), the UN Office for the Coordination of Humanitarian Africa (OCHA), UN Department for Political Affairs and Department of Peacekeeping Operations, UNICEF, UNHCR and UNIFEM. She had also done consultancy work as a head adviser for the UK Department of International Development in the Conflict and Humanitarian Affairs Department. Her specialisms were forced migration, post-conflict rule of law, gender and armed conflict and children and armed conflict. She had extensive experience of the Darfur region of Sudan and of Khartoum. From September 2004 – August 2005 she carried the human rights, protection and gender portfolios of the Inter-agency Real Time Evaluation of the Humanitarian Response to the Darfur Crisis. This necessitated repeated visits to Darfur and to Khartoum, conducting interviews with internally displaced persons in camps and other areas, UN officials at all levels including the Secretary General's Special Representative and his Deputies, humanitarian NGOs and the African Union. She had last been to Darfur and Khartoum in January 2006.

67. In addition to her own experience her report explained that she had relied on a number of UN and NGO reports and the report by the UK International Development Committee 'Darfur – the Responsibility to Protect' (March 2005). She also had sight, inter alia, of 'not for distribution' documents to and from NGOs, DFID and the British Embassy in Khartoum. She had also had recent (2006) discussions with informed individuals working in Khartoum, as well as discussions with a person from Darfur currently in the UK seeking international protection and had read a selected number of interviews of such persons provided to her by the Aegis Trust.

68. In her report she first dealt with the armed conflict in Darfur, against the background of the Comprehensive Peace Agreement (CPA) signed in January 2005 between the main parties involved in the armed conflict in the south – Africa's longest civil war. The CPA, the introduction of the interim constitution, the setting of elections in 2009 and of a referendum on the North/South divide in 2011 and the creation of a Government of National Unity were all important developments. But they had not resulted in any positive fundamental changes to the structure of the government, its strategies or its accountability.

69. The Arab/African tribal characterisation of the conflict did not mean, the report said, that it is a 'tribal war'. The Sudan Liberation Movement (SLM)/Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) both described their grievances as being about Darfur, the place, not Darfur, the tribal home. One of the reasons why the government had turned to the Janjaweed as a proxy militia to combat these rebel groups was that it had been preoccupied with the South. Its decision to target the civilian population in Darfur was taken in 2003, in response to their view that the rebels had gained too much power in the rural areas. Although the government had asserted that it has had no control over the Janjaweed and that the latter was never under the control or command of the state authorities, the UN General Assembly, the UN Security Council and the Commission on Human Rights have all taken a different view. Nor were the signs hopeful that the Darfur Peace Agreement (DPA) signed in early May 2006 (but not by the JEM or a smaller faction of the SLM/A) would be effective: since then there has been intense fighting between the rebel groups as well as attacks on villages and civilians allegedly by Janjaweed.

70. The Security Council Resolution of May 16, 2006 had been met so far by government resistance to the active involvement of UN peacekeepers. Recent clashes in

neighbouring Chad had meant a deterioration in the security situation for refugees from Darfur.

71. Most displacement caused by the conflict in Darfur occurred in 2003 and 2004, but during 2006 another 200,000 have been displaced. The vast majority of them are in camps in Darfur. Whilst facilities in most of the camps are substandard, the heavy involvement of humanitarian aid agencies has meant that provision can now be described as adequate. However it was not to be thought that living in an IDP camp in Darfur was a guarantee of protection.

72. Turning to Khartoum, Ms Maguire's report stated that the estimate made is that Khartoum State is home to approximately 400,000 IDPs living in official camps and between 1.1 – 3.6m IDPs living in squatter areas around Khartoum city. For various reasons most IDPs from Darfur live in the squatter areas rather than the IDP camps. Her report considers that the situation in Khartoum has to be viewed in the context that the monitoring by security forces is under the control of the very powerful National Security and Information Service (NSIS). This service has powers of detention which can effectively remove people from the legal system for long periods of time. They detain people in 'ghost houses' as well as in police stations, military camps and prisons. All places of detention, but particularly the 'ghost houses' and military camps, are notorious for the level of violence that takes place. In Khartoum the NSIS has an extensive network of formal and informal information gathering. It is not possible to live in Khartoum without the NSIS knowing of one's existence and activities.

73. She considers that there is a government (GoS) strategy of demolitions and/or forced relocations:

> 'From time to time and increasingly since the Comprehensive Peace Agreement (CPA) was nearing finalisation, the GoS have demolished the shacks and shelters that IDPs have constructed in the camps or squatter areas. Usually, no notice is given to the IDPs, nor do they have access to any mechanism for prevention or redress.
>
> According to the UN Office for Coordination of Humanitarian Affairs, (OCHFA), 'The government of Sudan asserts that demolition of IDP property and relocation of IDPs is part of a rezoning process which includes the allocations of land to IDPs. However, 77% of relocated IDPs have never received plots and vulnerable groups including female-headed households; IDPs without IDs; *and IDPs recently arrived in Khartoum have been excluded*' (emphasis added)'.

74. Her report chronicles the May 2005 assaults by GoS security forces on the Soba Aradi settlement as well as the August 2005 destruction of the Shikhan squatter area, where the authorities again used tear gas and loaded people onto a lorry with or without their possessions. The IDPs in Shikhan were taken to an area called Al Fateh 3 in the desert zone some 55 Km outside Khartoum, where there were no facilities, clean water or sanitation or education facilities. Other people had been rounded up by the security forces from the streets of Khartoum and taken to Al-Fateh 3. She mentioned another area, Thawra, to which some 500 families were removed. It was previously a rubbish dump. This camp too lacked adequate access to water, sanitation, food or education. These forced relocations had been condemned by UN Secretary General Kofi Annan in his report to the UN Security Council of 1 September 2005. She noted various findings on IDPs made by the UN OCHA in its briefing report on the IDPs in Khartoum (March 2005) based on an interagency, multi-sectoral Rapid Assessment Survey conducted in January 2005, including that at least 665,000 Sudanese IDPs living in camps and

squatter areas in Khartoum have had their homes demolished and have been relocated at some point over the last sixteen years and that demolition and relocations have been on the increase since 2003. She cited also the opinion by Professor Walter Kalin, the UN Secretary General's Representative on the Human Rights of Internally Displaced Persons in his 2006 report to the UN Commission on Human Rights. Professor Kalin has also supplemented that report in a note to the Aegis Trust stating regarding forced relocations:

> 'I conclude that IDPs in and around Khartoum are faced with a serious risk of being forcibly relocated in a manner that is often incompatible with the human rights of those affected and includes violations of their economic and social rights and thus are exposed to living conditions which fall short of international human rights standards.'

The conclusion Ms Maguire draws is that IDP camps and squatter settlements in Khartoum state provide no security for IDPs and that:

> 'It is also apparent that people from Darfur may be particularly vulnerable to forced relocation without notice or redress and they are vulnerable to detention and mistreatment by nature of their ethnicity and region of origin.'

75. Whilst acknowledging that one – if not the main – aim of the demolitions, forced relocations and rezoning was to secure the return of around 600,000 people to the South, Ms Maguire considers that the departures, which are starting to happen, will leave IDPs from Darfur and other northern areas:

> 'more vulnerable to forced relocation or other violations of human rights and gives the GoS (and the international community) even less incentive to provide humanitarian assistance in the camps and squatter areas to bring them to a minimum level of subsistence to match that provided by the international community in Darfur.'

76. Her report emphasises the fact that there is no UN or systematic international NGO monitoring of the camps or squatter areas.

77. As regards living conditions she details the finding of the interagency Khartoum State Rapid Assessment Survey carried out in January 2005 which found that the situation for IDPs in Khartoum State compared unfavourably with that in Darfur both in terms of food ('[t]here is no food assistance to IDPs in Khartoum', she said), as well as security, health, water and sanitation and shelter. She cites the example of the Al-Fateh camp, another situated some 50 km outside of Khartoum in the desert. In her view the living conditions in the camps and settlements are such that people who have sought international protection would be forced to live in areas of fundamental insecurity without access to employment, financial support or humanitarian assistance. The 2006 Work Plan for the UN and its Partners made reference to the Khartoum IDPs only in terms of assisting with returns to the South; no reference is made to humanitarian or human rights assistance to this population.

78. As regards return to Khartoum, it is first of all essential, she says, to understand that almost without exception people who leave Darfur and seek international protection in other countries do so without legitimate papers. In order to return to Sudan from the United Kingdom, therefore, people have to obtain travel documentation from the Sudanese Embassy in the UK. Their doing so itself alerts the Sudanese authorities to the fact that someone has arrived in the UK without a Sudanese passport – indicating that they probably sought asylum here:

> 'Given the powerful nature of the NSIS, it is inconceivable that an application for travel documents (whether made by the returnee or the UK government) would not cause the Sudanese embassy in the UK to alert the NSIS that a person from Darfur (specifying which area of Darfur) has applied for travel documentation and the circumstances of the application.'

79. In any event, by virtue of people from Darfur being distinctive by their appearance, accent, characteristics and names and not being amongst the affluent elite of Sudanese society, arrival off a plane from the UK:

> 'immediately alerts the immigration officials that someone unusual has (a) been to the UK and (b) has been sent back'.'

Ms Maguire appears to see three problems flowing from this state of affairs. First it would make the person immediately liable to suspicion as a draft evader.

> 'If a person is found to have evaded his conscription he will be liable – at best - to detention and interrogation and a sentence of imprisonment. If he is found to have left Sudan in order to evade conscription, it is not unlikely that he will be 'detained, interrogated and tortured'.

80. A second problem Ms Maguire identifies is that anyone from Darfur is associated by the regime with the rebel resistance. Thirdly, by virtue of the fact that the UK has been in the vanguard of states calling for sanctions against the GoS ruling elite, there is a great deal of antipathy towards the UK. Accordingly, Darfuri returnees from the UK would be highly likely to be subject to detention and abusive treatment and there was no monitoring by national or international organisations regarding the treatment of such detainees nor was there any access to legal representation.

81. Ms Maguire states that the Aegis Trust is in contact with a person now resident outside Sudan and the UK [currently in Egypt] who was returned by the UK as a failed asylum seeker from Darfur. This person reports that he was detained at Khartoum International airport, questioned at length on his activities in the UK and his connections to the rebels in Darfur and beaten when he could not give 'satisfactory' information. He was eventually released and instructed to return three times a week with information about the rebels. He did not have this information and, having returned a couple of times only to be further mistreated, made arrangements with a relative to leave Sudan again. He is currently living outside Sudan in the region. She states:

> 'To date very few people have been returned from Europe, especially from the UK on the basis of having failed [in] their application for international protection. The issue, therefore, is how likely it is that the security forces in Khartoum will detain the returnee, either at the airport or subsequently and how that person may be expected to be treated, particularly once it is known that he is a returnee from the UK and from Darfur. The numerous reports above all substantiate this fear.
>
> The power of the NISS is such that the presence of any returnee from the UK will be immediately detected on arrival and they will be vulnerable to detention and interrogation in circumstances that flagrantly breach all the relevant human rights norms and standards.'

82. Even if returnees were allowed to enter Khartoum, she added, they would risk being 'picked up' later and being subjected to the same treatment. In their situation there was little *de jure* and no *de facto* mechanism for protection and none for redress.

83. Elsewhere in her report Ms Maguire emphasised that as regards the attitude of the Sudanese authorities to persons from Darfur, the fact that the SLM/A and the JEM control large parts of Darfur and the armed conflict there is between rebels and the GoS, means that the latter perceive the civilian population in Darfur as partisan to the rebels. Further:

> 'This is plainly so if the person concerned is from an area considered to be a rebel stronghold. Men of less than 40 years old are suspected of being allied with the rebel groups (sharing these characteristics with the rebel leadership) and so are more likely to be detained for questioning.'

84. Earlier on in her report she had noted that the rebel strongholds or 'hotbeds' or rebel activity included Tawile, Kutum and West Darfur.

85. Ms Maguire also furnished two addendum reports in respect of the appellant G and appellant M, both written in June 2006.

86. In her oral evidence Ms Maguire said she had last been in Khartoum in January 2006 although not on that occasion visiting any IDP camps. Her recent work in Sudan included interviewing 300 IDPs in Darfur and 50 in Khartoum itself. She gave further details about her extensive network of contacts with the international and diplomatic agencies in Khartoum. She understood from all those contacts that the general view among such bodies was that the conditions in the camps and squatter areas in Khartoum were poorer than those in Darfur and that they were not safe. She gave more details of the obstacles met by international aid workers in gaining access and giving assistance to IDPs in the camps and squatter areas. Recent arrivals from Darfur would not get a plot. Since the Soba Aradi events in May 2005 and those in Shikhan in August 2005 there had been loosening of access to some of the camps, but no desire to make people's lives comfortable. She did not think that any reliance could be placed on the official assurance given to international bodies that they would not again forcibly relocate people without warning and planning.

87. Asked to clarify her view that Darfuri IDPs would be particularly vulnerable to arrest and mistreatment during forced relocations and at other times, Ms Maguire said that because of the nature of the conflict in Darfur such people were regarded as enemies of the state. Whilst high ranking officials from the visiting Darfur resistance might be left alone, because of their high profile, the main adverse treatment would be directed at those seen as providing support or having useful information about the resistance.

88. Her belief was that the departure of southern Sudanese back to the South would place the remaining Darfuri IDPs in Khartoum more at risk. She based this belief on two main reasons: one was that there was 'safety in numbers'; the other was to do with external security (less international humanitarian agencies and international interest and focus).

89. She accepted that conditions in the IDP camps and squatter areas were no worse than in some other urban slums elsewhere in Africa (if not elsewhere in the Third World

also), but there were three respects in which the situation of Darfuri IDPs was worse. First, by virtue of being persons who had fled armed conflict marked by crimes against humanity, they had psychological, not just economic issues. Secondly, by virtue of many being small farmers, they were ill-equipped for urban slum conditions. Thirdly, IDPs from Darfur would not be going back to their home area in the foreseeable future.

90. As regards persons returned from European countries to Khartoum, it was relevant to note that the NSIS had a desk at the Sudanese Embassy in the UK and so all information given by a Sudanese national when seeking to renew a passport or obtain a travel document would automatically be passed back to Khartoum. At the airport there would automatically be a security check. Non-Arab Darfuris would be initially or quickly identified by their ethnic appearance or dialect or personal habits. Anyone from Darfur returning from the UK would be viewed adversely, particularly given the ruling elite's anxiety about UK government initiatives in having some of them named for UN sanctions and possible ICC prosecution.

91. She amplified her written view that the detention which Darfur returnees would face would involve maltreatment.

92. She said that her views about risk on return were based not just on the single case of the man in Egypt, but on all the evidence gathered by others and relayed to her. She reiterated the view expressed in her written report that those of draft age would face detention and maltreatment on that basis alone. She accepted that her report had not addressed what had been said on this issue in the 2001 Danish Fact-finding report.

93. She was aware of the work of Dr Alizadeh and Dr Schodder, both experts on Sudan, but had not had her attention drawn to what they had presented to the December 2005 ACCORD COI seminar on Sudan about returnees. She was frankly surprised by what they stated about lack of problems on return. She did not see how they could tell; it was not their job or that of their colleagues. It may be that there was no policy of arresting returnees at a formal policy document level, but their observations did not suggest they had in mind the situation of the Darfuri returnee from the UK where there will be an assumption that they could have said something whilst abroad about GoS atrocities in Darfur. The methods that would be used when questioning in this context would not meet international standards.

94. She did not think it realistic to imagine that a returnee could arrange in advance for a friend or relative to be at the airport with a mobile phone. The mobile phone networks were unreliable. She had not once seen a mobile phone in an IDP camp. One needed permission to access the airport. Even if a friend or relative in Khartoum knew that a returnee who should have arrived and passed through the airport had not, that person would need to be someone who knew where to go and who to raise the issue with and there would be anxiety on their part that they would be putting themselves at risk.

95. Even if returnees got through the airport, there would be monitoring and surveillance and in this regard it was important to recall that the NSIS utilised an extensive network of informers throughout Khartoum.

96. Another consideration was that the international agencies in Khartoum had humanitarian priorities; they had no role in monitoring returns. She could only

speculate on what had actually happened to the forty odd returnees from the UK over a fifteen month period in 2004-5.

97. Once in Khartoum proper a returnee would need to look for accommodation. He would need an ID card as well as financial means to secure the accommodation: without an ID card one could not get legal work.

98. Cross-examined by Miss Giovannetti, she said her statement in the report about there being few returnees from Europe was based on soundings among UK Darfuris who were in close touch with Darfuris elsewhere in Europe: within this diaspora she said, 'everyone knows everyone'.

99. She agreed that in terms of actual cases, although she had asked a number of agencies including Human Rights Watch and UNHCR, the person from Egypt was the only specific case of returnee mistreatment she had heard about.

100. Ms Maguire was asked about her view that Darfuri returnees from the UK would be viewed adversely for having very likely given witness evidence about GoS atrocities in Darfur. Was there any evidence that Darfuris in Khartoum who had come directly from Darfur were being singled out for interrogation or detention for this reason? She said that such people would be confined to more recent arrivals and there was less evidence about them. However, in the May 2005 arrests and detention in the Soba Aradi settlement, people from Darfur were disproportionately represented among the detainees and had also been held for longer. She accepted however that her earlier statement that the people in Soba Aradi were predominantly Darfuri was contrary to the Rapid Assessment Survey which showed them as 8%.

101. She was asked whether she thought it significant that the Sudan human rights organisation, SOAT, spoke in its reports about being able to obtain access to persons and also appeared able to document in a precise and detailed way arrests and detention arising out of the events at Soba Aradi as well as other clashes with GoS security and police. She did not think their documentation of arrest and detention should be treated as exhaustive and plainly there were others who were simply not known about, e.g. because they had been taken to ghost houses. She had spoken to SOAT about whether they knew of any targeting of recent arrivals from Darfur, but they were unable to help.

102. She gave further details on what she had said about no humanitarian assistance being supplied to the IDP camps and squatter areas in Khartoum. She accepted there was some evidence from the Rapid Assessment Survey and other surveys of some assistance, including in respect of food, education and health, but she did not think these amounted to much, being carried out by local NGOs. She accepted that what she had written in her report about the 2006 UN Work Plan was wrong. When she wrote her report the draft of the Work Plan she had seen in January 2006 contained nothing about assistance to IDPs in Khartoum, but in any event the projects now listed in the Work Plan did not look like they had sufficient levels of existing funding to be viable (i.e. at or above 35% - 40%). Further, those listed were run by very small national NGOs.

103. She was asked why the views in her report as to the current situation in June 2006 did not appear to take note of developments in the IDP situation in the first half of 2006, in particular the view of Bob Turner, UNMIS Head of Returns, Reintegration and

Recovery (respondent's bundle page 256) that the situation had improved dramatically in the last half of 2005 in the sense that there had not been any large scale demolitions and relocations. Ms Maguire said that it depended on how the relocations were carried out: she was not against relocations as such.

104. In reply to questions from the panel, Ms Maguire said she thought Mr Verney's estimate of recent arrivals from Darfur in Khartoum of 100,000-200,000 was on the high side. She considered it unthinkable that Darfuris in Khartoum could or would go back to Darfur in the foreseeable future.

105. She considered that it was 'not unlikely' that even an elderly male Darfuri with no political involvement and little education would be at risk on return, since from the point of view of the authorities, all Darfuri were capable of lending support and giving shelter to the rebels. However, the patriarchal nature of Sudanese society might mean that a woman with children would not be seen in this light. At the same time a woman returnee on her own would be regarded as a peculiar person and would be conspicuous. The authorities would know that to leave Sudan lawfully she would have needed permission from her family's menfolk.

106. Asked about what steps she would take if she were a Darfuri failed asylum seeker faced with removal from the UK to Khartoum in the near future, she agreed that she might well seek to contact friends or relatives in Khartoum if there were any and that, if not, might seek help by contacting people in the Darfuri diaspora in the UK or Europe. But she reiterated her view that even if friends or relatives in Khartoum knew to expect her back, there would be the issue of their fear of the reaction of the authorities.

107. She accepted that having some financial resources upon return would help a person surviving in Khartoum.

108. She was asked to clarify whether her position was that all Sudanese returnees or just Darfuri returnees would be at risk. She said that it was all returnees, by virtue of the suspicion they would encounter through having gone abroad.

109. The experts` reports, particularly that of Mr Verney, also dealt with the evidence relating to medical facilities, but we shall leave that to be addressed later when examining it in the context of relocation.

## **The background evidence**

110. We do not propose to summarise all of the background evidence before us, particularly as our coverage of the expert evidence refers to significant aspects of this. However, we shall highlight parts of it which have a particular bearing on the issues we have to decide. The April 2006 COIS Report on Sudan affords a convenient reference point for much of what we say here, by virtue of its extensive sourcing.

111. Sudan's population is variously estimated as being between 32 and 39 million. Sudan is the biggest country in Africa. With an area of 2.5 million square kilometres, it is as large as Austria, Italy, Germany, France, Spain, Portugal, the UK and Sweden together. The distance between Khartoum and the nearest borders of Darfur is over 600km. Sudan's population encompasses a wide diversity of tribes (500 African and Arab), cultures, languages and religions, one of the principal religions in the South

being Christianity. In rough percentages Sudan's population is said to consist of 50% black Africans, 40% Arabs, 6% Beja and 3-4% others. It has experienced more than 30 years of internal armed conflicts, but current divisions date back to colonial times when different policies were applied to the North and to the South. Darfur was an independent sultanate which became part of Sudan only in 1917. Even though a peace agreement was signed in January 2005 ending more than 30 years of armed conflicts in the South, there remains armed conflict in Darfur, as well as in eastern Sudan. Both sides of the conflict in Darfur are Muslims.

112. The aim of the so called "Salvation Revolution" which brought the current regime to power in the 1989 coup was the islamization of Sudanese society. The current government of Sudan has a strong security and military dimension. The national security force and the military intelligence service are considered to be the most efficient organisations in Sudan. Both entities, more or less, control the country. Since its independence in 1956, Sudan has gone through a militarization process. The agricultural and industrial sectors of the economy are dominated by the military. The December 2005 ACCORD report states that according to staff members of the Sudanese Ministry of Defence and the Ministry of Finance, 80% of the budget for 2003 and 2004 was spent on the military. The Sudanese army, including Popular Defence Force militia and Borders Intelligence, as well as air force and navy, numbers approximately 200,000 (COIS April 2006 5.82). The current leadership is trying to establish Sudan as the dominant military and political power within the Arab region or at least among the North African countries, second to Egypt.

113. The human rights situation in Sudan has been described as extremely poor: there is a broad range of violations of human rights including arbitrary arrests, disappearance cases, executions and torture occurring in Sudan. Censorship of the press has increased since the signing of the peace agreement. The number of arbitrary arrests and people tried for political reasons has doubled from January 2004 to January 2005. Under the 1999 National Security Act, which is still being implemented, the security apparatus has impunity and is free to detain persons arbitrarily without arrest warrants. This Act allows detention without trial and judicial review for 30 days which can be extended three times. In practice, detention can be extended indefinitely. Many detainees are held incommunicado and are not given access to lawyers. Family members are not informed about their status. Many people are detained under emergency law, especially when there are political implications. Moreover, the judicial system is heavily overloaded. The safeguards of the Criminal Procedures Act are often not implemented simply because courts cannot cope with the number of cases. Lawyers face difficulties and also there is no real independence of the judiciary.

114. The conditions in prison are extremely harsh and are marked by overcrowding, lack of exercise and terrible sanitary conditions. Many detainees become ill in detention and some die as a result of lack of treatment.

115. Torture is routine and widespread. Many detainees, both persons detained for political reasons and persons suspected of having committed ordinary crimes, are affected. The real number of people who are being tortured is unknown, but it may reach into thousands every year. There are a number of recorded deaths in custody as a result of torture, and even after release from the results of torture. In case of ill-treatment by security officials, there is no complaint mechanism. Whilst

disappearances are not seen as taking place on a large scale, many people disappear every year.

116. Members of opposition parties or movements have experienced persecution in the past and whilst in 2005-2006 there have been some improvements in their position, the regime still imprisons them from time and time.

117. Members of civil society and human rights defenders are under surveillance and might be arbitrarily arrested and detained. Depending on the charges, their status and the location, they may then also be subjected to torture.

118. The present government is closely involved in the armed conflict in Darfur, often lending direct assistance to the Janjaweed. In Darfur there are around 40 tribes, 28 of which are non-Arab or "ethnic" tribes. The main non-Arab groups are the Fur, the Zaghawa and the Masseleit. Smaller ethnic groups include the Tama, Eringaa, Berti, Bergit, Dorok and Tunjur (COIS April 2006 Annex E, also 6.118). The military operation in Darfur started in June 2003 with a "cleansing" of the villages of the ethnic groups in South Darfur, especially the Fur and the Zaghawa tribes. The COIS April 2006 report states:

> '6.125 The UN ICI report also notes that "It is reported that amongst the African tribes, members of the Zaghawa, Fur and Masaalit tribes, which have a marked concentration of population is some areas, have been particularly targeted. This is generally attributed to the fact that the two main rebel groups in Darfur are ethnically African and are largely drawn from these three tribes. It is for this reason that some observers have concluded that a major objective of destruction and depopulation of targeted areas is to eliminate or pre-empt any possibility of support for the rebels…The UN SG`s March 2006 monthly report on the situation in Darfur states that:
>
> > "Civilians living close to rebel territory and who share the same ethnicity as the rebels are particularly vulnerable to human rights violations by the Sudanese Armed Forces…"'

119. The two main rebel groups are the Sudanese Liberation Movement (SLM), which in 2003 reportedly had as many as 2,500 armed troops, and the SJEM or JEM (Sudanese Justice and Equality Movement), estimated around the same time to number several hundred men (COIS April 2006 4.40). However, the conflict in Darfur is not a straight "Arab v African" ethnic one. At 6.121 and 6.123 the COIS April 2006 report states:

> "…Some Arabs groups are fighting with the rebels and some African tribes have joined the Government's militia forces…There is also a marked suggestion of affiliation based on a tribe's land ownership and access to Darfur`s scarce natural resources. Members of those tribes without their own Dar (homelands) appear to have mainly sided with the Government, whilst those tribes with a Dar have generally allied themselves with the rebels…6.123 The report of the …UN ICI on Darfur to the UN Secretary General listed a number of differing uses of the term `Janjaweed` in connection with the conflict in Darfur, which further detailed that the conflict was not solely one of ethnicity:
>
> > "The fact that the Janjaweed are described as Arab militias does not imply that all Arabs are fighting on the side of the Janjaweed. In fact, the Commission found that many Arabs in Darfur are opposed to the Janjaweed, and some Arabs are fighting with the rebels, such as certain Arab commanders and their men from the Misseriya and Rizeigat tribes. At the same time, many non-Arabs are supporting the Government and serving in its army. Thus, the term 'Janjaweed' referred to by victims in Darfur certainly does not mean 'Arabs' in general, but rather Arab militias raiding their villages and committing their violations".

120. We do not attempt at all to summarise the current situation in Darfur here beyond noting that the conflict has broadened geographically over time (COIS April 2006 6.118), the rebels operate as mobile guerrilla groups so that the areas they control are not fixed (COIS April 2006 p.151) and, despite the recent peace accord, the situation in that region is still very precarious.

121. Despite its growing oil production, Sudan is amongst the least developed countries. The Europa 2005 Survey records that "Sudan is primarily an agricultural and pastoral country, with about 59% of the economically active population engaged in the agricultural sector – the majority in essentially subsistence production" (COIS 2006 3.01). We lack details about the specific situation in Sudan's urban areas, but according to the December 2004 UN report, "Africa on the move: an urban crisis in the making", around 72% of people living in urban areas in Africa live in slums. Our determination deals separately below with health care provision, but it can be summarised as being generally at a very low level. The Human Development Index for 2005 has Sudan ranked 141st (out of 177 countries).

122. The various armed conflicts which have taken place in Sudan in the past 30 years have caused the displacement of millions of people, some externally, and some internally. As regards those who have gone to other countries as refugees, the February 2005 IRIN report recorded a UNHCR estimate that 600,000 Sudanese refugees had already returned to Sudan, including over 200,000 non-registered refugees from neighbouring countries, possibly as many as 400,000 IDPs, and that thousands more were expected to return in the following months (COIS April 2006 6.89).

123. The number of IDPs in Sudan is said by a number of reports to be more than 6 million: 1.8 million are in Darfur and approximately 2 million in Khartoum (Khartoum`s overall population being 6-7 million). The Sudan Organisation Against Torture (SOAT), in its Annual Report of April 2006 (appellants' bundle, pp. 338-398), puts the estimated population of Khartoum at "approximately eight million people, of these at least a third are IDPs" (p.349). There are said to be another 1.4 million in the South, the rest being in the East and in other areas. Generally speaking all the displacements have been inter-linked with resource issues, for example to secure oil-production and agricultural land.

124. According to COIS, one fifth of the IDPs in Khartoum live in four official camps, and four fifths in up to 30 squatter settlements or areas. That would give a figure for the camps of some 400,000, which accords with the figure given by Ms Maguire. SOAT considers that around 325,000 IDPs reside in official IDP camps and that the "remaining 1.7 million reside in approximately 30 different squatter areas". The IDP camps include Mayo Farms, Jebel Awlia, Wad el Bashier (WeB) and Omdurman es Salaam (OeS) and the squatter areas include Soba Aradi, Haj Yusuf, Jalbabekir, Boraka, Alingas and Salaama. Camps which have been set up in the outskirts of Khartoum, or in adjoining desert areas include Al Fateh 3, Thawra and (from February 2006) Sunduz. Estimates of the number of IDPs in Khartoum from Darfur vary from 8-16% of the total number of IDPs. Although IDPs are disliked by Khartoum residents, they are said to provide all the cheap manual labour force. Whilst estimates of unemployment of IDPs in the official economy are as high as 75%, it is difficult to ascertain to what extent IDPs are able to find some work in the unofficial or black economy. Some light is cast by the Rapid Assessment Report (respondent's bundle page 430) which has this to say about economic activity in the camps and squatter areas:-

> "Only 39% of heads of households surveyed reported that they had a regular source of income. Of these households, 37% were headed by women, with a range between the camps (47% in WeB, 44% in Mayo, 41% in Soba and 27% in OeS). It is no surprise that female headed households (FHH) are most vulnerable in terms of access to income, as data reveals that the higher the ration of FHH in an area, the higher a percentage of household reporting little or no income.
>
> Income was reported as being generated either through employment or entrepreneurship, with 22% reporting being employed, but only 5% reporting being entrepreneurs. There was a distinct range between the surveyed areas, with 33% in OeS reporting being employed, 9% in WeB, 26% in Soba Aradi and 27% in Mayo Farms.
>
> Access to employment included working as daily labourers, security guards, building, being engaged as cleaners/houseworkers. Entrepreneurship included selling vegetables, selling water (mudagagat), making brooms, operating small shops (toboliya), illegal activities, making blocks, building, selling tea, washing clothes. Boys in particular were involved in shoe shining, and using donkeys to sell water. Girls earn money by selling cooked foods, water melon seed and fried ground nuts.
>
> FGDs in all three areas (WeB, Oes and Soba Aradi) reported that the entire family were involved in providing income to the household, although it was mentioned in Soba Aradi that parents tried to keep their children out of the market so that they would attend school."

125. In considering the legal situation of internally displaced persons in Khartoum it is important to bear in mind the difference between new and old arrivals. Those who arrived before the outbreak of the civil war with the South in 1983, usually gained some rights as so called "squatters". But the majority, who arrived later, lack such rights. Documentation is a huge problem. The December 2005 ACCORD report notes that according to a survey which was carried out by CARE and IOM in 2003, 36% of IDPs in Khartoum had no documents. Only 37% had birth certificates, 15% had certificates of nationality and only 8% had Sudanese ID cards.

126. The living and health conditions of IDPs are said by some observers to be appalling. According to the UN assessment conducted in 2005, the housing and nutritional situation of IDPs in Khartoum is worse than in Darfur.

127. Since 2003, the demolition of IDP camps and squatters' settlements in Khartoum has progressed and about 250,000 IDPs have been made homeless by the government, sometimes being sent to new sites far away from the city into the desert with no water or any other services. However, there have not been any forced relocations since the May and August 2005 events.

128. The background country sources also deal with the evidence relating to medical facilities, but we shall leave that to be addressed later as already indicated.

129. In the course of the hearing of the evidence of the expert witnesses, four documents bearing on the issue of risk on return as well as military service were particularly touched upon and therefore it is important that we summarise their contents at this stage.

## The 2001 Danish Fact-finding Report

130. The first is the 2001 Danish Fact-finding report. What it says in a lengthy Section 2 about conscription has been summarised in the Country Guideline case of *BA*

*(military service – no risk) Sudan CG* [2006] UKAIT 0006 and is covered in this determination at paragraphs 187-194.

131. There followed another detailed section headed 'Conditions of Entry and Exit'. The following subsection is recited here in full:

> ***"3.1 Entry to Sudan***
>
> Abdulbagi Albushra Abdulhay, Major General, Director of Passport and Immigration, General Administration, Khartoum, denied that Sudanese citizens who had stayed abroad for some time would be arrested or questioned by the authorities on their return home. He said that no Sudanese would be questioned about his circumstances while abroad, however long he had been away, and whether he had been in Western Europe, the USA or other countries, with the exception of Israel. If a person had been in Israel he would be questioned.
>
> He also explained that Sudanese who worked abroad were obliged to pay tax on their foreign income either at a Sudanese Embassy or to the tax authorities in Sudan. Abdulhay said that no Sudanese had been arrested or even questioned on their return from abroad unless they had some unresolved business with the Sudanese tax authorities or were suspected of previous criminal activities in Sudan.
>
> Abdulhay explained that the airport police at Khartoum airport had a register of all wanted persons. The airport police showed these lists when the delegation visited the airport. The lists contain information about approximately 1700 Sudanese citizens who are wanted by the authorities. The lists are drawn up manually and there is no wanted persons database. Abdulhay also said that any foreigner could enter Sudan freely. Even former militant members of the opposition who had fought against the Government could enter without having problems with the authorities. He added that there was an amnesty for such people in Sudan.
>
> Anyone entering the country who appears on the list and is identified by the authorities will immediately be arrested and handed over to the Detective Police/Central Intelligence Department (CID) at the airport, which after further investigations may hand him over to the security service. A source at the airport police said that this happened three or four times a month. However, the head of the CID, Colonel Emad Kalafalla M. Khier, said that five or six people were handed over every day. This figure included those travelling on false passports.
>
> Waltmans-Molier said that the Netherlands Embassy did not follow up any deportations of rejected asylum applicants from the Netherlands. There was no form of monitoring and the Embassy therefore did not know what subsequently happened to those who had been returned. The Embassy was not informed in advance by the Netherlands authorities about forthcoming deportations, nor was it told if these were happening with or without a Dutch police escort.
>
> Waltmans-Molier was not aware of the existence of an alleged Sudanese decree called Decree No 4/B/307 from the head of the general security apparatus to senior border guards [24]. However, she knew that it was the practice for Sudanese citizens who had been away from the country for a couple of years or more and who were now returning home to be questioned by the Sudanese police on their arrival. Often this would be because of a failure to pay tax. The Netherlands Embassy was not aware of any examples of people suffering any harm while being questioned.
>
> Questioning was carried out by the immigration authorities or by the security service and was, according to Waltmans-Molier, quite normal. She mentioned a case in which a Sudanese woman had been returned from the Netherlands to Khartoum. The woman claimed to be the member of an opposition party but could not give any account of its ideology, and had been repeatedly questioned by the security service. The woman complained to the Netherlands Embassy but the matter was not felt to be serious and the Embassy had not heard that the woman had come to any harm. Waltmans-Molier did not have information about the number of Sudanese citizens sent back from the Netherlands in the last year.
>
> 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. This applied only to those returning voluntarily to

Sudan. The source had no information about conditions on entry for Sudanese citizens who were being forcibly repatriated to Sudan.

Johannes Lehne said that Germany had never had problems with the deportation of rejected asylum applicants to Khartoum, either on entry or following entry. In the previous year a total of 15 people had been sent back to Sudan from Germany. Only in some individual cases had the deportation been followed up".

## 10th ACCORD COUNTRY OF ORIGIN SEMINAR REPORT, Budapest, December 2005

132. The second document touched on (quite considerably) during the hearing is the December 2005 ACCORD COI report which sets out the opinions of Dr Schodder and Dr Alizadeh. This report deals with a wide range of issues and we have already drawn on other parts of it in the course of our summary immediately above. However, we set out here what is said in it under the heading of "3.10. Exit, Political Activities in Exile and Return". Dr Schodder comments here:

"Sudanese citizens need [an] exit visa to leave the country, and these are denied to persons the government doesn't want to travel abroad, for example to attend critical meetings or conferences. While considering an application for an exit visa, the authorities keep the passport of the applicant. It's not a fact that political opponents don't get exit visa at all; it just might [take] a couple of months or even years, and through all those years the passport stays with the authorities".

In relation to political activities in exile, Dr Alizadeh states:

"Of course, the Sudanese government observes activities of Sudanese nationals in Europe. Each consulate or embassy has at least two security officers who deal with intelligence information. Each event that is related to Sudan is attended by people from the embassy who observe and report – not to the minister of foreign affairs, but directly to their headquarters in Khartoum. The security apparatus, consisting of both internal security and intelligence service, monitors the activities of Sudanese citizens abroad."

133. In relation to the return of failed asylum seekers Dr Alizedeh states:

**"**Failed asylum seekers won't face severe problems upon return, as long as they are not recognized as a threat to the state. However, if they are seen as a threat – there is no guarantee. In the beginning of the 90s there were cases of people who just disappeared. A lot of persons who left the country after the coup returned from exile. Of course they feared that they would be arrested at the airport, but nothing happened. However, this does not mean that the situation will continue like this."

Dr Schodder adds:

"In the past persons who left the country after the coup and stayed away for more than one year, would be questioned upon return automatically. This is no routine policy anymore; also the practice of arrests straight at the airport is not common anymore at the moment. Returnees might get visits from security officers later and be questioned or warned not to start any "funky ["funny"] business" in Sudan. I have no information that these people are particularly being targeted. Instead, some people who have been abroad for many years, maybe for political reasons, have come back to Khartoum. They are subject to close surveillance and they know that they cannot engage in political activities. They also know that they can be arrested, questioned, and detained at any time. They feel a little bit more secure if they obtained a foreign passport before their return. But if they are still Sudanese citizens, they have no protection at all. There have been some positive developments, but the security is monitoring the situation very closely and it is quite unpredictable".

The situation as regards military service is said by Dr Schodder to be as follows:

**"**Forced recruitment, where young men were rounded up on the streets, occurred before the peace agreement. This practice has stopped. Sudan now plans to establish a draft registration system. However, young persons who finish their secondary education will not get a school certificate unless they do the military service. If they plan to continue their education at university, they usually do two months of basic service, then study at university and have to finish the other ten months of service before getting their university certificate. There is no possibility of conscientious objection. With the exception of some people with relevant connections, there is no way of getting around military service.

Women are being drafted as well, but usually there is less pressure on the drafting of women and then they are being used in the nursing profession, the reserve and similar fields. According to the military law, the punishment for draft evasion is three years imprisonment. Desertion carries the death penalty. Draft evaders, instead of being punished, are often coerced into certain contingents of active service. Depending on where they are sent to fight, this could constitute another death penalty."

Dr Alizadeh adds: "The law foresees the death penalty for desertion, but we don't know any case where a person was executed, also due to the Sudanese culture."

## UNHCR Position paper February 2006

134. The third document of particular relevance in these cases is the February 2006 UNHCR Position Paper entitled "UNHCRs Position on Sudanese Asylum-Seekers from Darfur". At paragraph 3 it states:

"Forced returns to Sudan entail risk 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 authorizes border authorities to arrest returning Sudanese who left after the June 1989 coup and 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 fighting age are particularly susceptible to be targeted".

Paragraphs 6-8 deal with the situation in Khartoum:

"6. In Khartoum there are approximately two million IDPs in four IDP camps and in some 16 squatter areas in and around the capital. The majority of the IDPs are from South Sudan, but there is a sizeable IDP population from Darfur as well, many of whom arrived in Khartoum during the 1980s as a result of drought. Survey estimates indicate that approximately 10-15% of the two million IDPs in Khartoum are from Darfur. The IDP population in and around Khartoum is socially and economically marginalised and lives in very poor living conditions, despite the activities of the UN and NGOs. Harassment and arbitrary violence on the part of the authorities is a regular occurrence. Internally displaced persons from Darfur in Khartoum also often face protection risks, including forced relocation and forced return [a footnote here gives the example of a March 2004 eviction of a camp composed of non-Arab Darfuri IDPs to the outskirts of Khartoum].

7. Exacerbating the problem, the Government has accelerated, since 2003, a "replanning process" for the IDP camps and squatter areas in and around Khartoum. This has led to demolition of IDP homes, schools and medical centres. It is assessed by UNHCR that approximately 250,000 IDP households have been made homeless as a result of the ongoing home demolitions. Thousands of families have been left with no place to live, because plots allocated are too few and no alternative shelters have been provided. There is no effective government policy addressing the needs of those excluded from accessing new plots. Especially hard-hit are undocumented IDPs, female-headed households and those who arrived in Khartoum after 1996. The latter include most of the IDPs from Darfur who were compelled to move to the capital, as a result of the Darfur crisis.

8. The fact that Internally Displaced Persons are receiving international assistance in Darfur and in Khartoum should not give rise to the conclusion that it is safe or reasonable for the claimants to return to parts of Sudan. Internally Displaced Persons in Darfur continue to face serious threats to their physical safety and personal security. In UNHCR's assessment, the threats 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' Darfuri background returning to Sudan face a

heightened risk of scrutiny by the security apparatus. Furthermore, where internal displacement is a result of 'ethnic cleansing' policies, denying refugee status on the basis of the internal flight or relocation concept could be interpreted as condoning the resulting situation on the ground and therefore raises additional concerns."

135. The report ends with the following recommendations:

- "States provide international protection to Sudanese asylum-seekers from Darfur of "non-Arab" ethnic background, through according them recognition as refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol or under the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, as appropriate [the footnote to this paragraph states that "While UNHCR`s recommendation that a presumption of eligibility to refugee status under the above-mentioned instruments applies to non-Arab Darfurians, asylum claims submitted by Darfurians of Arab origin shall be considered on their individual merits"];

- Where a State feels unable to grant refugee status under the law, but the individual is not excluded from international protection, at least a complementary form of protection should be granted; no non-Arab Sudanese originating from Darfur should be forcibly returned until such time as there is a significant improvement in the security situation in Darfur;

- Due attention is paid to the particular needs of especially vulnerable asylum-seekers from Darfur, such as female heads of households, medical cases or victims of past persecution;

- Due attention should, nevertheless be paid to possible grounds for exclusion, in according with Article 1(F) of the 1951 Convention and/or Article 1.5 of the 1969 OAU Convention, in certain individual cases".

## American University of Cairo June 2006 Report

136. Also of relevance is the very recent June 2006 report from the American University in Cairo entitled "A Tragedy of Failures and False Expectations: report on the events surrounding the three-month sit-in and forced removal of Sudanese Refugees in Cairo, Sept-Dec 2005." Perhaps the first point by way of clarification about this report is that the reference to "forced removals" is *not* to refoulement from Egypt to Sudan, but to the forcible eviction by the Egyptian authorities of Sudanese asylum-seekers from a sit-in in Cairo. This report notes at page 7 that in June 2004, as a result of the ceasefire declared earlier that year between the government of Sudan and the Sudan People`s Liberation Army, UNHCR suspended Refugee Status Determination (RSD) procedures for all Sudanese asylum-seekers, regardless of whether they originated from the South, Darfur, or elsewhere. Instead they were issued with a yellow card offering temporary protection. The report sees this as among the factors giving rise to frustrations amongst the Sudanese asylum-seeking community, which eventually led to the September 2005 sit-in. On 17 December UNHCR reached an agreement with leaders of the sit-in offering to revive RSD on a limited basis. However, the sit-in continued and eventually ended in forcible removals resulting in 28 deaths and over 600 detentions. Threats to deport the detainees were retracted pending UNHCR examination of their files and status determination; the report does not mention any deportations having taken place as yet.

137. The report also notes that some Sudanese security officials had monitored the sit-ins and entered the prisons where former demonstrators were held. We also have a note dated 19 June from Dr Barbara E. Harrell-Bond OBE, Distinguished Adjunct Professor, Forced Migration and Refugee Studies Programme, American University of Cairo, describing the experiences since 2000 of a refugee legal aid project in Cairo in

relation to Darfuri persons seeking asylum: "Without exception, the asylum-seekers that we assist report having to hide in Khartoum, to move around to avoid detection by authorities and waves of arbitrary arrest in the city": She states:

"'In Cairo, UNHCR`s current policy is to give `yellow cards` (indicating the holder is seeking asylum) to all Darfurians arriving in Egypt to protect them from refoulement. It has recently issued yellow cards to the many that they had previously rejected for asylum when they had arrived during the 1990s and early 2000s. Our experience is that UNHCR tends to be more restrictive than many governments, yet it clearly considers Khartoum unsafe for persons of a Darfurian identity".

## Tribunal country guidance post-*Januzi*

138. It is important when undertaking the task which was envisaged for this panel by the House of Lords in *Januzi* that we note the fact that since *Januzi* was decided the Tribunal has issued the new country guidance case of *MH (Darfurians: relocation to Khartoum?) Sudan* CG UKAIT 00033. The panel in that case was aware that the rehearing of the cases remitted by the House of Lords in *Januzi* would afford an occasion for a comprehensive review, but considered that it was important to bring the situation up-to-date at the relevant time (3 April 2006). Its conclusions at paragraphs 33-4 state:

"33. It cannot be expected that the above is a comprehensive review of the substantial amount of background material relating to Sudan and its present difficulties. The bundle prepared by the appellant's solicitors for the purposes of this appeal ran into some 445 pages and was augmented by additional material in the course of the hearing. The latest background material confirms the trends that were identified in early 2005. It demonstrates that there have been at least two additional closures of IDP camps in May and August 2005. Further, closure has taken place in violation of promises made by the Sudanese government. The breaking of these commitments was prefigured in the information set out as long ago as August 2004 and the report *Broken promises?* Nor can it be said that the breaches are the action of maverick politicians acting outside the scope of their authority because there is evidence that the decisions have been made at the highest level, namely, by the Governor of the State of Khartoum. We place no weight on the promises made by the Sudanese authorities. Nevertheless, Sudan is the recipient of aid and the donor countries have formed a Consultative Committee which attempts to exercise some control on what are undoubtedly violations of promises made in relation to proper respect for the rights of IDPs. It is clear that the UN are well aware of the breaches – as is amply demonstrated in the interview with the head of the UN's Internal Displacement Division on 30 September 2005 and the report of the UN Secretary General of 12 September 2005. Although the former indicates that the August closure of the camp at Omdurman was carried out in violation of settled procedures, the interview indicates the intention of the international community as represented by the Consultative Committee to influence the Sudanese government in effecting the orderly relocation of IDPs. We are satisfied that the United Nations and the wider international community are aware of the conditions of IDPs and that access to the camps is available to observers. Importantly, with that degree of knowledge about events on the ground, neither the United Nations nor the UNHCR have declared that those in the camps are at risk of persecution or that those returned to Sudan face a similar risk. Whilst the humanitarian concerns persist as to the manner in which the Sudanese government is handing its IDP population, the evidence does not suggest that all IDPs (or all those from Darfur) are at risk or that those returned to the country from abroad face a specific and heightened risk of persecution or ill-treatment. Nor, in our judgment, is it unreasonable in the sense that it is unduly harsh to expect those from the Darfur region to relocate to Khartoum. In this context, we take account of the appellant's personal strengths and resilience. He is a young male, apparently fit, who has shown himself to be resourceful.

34. Since hearing this appeal the House of Lords has issued its opinions in *Januzi* [2006] UKHL 5. We have not had the benefit of submissions from the parties as to the possible implications of this judgment in cases such as this. It is clear that the House of Lords envisages a need for an up-dating country guidance decision dealing with internal relocation in Sudan and we understand that steps are being taken to ensure that this happens as soon as practicable. We have, however, considered whether what is said in *Januzi* requires us to reappraise anything we have said in

this determination. We have concluded that it does not. Insofar as that judgment sets out the law dealing with internal relocation, we consider that our approach is consistent with that approach. Insofar as their judgment deals with the factual situation in Sudan and expresses concern about the current situation in Khartoum in the light of the most recent country materials, we consider that our decision takes account of all the background evidence, past and present, having a material bearing on the issue of relocation in Khartoum and can thus properly represent the position of the Tribunal on this issue for the immediate future and (in the absence of a change of circumstances in Sudan now) until such time as there is a new country guidance case dealing with the cases remitted by their Lordships' House.

For these reasons we are not satisfied that the two divisions of the Tribunal in MM and AE came to the wrong conclusion as a result of their not being shown background material that properly reflected conditions in Sudan in the early part of 2005".

139. The Tribunal concluded that whilst it could not say that conditions had improved since early 2005, it did not consider that they had deteriorated to a significant extent and "certainly not to such a significant extent that those returned to Khartoum are now at risk, thereby effectively reversing the decisions in all of the various cases that have sought to make an assessment of risk."

140. It will be apparent that what is said by the panel in *MH* above at paragraph 33 is no longer correct. They were plainly unaware when deciding this case of the February 2006 UNHCR Position Paper which, as we have seen, does state in its recommendations that States provide international protection to Sudanese asylum-seekers from Darfur of "non-Arab ethnic background" through according them recognition under the 1951 Convention or the 1969 OAU Convention as appropriate. It will also be apparent that although when assessing conditions in Khartoum this panel did take into account many of the reports on which the experts in this case have drawn, the background materials before us are much more comprehensive.

## The Legal Framework

### Country Guidance cases

141. As the concept of Country Guidance cases was mentioned in the opinions in *Januzi***,** (see esp. paragraph 50 (Lord Hope)), it is necessary to remind ourselves of the legal basis underlying that concept. Until the advent of the Asylum and Immigration Tribunal, a case styled by the Immigration Appeal Tribunal as Country Guidance carried persuasive force but had no statutory authority. Since 4 April 2005, however, the position has changed. On that day, paragraph 22(1) of Schedule 2 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 inserted into section 107 (practice directions) of the Nationality, Immigration and Asylum Act 2002 a new subsection (3), in the following terms:-

"(3) A practice direction may, in particular, require the Tribunal to treat a specified decision of the Tribunal as authoritative in respect of a particular matter."

The President's Practice Direction 18.2, made on 4 April 2005, provides as follows:-

"18.2 A reported determination of the Tribunal or of the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal or the IAT that determined the appeal. As a result, unless it has been superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:

(a) relates to the country guidance issue in question; and
(b) depends upon the same or similar evidence."

142. There is thus a statutory basis that underpins the CG system and which requires Country Guidance issues to be treated by all divisions of the Tribunal as authoritative. Practice Direction 18.2 ensures that, as Lord Hope makes plain in paragraph 50 of *Januzi*, each case is dependent on its own facts but, as PD 18.4 emphasises (and as was noted with approval by the Court of Appeal in *R and others v Secretary of State for Home Department* [2005] EWCA Civ 982), legal error will attend a failure to follow extant, relevant Country Guidance. Given that the AIT is a "single tier" Tribunal, it is particularly important that everyone concerned appreciates the underlying legal framework.

143. Given that these appeals were listed together with a view to considering the situation in Sudan and Khartoum afresh, and given that we have had a very comprehensive body of evidence placed before us, our decision covers a number of issues relating to appeals by Sudanese asylum-seekers.

## Internal relocation

144. Since the present appeals concern appellants who have been found to have a well-founded fear of persecution in their home area in Darfur, all raise the issue of whether they have a viable internal relocation alternative in Khartoum or elsewhere in Sudan. In *Januzi* the House of Lords gave specific guidance on how internal relocation or internal flight is to be assessed by decision makers. At paragraphs 20-21 Lord Bingham stated as follows:

> "20. … It is, however, important, given the immense significance of the decisions they make, that decision-makers should have some guidance on the approach to reasonableness and undue harshness in this context. Valuable guidance is found in the UNHCR Guidelines on International Protection of 23 July 2003. In paragraph 7 II(a) the reasonableness analysis is approached by asking "Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?" and the comment is made: "If not, it would not be reasonable to expect the person to move there". In development of this analysis the guidelines address respect for human rights in paragraph 28:
>
> "*Respect for human rights*
>
> Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the proposed area cannot be considered a reasonable alternative. This does not mean that the deprivation of any civil, political or socio-economic human right in the proposed area will disqualify it from being an internal flight or relocation alternative. Rather, it requires, from a practical perspective, an assessment of whether the rights that will not be respected or protected are fundamental to the individual, such that the deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative."
>
> They [UNHCR] then address economic survival in paragraphs 29-30:
>
> "*Economic survival*
>
> The socio-economic conditions in the proposed area will be relevant in this part of the analysis. If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of simple standards or worsening of economic status may not

be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned. If, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level.

If the person would be denied access to land, resources and protection in the proposed area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable. For example, in many parts of Africa, Asia and elsewhere, common ethnic, tribal, religious and/or cultural factors enable access to land, resources and protection. In such situations, it would not be reasonable to expect someone who does not belong to the dominant group, to take up residence there. A person should also not be required to relocate to areas, such as the slums in an urban area, where they would be required to live in conditions of severe hardship."

These guidelines are, I think, helpful, concentrating attention as they do on the standards prevailing generally in the country of nationality. Helpful also is a passage of socio-economic factors in Storey, *op cit*, p 516 (footnotes omitted):

"Bearing in mind the frequency with which decision-makers suspect certain asylum seekers to be simply economic migrants, it is useful to examine the relevance to IFA claims of socio-economic factors. Again, terminology differs widely, but there seems to be broad agreement that if life for the individual claimant in an IFA would involve economic annihilation, utter destitution or existence below a bare subsistence level (Existenzminimum) or deny 'decent means of subsistence' that would be unreasonable. On the other end of the spectrum a simple lowering of living standards or worsening of economic status would not. What must be shown to be lacking is the real possibility to survive economically, given the particular circumstances of the individual concerned (language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health; available or realisable assets, and so forth). Moreover, in the context of return, the possibility of avoidance of destitution by means of financial assistance from abroad, whether from relatives, friends or even governmental or non-governmental sources, cannot be excluded."

21. In arguing, on behalf of Messrs [H,G and M] that internal relocation is never an available option where persecution is by the authorities of the country of nationality, Mr Gill QC gains support from the conclusions of the San Remo experts in 2001. They considered that where the risk of being persecuted emanates from the State (including the national government and its agents) internal relocation "is not normally a relevant consideration as it can be presumed that the State is entitled to act throughout the country of origin". The UNHCR Guidelines of July 2003 similarly observe (paragraph 7 I (b)):

"National authorities are presumed to act throughout the country. If they are the feared persecutors, there is a presumption in principle that an internal flight or relocation alternative is not available."

There can, however, be no absolute rule and it is, in my opinion, preferable to avoid the language of presumption. The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so. The source of the persecution giving rise to the claimant's well-founded fear in his place of ordinary domicile may be agents of the state authorised or directed by the state to persecute; or they may be agents of the state whose persecution is connived or tolerated by the state, or not restrained by the state; or the persecution may be by those who are not agents of the state, but whom the state does not or cannot control. These sources of persecution may, of course, overlap, and it may on the facts be hard to identify the source of the persecution complained of or feared. There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department [2002] EWCA Civ 74 [2002] I WLR 1891, paragraph 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls. The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts".

145. Mention should also be made of a passage at paragraph 19 where Lord Bingham was giving reasons for rejecting the Hathaway/New Zealand approach:-

> "Fifthly, adoption of the rule would give the Convention an effect which is not only unintended but also anomalous in its consequences. Suppose a person is subject to persecution for Convention reasons in the country of his nationality. It is a poor country. Standards of social provision are low. There is a high level of deprivation and want. Respect for human rights is scant. He escapes to a rich country where, if recognised as a refugee, he would enjoy all of the rights guaranteed to refugees in that country. He could, with no fear of persecution, live elsewhere in his country of nationality, but would there suffer all the drawbacks of living in a poor and backward country. It would be strange if the accident of persecution were to entitle him to escape, not only from that persecution, but from the deprivation to which his home country is subject. It would, of course, be different if the lack of respect for human rights posed threats to his life or exposed him to risk of inhuman or degrading treatment or punishment."

At paragraphs 47-50 and 54 Lord Hope said:

> "47. The question where the issue of internal relocation is raised can, then, be defined quite simply. As Linden JA put it is Thirunavukkarasu v Canada (Minister of Employment and Immigration) (1993) 109 DLR (4th) 682, 687, it is whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words "unduly harsh" set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there.
>
> 48. Care must, of course, be taken to allow the argument that there is an internal relocation option to defeat the basic purposes of the Convention. That is why there is a further question that must be considered where the claimant has a well-founded fear of persecution for a Convention reason which is due to action taken, or threatened to be taken, against him by the state or by state agents within the country of his nationality and it is suggested that he could reasonably be expected to live in a place of relocation there. The dangers of a return to a country where the state is in full control of events and its agents of persecution are active everywhere within its borders are obvious. It hardly needs to be said that in such a case internal relocation is not an option that is available. Remoteness of the suggested place of relocation from the place of origin will provide no answer to the claimant's assertion that he has a well-founded fear of persecution throughout the country of his nationality.
>
> 49. On the other hand control of events by the state may be so fragmented, or its activities may be being conducted in such a way, that it will be possible to identify places within its territory where there are no grounds for thinking that persecution by the state or its agent of the claimant for a Convention reason will be resorted to. A civil war may take that pattern where the extent of it is localised. So too may the process of ethnic cleansing affecting people of the claimant's ethnicity which is in progress in one area but not in others. The state may be ruthless in its attempts to move people of a given ethnicity out of one area. But it may be benign in its treatment of them when they reach an area which it regards as appropriate for people of that ethnicity. Of course, one kind of brutality may lead to another. Those who object to the state's policy may be treated differently from those who do not, wherever they happen to be for the time being. And those who move to a safe area may be at risk of being forced to move back again. The situation in the country of the claimant's nationality may be so unstable, or the persecution which the state condones in one place may be so difficult to limit to a given area, that it would be quite unreasonable to expect the claimant to relocate anywhere within its territory.
>
> 50. In practice the tribunal tries to provide guidance as to how cases that originate from areas of particular difficulty should be dealt with. The country guidance cases that have already been mentioned seek to achieve this result: see *AB (return of Southern Sudanese) Sudan CG [2004] UKIAT 00260; MM (Zaghawa – Risk on Return – internal Flight) (Sudan) [2005] UKIAT 00101*. Where this is done, that guidance should be followed by immigration judges. It is desirable that they should do so in the interests of fairness and consistency. But in the end of the day each case, whether or not guidance is available, must depend on an objective and fair assessment of its own facts".
>
> …

> 54. Once it is accepted, as in my opinion it must be, that a comparison between the basic norms of civil, political and socio-economic rights that are regarded as acceptable internationally and the situation in Kosovo is not relevant, the argument that there was a defect in the Court of Appeal`s reasoning in Mr Januzi`s case falls away. I would wish to sound a note of caution on one point only. In paragraph 28 of his judgment Buxton LJ said that conditions which extend throughout Kosovo are irrelevant because they apply in both cases and cannot be taken into account in the balance. I would prefer to put the point that he was making differently. It is the fact that there is a difference between the standards that apply throughout the country of the claimant's nationality and those that are regarded as acceptable internally, and this fact only, that is irrelevant. The fact that the same conditions apply throughout the country of the claimant's nationality is not irrelevant to the question whether the conditions in that country generally as regards the most basic of human rights that are universally recognised – the right to life, and the right not to be subjected to cruel or inhuman treatment – are so bad that it would be unduly harsh for the claimant to have to seek a place of relocation there. As Mr Rabinder Singh QC for the Secretary of State observed, one does not need to rely on the European Convention on Human Rights to conclude that if conditions are that bad relocation there would be unduly harsh. But the evidence about the conditions in Kosovo on which Mr Blake relies does not begin to approach that standard…"

146. From the opinions of their lordships in *Januzi* we extract several propositions of particular importance in deciding the issues before us in this case.

147. First, it is essential when considering internal relocation to have regard to both considerations of: (1) safety, in the sense of an absence of persecution; and (2) reasonableness, in the sense of whether conditions are unduly harsh (*Januzi*, paragraphs 7, 8, 47 and 48).

148. Secondly, whilst it may be relevant to deciding a particular case to have regard to whether a person sought to avail himself of internal relocation prior to departure, the test of whether someone faces real risk under the Refugee Convention and under Article 3 essentially concerns whether refoulement or return of a person would give rise to *current* risk: see for example Lord Bingham's approval at paragraph 20 of analyses made "in the context of return" and Lord Hope's reference in paragraph 48 to "the dangers of return".

149. Thirdly, there is no presumption that internal relocation is impossible simply because the persecutors in a person's home area are agents of the state. Nevertheless, evidence of state involvement, whether that involvement is direct or indirect, is relevant (paragraphs 21, 48 and 49).

150. Fourthly, the issue of reasonableness or whether conditions are unduly harsh is a rigorous one (Lord Carswell, paragraph 67); and it is wrong to decide this, as urged by the Hathaway/New Zealand approach, by reference to whether those conditions meet the requirements of international human rights law in full. The issue is whether "conditions in that country generally as regards the most basic human rights that are universally recognised – the right to life and the right not to be subjected to cruel or inhuman treatment – are so bad that, it would be unduly harsh to expect a person to seek a place of relocation" (Lord Hope, paragraph 54). At most all that can be expected is that basic human rights standards, in particular non-derogable rights, are not breached.

151. Fifthly, it is of particular importance in the context of whether internal relocation is reasonable in the sense of unduly harsh that matters are looked at cumulatively, taking account of "all relevant circumstances": the importance of this approach is manifest from paragraphs 20-21 and 50 of their Lordships' opinions.

152. Sixthly, integral to the assessment which must be made is a comparison between the conditions in the country as a whole and those which prevail in the place of intended alternative relocation (paragraphs 19 and 54).

153. In this determination we shall also have cause to consider legal principles arising in the context of claims made by Sudanese asylum-seekers based in whole or in part on *sur place* activities; however, these are best examined in their specific context later on.

## Our Assessment

### The General Issues

154. Before turning to assess the evidence, including the expert evidence we have heard, it is important that we state three particular points at the outset, as they are central to addressing matters in the way required by their lordships' opinions in *Januzi*. The first concerns the extent to which the situation in Khartoum so far as persons of Darfuri origin are concerned can properly be seen as an extension of the Sudanese Government's attitude to non-Arab Darfuris in Darfur. It has been a central part of the appellants' case before us that there was a common approach, perhaps summed up by Ms Maguire's claim that non-Arabs of Darfur origin in Khartoum were regarded as "enemies of the state". We reject that contention. To use Lord Hope's example of "civil war" in paragraph 49, the "civil war"/armed conflict in Darfur has been relatively localised and has certainly not extended to Khartoum.

155. In this regard, it is useful to remind ourselves that the Darfur conflict is not the first situation where courts and tribunals in the United Kingdom have had to consider, in the context of the Refugee Convention, whether a person who asserts persecution by the state in one part of his country may be expected to relocate elsewhere within that country. The civil war in Sri Lanka provides a recent example. As the Court of Appeal found in *E and Another v Secretary of State for the Home Department* [2003] EWCA Civ 1032, a Tamil might be subjected to persecutory acts by the Sri Lankan army itself, whilst in the north of the country, and yet be able to live without a well-founded fear in Colombo (see paragraph 13 of the judgments in that case).

156. We have no hesitation in accepting that the Sudanese government makes important connections between the two situations, notwithstanding Darfur`s geographical and political separation from Khartoum (and North Sudan generally). We also think that the evidence of state involvement in the armed conflict in Darfur and of state responsibility for wide-scale crimes against humanity committed in Darfur is overwhelming. However, we think the evidence falls well short of demonstrating that the Sudanese authorities have maintained the same approach to non-Arab Darfuris outside the Darfur region as they have to those in Darfur. In our view the evidence at most bears out that in Khartoum only certain subcategories of non-Arab Darfuris are targeted for serious harm – those connected with the resistance, for example. It is true that the continuing war with the rebels being waged by the Janjaweed with government assistance in Darfur, notwithstanding the peace accord, appears to be overseen closely by members of the central government in Khartoum. But the evidence does not suggest that the GoS leadership sees Khartoum or other areas outside Darfur as a further front

of this war or that they are applying (what Mr Verney described at paragraph 54 of his report as) its "directive to kill Darfuri civilians" to Darfuris living in Khartoum. Nor is there anything to suggest that the authorities - except in Darfur- regard or treat non-Arab persons of Darfuri origin generally as objects of persecution.

157. We emphasise this finding at the outset because it was clearly seen by their lordships in *Januzi* as being important for the Tribunal to assess the nature of the interconnection.

158. The second point concerns the approach we have adopted when assessing conditions for IDPs in Khartoum. We consider that the proper comparison is between their situation and that which prevails in the rest of the country generally. Insofar as the question of conditions in Darfur arises in that context, in our view it would in general be misconceived to seek to focus on conditions in the IDP camps there. The IDP camps in Darfur are where people have fled to from their homes in Darfur; almost by definition they are not in the individual's home area. The home area in Darfur stands to be considered, therefore, as the normal habitat of those living there, leaving to one side the fact of persecution.

159. Thirdly, we reject Mr Mahmood`s (curious) contention that the legal analysis in *Januzi* treats as determinative of refugee eligibility the issue of whether a viable internal relocation alternative existed prior to departure. We consider that all the passages he referred to in support of this contention simply illustrate that their Lordships see the issue of whether someone had failed to relocate prior to departure as a relevant consideration when addressing the issue of current risk on return.

160. We should also mention that the fact we have not referred to a specific item of evidence should not be taken as showing that we overlooked it. We have considered all the oral and documentary evidence placed before us.

## Our evaluation of the expert evidence

161. We attach weight to Mr Verney's evidence. He brings to bear in his reports a wealth of knowledge built up over some thirty years about the situation in Sudan. However, in the nature of this hearing we have had to examine his views more closely than previously and we are bound to say that the weight we felt able to attach to his reports and testimony was lessened to some extent by two features of his evidence. First, we do not think, when describing and evaluating certain aspects of the situation in Sudan, that he always sought to give a balanced picture. The need to give a balanced picture, in the sense of identifying evidence for and against, is indispensable. It is one reflected, for example in 1.4 of the Practice Direction supplementing Part 35 of the Civil Procedure Rules. This states:

> "An expert should consider all material facts, including those which might detract from his opinion".

162. We asked Mr Verney why in his report he had not addressed the evidence given by two experts, both having UNHCR credentials, specifically addressing risk on return presented to the December 2005 ACCORD COI Budapest seminar, jointly sponsored by UNHCR, which was plainly to different effect than his own. His answers covered the respects in which he did not think the two experts concerned were specifically focussing

on the situation of returnees of Darfuri origin (we return to this below). But it did not explain to our satisfaction why he had failed to take account of it when drawing up his own account of the same general issues as were covered in this report, particularly as he said he set particular store by the UNHCR Position paper of February 2006.

163. In his report he placed considerable reliance on the Aegis Trust`s 2005 "Lives in Our Hands" report, for example at paragraphs 69-72. This report contained a "dossier" on the plight of "African" asylum seekers from Darfur now facing removal to Khartoum". It includes profiles of 26 "genocide survivors" including one whose evidence we know has been found not credible by an Immigration Judge. Whilst we accept that Mr Verney may not have known this when he prepared his report, he nowhere appears to have shown awareness of the evidential significance of the fact that the accounts given in this dossier, despite being known to be those of "asylum-*seekers*" have not been tested, whilst others have had their appeals dismissed. Indeed, so far as concerns the wider issue of the evidence adduced before us by those representing the appellants in this case, it is a matter of some surprise to us that neither written statements nor oral evidence from any of the 26 persons, except for appellant H, was offered, in particular from the two whose accounts involved being returned to Khartoum. Both those representing the appellants and the Aegis Trust have been fully aware for some time that this panel was seeking all relevant evidence relating to risk on return.

164. Secondly, we noted a tendency to exaggeration or at least to make assertions going beyond the evidence which he cited in support. For example at paragraph 13 when describing the "cascade of adverse treatment by the security police, initially triggered by their ethnic [non-Arab/black African] identity and linked automatically to suspicion of sympathy with the rebels" he said that "[t]his is just as likely to happen in the capital Khartoum as in Darfur region". He saw this as part of what he considered to be a "collective punishment" strategy of the current government. However, it is plainly not the case that crimes against humanity have been carried out against Darfuris anywhere in Sudan outside the Darfur region. There is another example at paragraph 60 of his report where he cited with approval the "Lives in Our Hands" report's statement that: "In Khartoum now, if even two or three people identified as being from Darfur or talking about Darfur are seen talking by the authorities, they can be in very serious trouble...". In cross-examination he agreed that this went too far and would not cover, for example, Darfuris who were simply talking about the weather. Further, at paragraph 61 of his report he stated that "[m]any "African" students have been subjected to detention, physical abuse, denial of rights and serious life-threatening harm", yet he mentioned only three such students. At paragraph 17 he said there had been a "complete halt to food distribution", an assertion which he accepted in cross-examination went too wide. Whilst we accept that seen over time there have been a significant number of forcible relocations, we see no help to the cause of accuracy for him to describe IDPs as being constantly "on the run", especially as both he and Ms Maguire accepted that, even though some of the relocations had been unannounced, many had been motivated by the interests of planners in utilising the sites for industrial or related purposes and that there had been no forcible relocations since August 2005. Both of these points are made by UNMIS`s Head of Return, Reintegration and Recovery (respondent's bundle, page 256).

165. Turning to the evidence of the second witness, Mr Nourain, we regret to say we have very considerable difficulty in attaching even limited weight to it. We use the word

regret because we do not doubt for a moment that in Sudan he did at some stage hold a judicial position and was a Member of Parliament. However, he simply failed in his oral testimony to come up to proof. It cannot be that any fault lies with the legal representatives who prepared his statement, as they have specifically confirmed to us that they provided a translation of his report in his own language for him to check. In any event particular care was taken at the hearing by those questioning him to ensure he understood what he was recorded as saying in his statement and he did not seek to suggest anything recorded was inaccurate. His oral evidence gave little indication that he had thought carefully about the general assertions he made in his written report and reiterated in his oral evidence. His reference to having contacts "throughout all levels" of the immigration and intelligence services in Sudan was exposed in cross-examination to be no more than a single individual, plus one person who was said to have left the country. We quite understood Mr Nourain`s position that he did not want to and would not name all but one of his claimed sources; but considering that he said he had met and worked closely with many people involved in the immigration and intelligence services, we found his inability in respect of all but two to give any particulars at all – for example about where and when he had met them or spoken with them, or what discussions he had with them - a serious shortcoming. What made the vagueness of Mr Nourain's evidence even more curious in our view was that on his account the officials with whom he had contact were fellow members of the Fur tribe. We would have thought that their recollection of any specific instances of mistreatment of fellow black Africans from Darfur would have been acute and that Mr Nourain would have been able to reflect that in speaking about what they told him. Moreover, the witness has never, by his own admission, met a person who has been deported to the Sudan. Nor was he able to tell the Tribunal that any of his contacts had witnessed, let alone been involved in, any ill-treatment of a returnee. The evidence about the authorities having video evidence of demonstrations attended by Sudanese nationals abroad was shown to be vague in the extreme and based at best on one specific example, from 2002. The Tribunal agrees with Ms Giovannetti that Mr Nourain's evidence is substantially unreliable in relation to all the main issues with which we are concerned with in this appeal.

166. We turn finally to the evidence of Ms Maguire. Whilst she did not have as many years experience in Sudanese affairs as did Mr Verney, she has plainly acquired in a relatively short space of time a formidable knowledge of what is going on in Sudan. The fact that she had worked for the UN and for the UK government enhances the perspective she has on events there. As we did with Mr Verney, we must record our particular thanks to her for the care and efforts she showed in trying to assist us on a wide range of matters during a particularly lengthy examination. As with Mr Verney, however, we did not find ourselves able to attach full weight to all aspects of her evidence. In our view her written report (and her "Ghost Houses" report written for the Aegis Trust) were somewhat weakened by the same two features we identified with Mr Verney's report. Her report did not show that on certain key issues she had borne in mind the duty on any expert to identify evidence contrary to his or her own opinion. We found particularly surprising the failure of her report to identify or address the Report of the 10th European Country of Origin Information Seminar, 1-2 December 2005, Budapest arising out of the seminar organised by ACCORD, HHC and UNHCR. This report was based on the presentation given by Dr Hamayoun Alizadeh, Regional Representative of the Office of the United States High Commissioner for Human Rights (OHCHCR) for South East Asia and former head of OHCHR in Khartoum, and Dr Hans Schodder, Senior Protection Officer of the UNHCR representative in Khartoum, on 1

and 2 December 2005. This report, some thirty-three pages long, covered a wide range of refugee related issues including those of military service and 'Return (of Failed Asylum Seekers)` (we have summarised those above at paragraphs 132-133). Given the efforts Ms Maguire made to seek and obtain information from relevant bodies with knowledge and expertise about the situation in Khartoum, we find this omission particularly surprising, all the more so given that Ms Maguire acknowledged that she knew of both and that she fully accepted their credentials.

167. Equally surprising in our view was her failure to show any awareness of the 2001 Danish Fact Finding Mission report. Again this report is one of the very few to contain specific evidence on a number of key issues affecting asylum seekers, including the same two issues of military service and risk on return to failed asylum seekers and continues to be regarded as the fullest treatment of these issues.

168. We also felt that what Ms Maguire said about living conditions in the IDP camps and squatter areas in Khartoum lost much of its force through failing to show that she had taken into account important parts of the 2006 UN Work Plan bearing on projects for IDPs in Khartoum. Even in its early draft this contained information about projects relating to IDPs. This Work Plan also made a distinction between funding for humanitarian projects and funding for development projects (in terms of minimal levels of funding required) which she did not show she appreciated. Again, given that her June 2006 report purported to be up-to-date, we were surprised that she appeared unaware of the briefing expressed in February 2006 by Mike McDonagh of OCHA (an organisation which has not previously been afraid to voice criticism of the Sudan regime's treatment of IDPs) to the effect that the GoS had 11,000 plots for IDPs and the statement of Bob Turner of UNMIS that the situation has improved fairly dramatically in the second half of 2005.

169. We also consider that her written reports showed a tendency to exaggerate. For example, in her report she stated (without qualification) that IDPs recently arrived in Khartoum have been excluded from receiving plots and that there was "no food assistance to IDPs in Khartoum", even though there was evidence strongly suggesting that this was not always the case. For example, her statement in her report (which she retracted in oral evidence) that Soba Aradi was "considered to be largely occupied by people from Darfur" was difficult to square with the only UN-related assessments made in 2005, showing that this was not so. We also found lacking in balance her comments about the one case the Aegis Trust was in touch with of a person outside Sudan [presently in Egypt] who said he had had serious problems after being returned from the UK as a failed asylum seeker. In our view, her comment that "[t]he circumstances of the failure to obtain refugee status in the UK is immaterial for this account" was seriously lacking in balance (we return to this point below at paragraph 205).

170. Before leaving the evidence of the three experts, however, we would like to clarify in respect of Mr Verney and Ms Maguire the following point. Although we have not felt able to accept their principal contentions about risk categories for those facing return to Khartoum, we have benefited significantly from their input into these appeals.

171. We turn now to consider the principal issues we have been asked to address in the four appeals before us.

**Risk to involuntary returnees from Sudan**

172. We start with the most general risk category which has been proposed to us in the course of submissions. It is that we should find that involuntary returnees to Sudan generally would be at risk. This was not of course the scope of the review of the situation in Sudan contemplated by the House of Lords in *Januzi* when remitting the three Sudan cases to the AIT. The arguments canvassed in that case were confined to the issue of risk to persons of non-Arab/black African Darfuri origin facing return to Khartoum. The original grounds of appeal in the four cases before us did not argue for such a general risk category. Nor, as we have seen, is such a broad risk category advanced by any of the established country reports or even by the latest UNHCR Position Paper. Nor is it one subscribed to by Mr Verney in his written and oral evidence to us. Nevertheless, it is one we have to address because it has been advanced by both Mr Nourain and Ms Maguire. We say that because both were asked point blank to clarify whether that was in fact their position and both confirmed that they considered that anyone forcibly returned from Sudan would be at risk.

173. We are not persuaded that there is such a general risk category for several interrelated reasons. If the general argument here advanced was right, of course, then even Sudanese nationals returning on up-to-date Sudanese passports who were members of the Sudanese government would be at risk. That itself defies common sense. It also contradicts the very considerable evidence from a number of sources and supported by both Mr Verney and Ms Maguire, that the current regime is extremely security-minded and highly sophisticated in its approach to the control of political opposition of every kind. But even considering that in practice this category would be confined to those who would be returning on other travel documents, we cannot see that the argument is made out. First of all, we can see no good reason why, for example, an involuntary returnee who was an Arab from northern Sudan or who was a member of the Sudanese government would be viewed adversely. It may be that certain individuals from one or both of these sub-categories may have specific characteristics which would put them at risk: e.g. if they were a member of the government who had turned "whistleblower" (and so had effectively become outspokenly anti-government), but here we are considering the category on its own.

174. Secondly, such a risk category assumes a general practice or pattern of adverse treatment of involuntary returnees on return, satisfactory evidence for which is lacking. It has been submitted that a practice or pattern of ill-treating involuntary returnees is not one which would necessarily be known about, especially given the secretive and repressive nature of the NSIS in its security and intelligence work. However, it is clear from the background evidence that, internal censorship notwithstanding, organisations within Sudan, both parliamentary and NGO-based, have shown ability to document and bring to light evidence of NSIS activities and abuses. The Sudan Organisation Against Torture (SOAT) reports on the Soba Aradi incidents of May 2005 are one such example. Whether SOAT is wholly based outside Sudan or not, it is clearly able to obtain and document a great deal of relevant information from inside Sudan. It is also clear that even outside international bodies, such as Amnesty International, have been able to obtain and make public evidence of human rights abuses: see for example its detailing of some 330 detentions of political opponents covering mid-2004- mid-2005 (at pp.160-170 of the bundle relating to appellant M). Even where investigations have not been able to give complete information, e.g. in relation to the regime's use of 'ghost houses', nevertheless the underlying practice has been identified and documented to some degree.

175. It may be that there is no international or national body or agency monitoring returns to Khartoum Airport, but by virtue of the protracted civil war in the South, the issue of risk on return to failed asylum seekers has long been seen as one which the international community has had to examine: see for example the 2001 Danish Fact-finding report. From the evidence of the Aegis Trust and Mr Verney and Ms Maguire, we also know that it is a topic which national and external NGOs in Khartoum have been asked to think about for some time now.

176. In such circumstances we would expect those contending that the situation has changed such that there is now a general risk on return, to evidence how and why.

177. We agree with Miss Giovannetti that if there was a practice, official or unofficial, of adverse treatment of involuntary returnees, it would have become known and would have been adequately documented. On Mr Verney's and Ms Maguire's own approach, such a pattern would have started some time in 2003, when the current regime decided to oppress the non-Arab Darfuri population, so there have been three years in which such a pattern would have become discernible.

178. Despite the scrutiny of national and international bodies, we note in this regard that there have only been two specific case examples cited in the evidence before us of returnees facing mistreatment. We shall deal with them below when considering non-Arab Darfuri returnees, but the general point we make here is this: if there was an established practice or pattern, we would have expected to see much more extensive evidence in the form of a significant number of adequately documented case examples.

179. Thirdly, as already touched on, the background evidence does not suggest that the current leadership saw fit to adopt such a practice even during the periods when the war in the South was at its most intense. The October 2001 CIPU Report, for example stated at paragraph 5.51**:**

> "In general, Sudanese nationals who have been abroad for some time can enter Sudan without any problems. Leaders and high ranking members of opposition political parties, however, may encounter problems with the security forces on return to Sudan. This, however, would not apply to members of the Umma Party as the leader and leading members of the Umma Party have returned to Sudan recently without any hindrance by the security forces. Members of the SPLM/A who have been abroad and would like to return to Sudan would be at risk of persecution. People returning to Sudan from countries having strained or hostile relations with Sudan may be questioned about their activities in the country or countries they had been in."

180. This account falls well short of identifying returnees generally as having been at risk on return at that time.

181. As we have seen, the 2001 Danish Report from around the same time on the fact-finding mission to Cairo, Khartoum and Nairobi contained a specific subsection on conditions for entry and exit. The report drew not just on evidence from the Sudanese government itself (the then Director of Passport and Immigration, General Administration, Khartoum). It also drew on evidence from officials of the Netherlands and German embassies and a well informed local source in Cairo. The furthest that the evidence in this report went was to identify that Sudanese citizens who had been away from the country for a couple of years would face questioning by the Sudanese police on their arrival, often regarding failure to pay tax. Questioning was not said to lead to any harm. Many of the same considerations said to arise now: for example, anger at

international condemnation of the Government of Sudan's handling of the armed conflict in question, were present then, albeit in respect of the South.

182. As regards the likely position of returnees in terms of documentation, the points we make at paragraphs 201-202 also apply here.

**Risk to failed asylum seekers**

183. The main thrust to the contention about involuntary returnees appears to be in fact that a somewhat more limited subcategory would be at risk, namely failed asylum seekers. It may be the two groupings should be seen as interrelated because the argument has been that if a person is returned on emergency travel documents that in itself would cause the Sudanese authorities to regard him or her as a person who had claimed asylum abroad (unsuccessfully). That argument is not uncontentious. We have no difficulty accepting that when dealing with involuntary returnees the Sudanese authorities would have in mind that the persons concerned might be failed asylum-seekers. The evidence is that they know who is who. But for similar reasons we think it likely that they will also know that some involuntary returnees might simply be deportees (deported, for example, for having committed criminal offences). We do not see, therefore, why they would always equate the two. But even supposing this argument to be correct, the question we have to decide is whether the Sudanese authorities would treat such persons adversely simply because they were failed asylum seekers.

184. In this regard the contention throughout has been that they would because of (i) the act of claiming asylum, which would be seen in itself as anti-government and an act of treason; and, (ii) the current regime being particularly sensitive about its nationals having given evidence to foreign, particularly Western, governments, about atrocities it has committed inside Sudan.

185. However, despite what is claimed to be the low numbers involved, we come back to the palpable lack of any satisfactory evidence that either returnees generally or failed asylum seekers generally are being mistreated on return for any reasons (see also paragraph 204).

186. As regards the likely position of failed asylum seekers in terms of documentation, what we say at paragraphs 201-202 also applies here.

**Risk to persons eligible for military service**

187. It is accepted that Sudan has a system of compulsory military service for those (mainly men) of fighting age. It has been argued, principally on the strength of Ms Maguire's expert evidence read together with the February 2006 UNHCR Position paper, that as a consequence all Sudanese nationals of eligible military age would be at risk on return by reason of (a) being punished as a draft evader or draft deserter; or (b) being subjected to additional and oppressive investigations upon return, in connection with the draft issue. Both these aspects need to be taken into account when analysing this proposed risk category.

188. Ms Maguire sets out her view of why there is such a risk category at page 20 of her report as follows:

> 'Conscription
> It will quickly be apparent to the officials at Khartoum airport if a person has been absent from Sudan for months or years. This would make the person immediately liable to suspicion as a draft evader.
>
> Sudan conscripts its young people into the armed forces (either the regular army or the ODF). There are no exemptions, and no facilities for conscientious objection. *If a person is found to have evaded his conscription, he will be liable – at best - to detention and interrogation and a sentence of imprisonment. If he is found to have left Sudan in order to evade conscription, it is not unlikely that he will be detained, interrogated and tortured.*
>
> As stated in the UNHCR paper (February 2006), a decree passed in 2003 authorises the detention of all people who left Sudan after the coup of 1989 and have been away for over 12 months. Detainees may be subjected to 'investigation' and 'necessary security measures'. UNHCR posits that young men of conscript age are particularly at risk of such detention, which is currently being applied selectively. *Given the hostility referred to herein towards the UK and the nature of the armed conflict in Darfur, it is, in my view, highly likely that a person from Darfur who has been out of Sudan for many months and has sought to stay out of Sudan in the UK would be subject to this detention and measures as described.* There is no monitoring or scrutiny of national or international organisations regarding the treatment of such detainees' (emphases added).

189. Ms Maguire's claim here is formulated so as to cover not just conscriptable returnees of (non-Arab) Darfuri origin but conscriptable returnees generally. Insofar as it addresses with the former, we deal with that in a moment. As regards the latter, we have already made the point in respect of Ms Maguire's evidence on this matter that it lacked balance: she herself acknowledged that as an expert she should have engaged with evidence appearing to take a less definite view, in particular the evidence as presented in the 2001 Danish Fact Finding Report. Albeit written before the Darfur crisis that report examined the experiences of conscripts during the war in the South and is still the most detailed treatment of the issue.

190. Such criticism aside, it still remains for us to evaluate whether on the basis of all the evidence now before us it can be said that persons of conscript age would be at risk. In our view we have not seen any evidence that persuades us to take a different view from that reached by the Tribunal in *BA (military service – no risk)* Sudan CG [2006] UKAIT 0006, a case heard in December 2005.

191. That case concluded that there was:

> "33. ..a clear preponderance of evidence to the effect that the general response of the Sudanese authorities to draft evaders when caught is not to imprison them, but to take steps instead to ensure they are seen to serve in the army, under supervision. Thus the 2001 Danish FFM report (which is the most detailed and multi-sourced study on this issue) states that:
>
> > "A well informed local source in Cairo said that deserters were not normally punished with imprisonment. [In 2001] if a deserter was caught he would be sent to the front under genuine threat of harassment and under close supervision. Otherwise the sentence for desertion was three years, but there had been few examples of deserters being sentenced to three years in prison."

34. The same report noted further that:

> "The same well informed [Cairo] source also explained that a person's ability to avoid military service in Sudan [in 2001] would depend very much on his and his family's connection to the regime, and the social and economic position for the family in Sudan."

35. The report also states that two other sources, Barach and Ngot, confirmed that deserters were not usually imprisoned, but were often sent directly to the front under close supervision. It stated that another source, Lehne, said that in practice the military authorities did not insist on sentences [for avoiding military service] (52). At p.53 it noted that a further source, El Mufti, was not aware of cases of deserters or draft evaders being punished for their actions. If the authorities caught such people they would simply demand that they returned to service.

> Accordingly, we conclude that the background evidence considered in the round does not demonstrate that draft evaders and deserters in general face a real risk of imprisonment in Sudan."

192. Since the December 2005 hearing of the above case, the only four items of evidence of any significance bearing on this issue are the February 2005 letter from the Foreign and Commonwealth Office confirming that there has been no change to the laws governing military service since 2001 (COIS April 2006 paragraph 5.114), the December 2005 ACCORD COI Budapest report, the February 2006 UNHCR Position paper, and an 8 March 2006 UNHCR statement that "[s]ome three years ago the government stopped rounding up young men in the cities to conscript them into National Service. Students are now required to undergo 45 days to 2 months military training prior to entering University and then serve one year National Service upon graduation. National service can be in the army or in governmental institutions depending on professions and state of health" (COIS April 2006 5.130).

193. As regards the December 2005 ACCORD report, we consider it lends further support to the findings made in *BA*: Dr Schodder notes that the practice of forced recruitment has stopped and states that draft evaders, instead of being punished, are often coerced into certain contingents of active service. Dr Alizadeh adds: "The law foresees the death penalty for desertion, but we don't know any case where a person was executed, also due to the Sudanese culture."

194. We turn next to what is said on this topic in the latest UNHCR Position paper. We attach significant weight to the February 2006 Position Paper, which has clearly not been written in haste. However, in contrast to some other parts of this paper which are sourced, e.g. to UN reports, this part is unsourced and certainly does not refer to anything not considered by the Tribunal in *BA*. Whilst we can accept that young men of fighting age would face investigation and interrogation, the paper fails to identify evidence of a practice or pattern of mistreatment of such persons, whether one considers such young men situated inside Sudan or returning from abroad. Significantly, given the specific focus given to this issue in the 2001 Danish Fact Finding report and in the December 2005 ACCORD seminar co-sponsored by UNHCR and involving experts on Sudan working for UNHCR, we would have expected that any change of position would be supported by a comparably balanced survey, taking into account Sudanese government evidence and evidence from Western governments, as well as evidence from well-informed academic and NGO sources.

**Risk to returnees of Darfuri origin**

195. We formulate this mooted risk category in this way because of the emphasis placed in the February 2006 UNHCR Position paper on forced returns that there are risks for certain categories of Sudanese "regardless of their place of origin, including Darfurians". Doubtless one important consideration in the UNHCR's mind here is the existence of a very significant number of Darfuris who have resided in Khartoum for a considerable period and so may not be immediately classifiable as 'from Darfur'. Possibly another is that some Arabs have sided with the rebels in Darfur. (Possibly too the author bore in mind Dr Schodder`s point, as expressed in the December 2005 ACCORD seminar report, that, insofar as the conflict there is one between nomads and sedentary farmers, the farmers are not necessarily Africans and the nomads not necessarily Arabs.)

196. Nevertheless, in practice we think that what is primarily meant by returnees of Dafuri origin is non-Arab/black African Darfuris, i.e. persons from the black African tribes who dwell in Darfur, in particular the Fur, Zaghawa and Masseleit. (Indeed the UNHCR paper in the course of its recommendations draws an important distinction between non-Arab and Arab Darfuris when it comes to assessing risk under the Refugee Convention.) When the three expert reports refer to Darfuris (or Darfurians), this in most contexts is plainly what they mean.

197. We must take very seriously what a UNHCR Position paper says about risk, and it is important to note that, in contrast to UNHCR Position papers on some other countries, it does not merely identify persons it considers in need of international protection by reference to a broad reading of that term (going beyond protection under either the Refugee Convention or ECHR norms). As we can see, the first bullet point of its recommendations makes specific reference to the need for States to provide international protection to Sudanese asylum-seekers from Darfur of "non-Arab" ethnic background by recognising them *under the 1951 Refugee Convention*. Nevertheless, it seems to us that this paper's risk assessment is predicated on a particular UNHCR reading of the internal relocation alternative regarding state complicity which in our view is at odds with that adopted in *Januzi* and thus with United Kingdom law and at odds therefore with an interpretation of the 1951 Convention that is binding on us. At paragraph 8 of the paper, in support of its view that the threats to asylum-seekers from Darfur anywhere in Sudan are so widespread that it cannot be said there is a viable internal flight alternative anywhere in Sudan, it is stated:

> "Furthermore, where internal displacement is a result of "ethnic cleansing" policies, denying refugee status on the basis of the internal flight or relocation concept could be interpreted as condoning the resulting situation on the ground and therefore raises additional concerns".

198. The footnote to this sentence is to the July 2003 UNHCR Guidelines on Internal Protection: "Internal Flight Alternative" within the Context of Article 1A (2) of the 1951 Convention which were analysed in *Januzi*. Those Guidelines considered that in the case of persecution in the home area inflicted by state agents, there was a presumption that internal flight would not be available to victims of that persecution elsewhere in the country. At paragraph 21 of *Januzi* Lord Bingham rejected that approach (as had the Court of Appeal in *Hamid* [2005] EWCA Civ 1219) and identified instead a factual approach which considered where on a spectrum of cases a particular case fell. We do not think, therefore, that the UNHCR approach to the internal relocation test

specifically adopted in this February 2006 Position paper on Sudan and that adopted in the UK case law are in all respects the same.

199. Furthermore, we have some concerns about the paper's lack of sources for certain key parts of its analysis of this issue. In relation to the situation in Darfur and Eastern Chad, it makes copious reference to various (UN) sources, including very up to date sources. But when it comes to the situation of IDPs in Khartoum, only one source is given and that dates from 2004. Another factor making it more difficult to overlook this comparative lack of sourcing (when compared with the report's treatment of the situation in Darfur) is our knowledge that less than two months before, at the UNHCR-sponsored ACCORD seminar in Budapest, a Senior Protection Officer of UNHCR in Khartoum said nothing to indicate that asylum-seekers from Darfur would be at risk. (If the June 2006 report from the American University of Cairo is accurate, then it would also seem that even as late as June 2006, UNHCR there, despite reviving Refugee Status Determination on a limited basis for Sudanese asylum-seekers, is not recorded as having accepted that asylum-seekers from Darfur would qualify as refugees by virtue of return to Khartoum being unsafe. Dr Harrell-Bond's letter does not resolve the matter since, on the report`s analysis, the yellow card is issued as a form of temporary protection and does not in any way imply acceptance that a person is a refugee).

200. We turn then to consider the matter for ourselves on the basis of the large body of evidence before us.

201. As regards Arab Darfuris, it is not immediately obvious to us why they would be in any different position from someone who was an involuntary returnee from anywhere else, except that their travel document or passport would flag up their place of origin. The authorities at Khartoum airport appear able quickly to check or elicit not only which part of Sudan a returnee is from but what his or her ethnic origin is. Whilst it may be that some Arabs have sided with the rebels in Darfur, the authorities in Khartoum can be taken to know that the great majority of Arabs have sided with the government. Against that background, we struggle to see how the distinction (between involuntarily returned Arab Darfuris and other Sudanese involuntary returnees) would be important, on its own, when it came to risk. However, we shall continue to frame the risk category in this broad way, so as to ensure all genuine possibilities are covered.

202. The argument for identifying returnees of Darfuri origin as being at risk starts with the UK part of the process of returning Sudanese nationals, i.e. by examining what happens at the Sudanese Embassy in London. We accept the evidence of Mr Verney and Ms Maguire that very few Darfuri returnees will have their own passport or one which is current. That is because all the evidence about the circumstances in which such people have made their way to the UK and other countries indicates that they left without documents, by ship through Port Sudan or through Chad, Libya and other routes and passed controls by using false documents secured for them by agents. In this connection, the evidence of both Mr Verney and Ms Maguire is that the Sudanese Embassy in London shares information with the security and intelligence services in Sudan and indeed maintains a specified NSIS desk at the Embassy. On the strength of this evidence we believe it reasonable to infer that persons who are of Darfuri origin may be identified at this stage of obtaining travel documents and that Sudanese officials at the airport in Khartoum will have been alerted to their possible return in advance. Of course, it is possible that agreement to issue a person with a travel

document upon application in London itself operates as a type of clearance. But we have no evidence about that and, because we cannot discount the real possibility that the Sudanese authorities might want to facilitate the return of people they have an adverse interest in, we proceed on the basis that the obtaining of a travel document still leaves the individual in the position of having to be security-cleared or screened on return, albeit by reference to information that may have been passed to Khartoum from the London Embassy.

203. Like the Secretary of State, we have no difficulty in accepting that on return failed asylum seekers generally and persons of Darfur origin will face screening. We also have no difficulty in accepting that - either immediately or during the course of that screening - it will become obvious what their ethnic origin is and where they are from (both originally and when last in Sudan). Such identification is apparently made without difficulty on the basis of a person's combination of physical appearance, language and dialect and personal habits. But such evidence only takes us so far.

204. It is a principal contention of the appellants that on return they will face not only interrogation based on their known identity and background as non-Arab/black African Darfuris, but also mistreatment. According to Mr Verney and Ms Maguire, mistreatment will arise because the Sudanese authorities will start with a presumption that such returnees are allied with the rebels. We do not find this contention to be borne out by the evidence. Here we come back again to the points dealt with earlier in relation to involuntary returnees and/or failed asylum seekers. If there was a practice or pattern of non-Arab/black African Darfuris being mistreated, we believe that there would by now be a significant number of adequately documented cases. It is now three years since the Darfur conflict has erupted and over that period a vast number of people have faced internal or external displacement. It is true that the UK removal figures at least do not suggest that there have been very many removals of any kind from the UK (voluntarily or involuntarily) to Sudan. We do not even know how many, if any, of the forty Sudanese nationals recorded as being returned by the UK in a fifteen month period spanning 2004/2005 were of Darfuri origin. Possibly most would have been from the South. However, we have not heard of any country suspending removals to Sudan save for Egypt (for a period during 2004-2005). So we see no evidential basis for finding that removals back to Sudan of Sudanese nationals by other countries over the past three years have excluded persons of non-Arab Darfuri origin.

205. In our view this throws into sharp relief the significance of the following fact. Over the past three years there is virtually no specific evidence of such persons facing difficulties. Despite the extensive inquiries by Mr Verney and Ms Maguire of relevantly placed individuals, they have only been able to point to two specific cases. We have already made mention of the first: he being the individual mentioned in the 2005 Aegis Trust report whose evidence was later found not credible by an immigration judge. The second is referred to in Ms Maguire`s report under the sub-heading, "Evidence of detention on arrival" at page 21 and is as follows:

> "The Aegis Trust is in contact with a person now resident outside Sudan and the UK who was returned as a failed asylum seeker from Darfur [her footnote here states `[t]he circumstances of the failure to obtain refugee status in the UK is immaterial for this account`]. This person reports that he was detained at Khartoum International Airport, questioned at length on his activities in the UK and his connections to the rebels in Darfur and beaten when he could not give `satisfactory` information. He was eventually released and instructed to return three times a week with information about rebels. He did not have this information and having returned a couple of times only to be further mistreated, made arrangements with a relative to leave Sudan again…".

206. As indicated earlier, we cannot agree with Ms Maguire that the circumstances of this man's failure to obtain refugee status in the UK are "immaterial" to a report purporting to identify "[e]vidence of detention on arrival". The fact that he was returned as a failed asylum seeker indicates that his own claim for asylum was rejected. We are not told on what basis it was rejected, but if, for example, he had been found by an adjudicator or an immigration judge to be lacking in credibility, that would be a highly material piece of information about his story. In any event, this account is at best untested evidence. It is also an account which on its face would normally receive further scrutiny: why, one would want to ask for example, would he have reported back to the Khartoum authorities (rather than fleeing) even after they had mistreated him when he made his first report back to them? We have not even had a statement from this man which might have enabled the respondent to make inquiries as to the extent to which his account tallied with what he had said to the UK authorities when here.

207. Still on the subject of specific case examples, we reiterate here our surprise that despite the Aegis Trust's` "Lives In Our Hands" 2005 report having been regarded as reliable evidence by a number of bodies and individuals, including Mr Verney and Ms Maguire, for the contention that returnees of Darfuri origin face risk on return, neither of the two claimants out of the 26 individuals covered in the report who asserted that they had been sent back to Khartoum have been produced as witnesses. One of these is a person whose story was roundly disbelieved by the Immigration Judge who heard his appeal in December 2005. The other returnee, according to the interview as recorded in the report, was not subjected to ill-treatment in Khartoum. Instead, he reported receiving a beating whilst apparently still in the United Kingdom from those who were trying to get him onto the plane (his story was that the Khartoum authorities had sent him back to the UK). Apart from these two, the other individuals featured in the report were, like the current appellants, people claiming to be from Darfur who did not want to be sent to Khartoum.

208. In striking contrast to the reports of Mr Verney and Ms Maguire we have the evidence given by the two Sudan experts in the December 2005 ACCORD report. We note that neither Mr Verney nor Ms Maguire disputed the credentials of the two experts who gave presentations to this seminar and we think that anyone reading their presentations in full would at least recognise their close grasp of current Sudanese affairs. Both Mr Verney and Ms Maguire did, however, seek to argue that the section of their presentations dealing with risk on return were ill-founded. We cannot agree. It is true that neither specifically identified the category of returnees of Darfuri origin, but their report shows close appreciation of the Darfur crisis and the huge extent of the displacements it has caused. Furthermore, both plainly understood that in the relevant sections they were looking at entry generally and at risks to returnees generally/ failed asylum seekers generally, and there is simply no reason to suppose that somehow they omitted persons of Darfuri origin from consideration. We wholly fail to understand the comment made by Ms Maguire that it was "not their job": for UNHCR protection officers the assessment of risk on return is one of their principal duties. In such circumstances we think their evidence is weighty and, in the absence of any evidence of developments since December 2005 casting a significantly different light, we see no reason to adopt a different view.

209. The contention on behalf of the appellants is that persons of Darfuri origin –or at least of non-Arab Darfuri origin- would face on return to Khartoum airport a real risk

of serious harm or treatment contrary to Article 3. Just as with the argument raised in relation to involuntary returnees generally and failed asylum seekers generally, this contention urges us to avoid rejecting it simply because we may think there is no substantiated evidence of the existence of any practice or pattern of mistreatment of persons of non-Arab Darfuri origin in Khartoum airport. This contention states that it is the type of practice that would be kept hidden and so it is justifiable to infer its existence from surrounding circumstances. However, in our view this contention does not withstand scrutiny. As already explained when dealing with involuntary returnees/failed asylum-seekers, if such a practice or pattern has been going on, it is one which would have come to light and have been documented. We reject in particular the arguments intended to establish that the fate of returnees said to have been detained or "disappeared" at the (airport) point of return would not be known about.

210. Such arguments ask us to assume that returnees of non-Arab Darfuri origin said to have met with mistreatment would not have taken steps before removal to Khartoum to inform family and/or friends in the United Kingdom or other country from which they were returned, when they were due to be removed and when they were due to arrive in Khartoum. It asks us to assume that if an involuntary returnee is detained on arrival or otherwise "disappears", that family or friends in the United Kingdom or other country of departure do not tell NGO's or others that contact was lost after the due date of arrival. It also asks us to assume that there are never contacts in Khartoum who have been asked to check whether such persons have arrived safely and who have never alerted family and/or friends in the United Kingdom etc. if they have not.

211. Such a series of assumptions is not to be equated with evidence. On the contrary, it is a piece of speculation that runs contrary to common sense. Ms Maguire herself expressly agreed with us that if she was a person of non-Arab Darfuri origin she would seek to take steps to ensure those close to her were able to check that she had arrived and passed through controls safely. We had evidence from several quarters about anxieties felt within the non-Arab Darfuri community in the United Kingdom about return: the 2005 Aegis Trust report is a prime example. In our view the existence of such anxieties would increase such motivation.

212. The assumptions therefore must be asking us to accept that previous returnees (not just from this country) were without families and friends in a non-Arab Darfuri diaspora where, according to Ms Maguire, "everyone knows everyone". We see no evidential basis for such an assumption.

213. There is no evidence of any barrier to communication between Khartoum and the United Kingdom. Whether mobile telephones are available, or commonly work, is beside the point. We have no evidence to show that other telephone links and, indeed, postal links do not exist or are too exiguous to be relied upon. Indeed, Mr Verney's work involves him keeping in contact with people in Sudan.

214. We think there is force in Miss Giovannetti's closing submission that appellants anxious about return could have contacted the Sudan Organisation Against Torture or some other Sudanese NGO with details of their travel plans so that outside observers were primed for their return to Sudan.

215. Ms Maguire said in her evidence on this issue that even if such contact would have been made, account had to be taken of the 'fear factor', the anxiety resident non-Arab

Darfuris might have about alerting human rights bodies or the authorities themselves about anyone who failed to make it through the airport. However, we have not seen anything to suggest that this has been a significant factor in relation to persons arrested and detained in the May 2005 Soba Aradi incidents or in other reported incidents involving the authorities relating either to IDPs or other categories of persons. We do not see that anxiety about the attitude of the Sudanese authorities would in fact prevent enquiries from being made directly or indirectly.

216. We must also address the alternative argument that mistreatment on return has not been going on up to now (because of the small number of persons of non-Arab Darfuri origin being involuntarily returned by countries inside and outside Europe), but that it would start as soon as any returns were made.

217. In our view, even if the situation were that there have been virtually no returns of persons of Darfuri origin, the evidence from the past, which must be accorded weight, does not support a conclusion that such persons would meet with risk on return solely because they were of Darfuri –or non-Arab Darfuri - origin. We think it highly significant that no such practice or pattern existed in respect of persons from southern Sudan during the height of the North/South conflict. We recall what was said on this subject in the 2001 Danish Fact Finding Report.

218. It is argued that one reason why the authorities in Khartoum would have a particular reason to mistreat a returnee of non-Arab Darfuri origin is that they believe that persons who have fled abroad may well have given evidence to bodies abroad about government atrocities, which could assist the International Criminal Court to bring prosecutions against key figures in the current government. In our view this suggestion substitutes the particular for the general. We have no doubt, given the evidence charting the strong international condemnation of the government's handling of the armed conflict in Darfur and the naming of certain members of the Sudanese ruling elite as persons wanted for crimes against humanity, that there would be a specific interest in any individual who had in fact given evidence to bodies or agencies in witness of atrocities. We can easily accept that this is a consideration which the authorities might bear in mind in the course of their interrogation of non-Arab Darfuri returnees at the airport or on any subsequent occasion. But we cannot accept that this would operate as a risk factor for all non-Arab Darfuri returnees. If there was such an official concern about non-Arab Darfuri witnesses to atrocities in Darfur, we would expect there to be evidence showing that persons already in Khartoum who have fled directly from Darfur have been arrested or detained for this reason. In this respect, the point must be firmly kept in mind that the Sudanese authorities will also be aware that the involuntary returnee will, by definition, have failed in any claim that he may have brought in a third country to be in need of international protection (see also paragraphs 301-302).

219. It is also submitted on behalf of the appellants that persons of non-Arab Darfuri origin who are relatively young men of military service age would face a risk on return by reason of being perceived as having already, or being likely in the future, to resist the Janjaweed by military means. However, there is, as the Tribunal has already indicated, no evidence to show that non-Arab Darfuris of military age are being targeted in Khartoum. If the Sudanese authorities are not targeting such young men already in and around the capital, the Tribunal sees no reason why they would adopt a different stance in respect of those returning from abroad. We note also that there was no

evidence presented to us of any non-Arab Darfuris who had fled Darfur seeking to go back to join the rebels.

220. It is further argued that there is evidence of the authorities in Khartoum targeting non-Arab Darfuris. We shall address that argument below and explain why we reject it.

**Darfuris in Khartoum proper**

221. It has been argued that even if persons of non-Arab Darfuri origin were to pass through airport controls without any significant difficulty, they would face adverse treatment in Khartoum. The first thing to note is that even Mr Verney and Ms Maguire have not suggested that the Sudanese government has a policy of compelling returnees (including non-Arab Darfuris) to live in IDP camps.

222. Some of the points made above also apply when considering the Khartoum proper scenario, but separate examination is needed.

223. One aspect of this argument, which we deal with first, is that the NSIS would place returnees under surveillance and would monitor their movements. It makes sense to us that persons of Darfuri origin, like any other nationals of Sudan coming into Khartoum, will face further official attention. We accept the evidence that it is very likely that such persons will soon become known to the authorities. Even if the authorities did not come to know directly through their own observations, there exists a large informer network, who, we are prepared to accept, would see it as their job to alert the authorities to the arrival of any person of non-Arab Darfuri origin. However, it is important here not to confuse this evidence of government attention with evidence of *adverse* government attention. In respect of the latter we have no specific substantiated evidence and are left instead with what the experts say they have been told, typified by Mr Verney`s statement at paragraph 88 of his report: "[s]ome individuals have managed to avoid detention at the airport, only to be picked up by the security police shortly afterwards, Sudanese non-government organisation officials have told me". In the circumstances we do not think that evidence of this type is good enough to support a claim of real risk to an individual returnee.

224. We would emphasise that our rejection of Mr Verney`s and Ms Maguire's contentions about risk to persons of Darfuri origin in Khartoum must not be read as suggesting that they are wrong in stating that, as a general proposition, non-Arab Darfuris in Khartoum, particularly those who have only relatively recently arrived from Darfur, face increased surveillance. We accept too that a non-Arab Darfuri who, whether as a result of such surveillance or otherwise, becomes of serious adverse attention to the authorities, may well be at risk of detention and ill-treatment, whether in a "ghost house" or otherwise. But the evidence is far from showing that there is a real risk to any non-Arab Darfuri, including any recently arrived, of being subjected to such ill-treatment.

225. It is not entirely clear whether or, if so, at what point a returnee of Darfuri origin (or indeed any other returnee holding a travel document) would be able to obtain an identity card. According to Ms Maguire's evidence, there are offices in Khartoum itself which issue identity cards. We have nothing to show that identity card documentation is denied to Sudanese nationals able to produce a valid travel document issued by a

Sudanese Embassy and who have been able, following screening, to pass through Khartoum airport. But equally we have no evidence to show that such documentation is granted. In the light of the complete absence of evidence, we shall assume that a returnee cannot obtain an identity card simply on the strength of holding a valid travel document.

226. At the heart of the appellants' submissions in the cases before us is the contention that, in general, returnees of Darfuri origin face having to live in the worst parts of Khartoum, in the IDP camps or squatter areas as undocumented IDPs. However, even assuming such persons would not be able to obtain identity cards, it does not seem to us that this contention is borne out by the evidence. We entirely accept that a significant number of Darfuris presently in Khartoum, being almost all persons who have fled in haste from Darfur and gone straight to Khartoum, may be destitute and may face no choice but to go to areas in Khartoum where conditions are worst. But in our view one cannot equate the situation of failed Darfuri asylum seekers in the UK with theirs.

227. There is an important point here in our view concerning the burden of proof as regards their personal resources. The evidence does not show that any returnee from the UK would, regardless of circumstances, be required by the authorities to live only in a camp or squatter area. The likelihood of the returnee having to do so is accordingly part of the individual factual matrix to be established by the appellant in seeking to prove his case to the "lower" standard. A returnee who had personal resources to enable the trip to be made to the United Kingdom may very well have such resources to use for his support upon return. A person whose credibility has been so damaged as not to be a witness of truth will therefore be in difficulty is showing that he is reasonably likely to be devoid of funds or other help on return.

228. However, even if returnees of Darfuri origin have to be considered on the basis that they would be left with no alternative but to live in IDP camps or squatter settlements, we still do not consider that in the general run of cases the conditions they would face give rise to either persecutory harm, ill treatment contrary to Article 3 or to undue hardship in the context of a claim for international protection under the Refugee Convention. We now turn to explain why.

**Conditions for IDPs in Khartoum State**

229. We remind ourselves here that both Mr Verney and Ms Maguire regarded the conditions in the unofficial or semi-official squatter areas as better than those in the IDP camps. The overall evidence on this issue is not clear-cut, but we are prepared to approach matters on that basis. Both experts also agreed that generally returnees of Darfuri origin would do all they could to avoid *both* the squatter areas and the IDP camps but if they failed in this, they would first enter the squatter areas (indeed it was Ms Maguire's evidence that the majority of Darfuris in Khartoum were in the squatter areas). Nevertheless, for the purposes of our assessment of living conditions, we shall assume that such persons may have to live in either a squatter area or an IDP camp.

230. When considering the living conditions in the squatter areas and in the IDP camps, we have, following *Januzi*, always to bear in mind and examine two distinct matters.

One relates to safety. The other relates the extent to which conditions are unduly harsh or unreasonable.

231. So far as safety is concerned, it has been submitted that returnees of non-Arab Darfuri origin would be at risk of being singled out or targeted by the police and security forces. Opinions from Mr Verney and Ms Maguire were to this effect. However, their opinions on this issue were not in our view borne out by the evidence. To our mind the evidence is that since the start of the Darfur crisis the authorities in Sudan have targeted only certain categories of non-Arab Darfuris (e.g. activists). The evidence does not suggest that non-Arab Darfuris generally face round-ups or targeting. When asked to identify evidence of such targeting, the only thing Ms Maguire was able to point to was what she described as the "disproportionate" number of Darfuris arrested in the course of the May 2005 incidents at Soba Aradi. However, she herself accepted that her figures of the number of Darfuris in the Soba Aradi camp were very different from those which had been documented by the only recent surveys done and we have not seen any sources which give a breakdown of area of origin for *all* arrestees or detainees. Even accepting, however, that the number of Darfuris arrested/detained in these incidents was disproportionate on this occasion, the evidence relating to other incidents does not suggest any pattern to this.

232. That neither expert was able to point us to any satisfactory evidence of a practice or pattern of arrests or detentions of non-Arab Darfuris is made more striking in our view by the fact that both spoke of having asked a number of agencies and contacts in Khartoum about this. Whilst the responses were to say (in some cases at least) that there was such a pattern, they did not identify any evidence in support. This state of affairs is in marked contrast to the very detailed evidence SOAT, Amnesty International and other groups have been able to assemble relating to arrests and detentions by the police and security forces in Khartoum generally.

**Life in squatter areas and IDP camps**

233. We have before us a great deal of evidence relating to the conditions in the squatter areas and IDP camps in Khartoum. In assessing it we have to bear in mind our earlier findings at paragraphs 161-170 regarding the evidence of Mr Verney and Ms Maguire, which we did not find as helpful as we hoped because neither showed that they had always looked at evidence going the other way and had avoided exaggerated conclusions.

234. Nevertheless what both experts highlighted to us was that conditions in IDP camps in Khartoum have been the subject of specific attention by UN bodies, including by the UN Secretary General's Representative on the Human Rights of Internationally Displaced Persons, Professor Walter Kalin, in a 2006 report. This report deals with the issue of forced relocations and living conditions for IDPs in Khartoum State. We also have from Professor Kalin a supplement commissioned by the Aegis Trust. We asked Ms Maguire about this and other reports by international bodies familiar with international human rights law norms, in particular with the absolute prohibition on torture or inhuman or degrading treatment or punishment (familiar in Europe in the form of Article 3 of the European Convention on Human Rights). She accepted that neither in Professor Kalin's report nor in his supplement nor in any other international report has there been a finding that conditions in the Khartoum IDP squatter areas and

camps are sufficiently serious to cross the high threshold of harm required for there to be a breach of this basic non-derogable human right. In this regard we note that these reports do *not* bear out Mr Verney's apparent assessment at paragraph 91 of his report that the conditions facing Darfuris in Khartoum were 'inhuman and degrading'.

235. The lack of any UN-related finding that conditions in the camps and/or squatter areas are generally at the level of the international equivalent to what we in Europe refer to as the Article 3 ECHR standard, is an important reference point for us in having to decide the issues in this case, since it is clear from *Januzi* that what we have to consider is whether the conditions in a place of relocation fall below the most basic human rights, in particular non-derogable human rights (see Lord Hope, *Januzi,* paragraph 54).

236. We recall at this point that Mr Verney`s and Ms Maguire's evidence was that in general terms, albeit the living conditions in Khartoum IDP camps compared unfavourably with those in Darfur currently, conditions in the squatters areas and IDP camps in Khartoum were no worse than the living conditions found in other slum settlements elsewhere in Sudan or much of the rest of African or other third world countries.

237. However, both argued that it was false to draw a comparison based solely on living conditions in Khartoum since non-Arab Darfuri IDPs there faced a combination of difficulties, not all of which related to living conditions. Living conditions in the Khartoum IDP camps could not simply, they said, be considered in terms of basic standards, for example, in terms of access to drinking water and sanitation.

238. One of the additional difficulties identified by Ms Maguire was that Darfuris in Khartoum faced specific psychological problems arising out of the fact that many were victims of atrocities/gross violations of international humanitarian law. However, as Miss Giovannetti pointed out, correctly in our view, this was an aspect of the experience of many of the IDPs in Khartoum from the south (who had fled from the north/south civil war) and also of many other IDPs in camps and squatter areas elsewhere in Sudan (and in the rest of Africa). Furthermore, many people living in Sudan have experienced armed conflict of one sort or another over the past 25 years. In any event we do not think that difficulties of this kind suffice to make unduly harsh places of safety to which victims of armed conflict flee.

239. The other distinguishing feature or additional difficulty in Ms Maguire`s view was that returnee non-Arab Darfuris were ill-equipped for city dwelling slum life, having come in the main from rural 'sedentary' backgrounds as farmers. However, once again that is a feature shared by many other non-Darfuri IDPs in Khartoum and many other slum dwellers elsewhere in Sudan and other parts of the world.

240. For Mr Verney the set of circumstances obtaining for people in these camps had to be looked at in the round. Account needed to be taken of not just access to basic facilities but also the ethnic and political dimensions, the government's strategy in respect of forcible relocations, the close attention of the police and security forces to the presence of persons of Darfuri origin, their concerns that persons returning from abroad may have given evidence to bodies in touch with the International Criminal Court and the implications of the recent departures from Khartoum of southerners returning to the South. This is not intended as a full list of all the factors he mentioned.

But it is enough to indicate that he did not think there could be any straightforward comparison with conditions facing IDPs in IDP camps and squatter areas in other parts of Sudan or Africa or other developing countries.

241. So far as the ethnic dimension is concerned, we accept that the conflict in Darfur has featured deliberate targeting of civilians and that the Sudanese government bears sometimes direct, sometimes indirect, responsibility for the atrocities. We accept that even Darfuris who came to Khartoum in the 1980s at the time of the drought have never been accepted as first-class Sudanese citizens by their fellow countrymen, although it has to be said that most Darfuris, being Muslims, at least do not face the religious animosity directed towards the largely Christian IDPs from the South. We are also prepared to accept that the attitudes of the current government (whose members are largely from northern tribes) contain an element of entrenched racism. However, we have to examine what type of treatment Darfuris actually face in Khartoum, from the authorities there as well as from the local populace.

242. We accept, as already noted, that certain categories of non-Arab Darfuris in Khartoum have been targeted in the past, and would face targeting by the Sudanese authorities in the future. However, if Mr Verney and others are right, and the current government regard black non-Arab Darfuris *per se* as 'the enemy', we would expect to see a very different pattern of events taking place in Khartoum than we have seen and are seeing. We would expect to see the types of operations carried out against Darfuri civilians in Darfur being carried out against Darfuri IDPs in Khartoum. What we have seen suggests rather that it is only in relation to those black non-Arab Darfuris who are connected with the rebel movements in a specific way or have other specific characteristics (e.g. being an activist), that there is any targeting in Khartoum.

243. In our view the preponderance of the evidence points to the authorities in Khartoum largely confining their adverse interest to persons connected with the rebel movement or with oppositionist groups or movements, not because they are persons of non-Arab Darfur origin.

244. As to the contention that there is a deliberate government strategy of forced relocations, we have already explained why we have reservations about some of the language used by Mr Verney and Ms Maguire when describing these: e.g. Mr Verney`s reference to the authorities trying to keep Darfuri IDPs constantly "on the run". We accept that there is considerable evidence that forced relocations abusive of human rights standards have been made from time to time, sometimes unaccompanied by notice and sometimes leading to clashes. It may well be that there is a government strategy of making life difficult for IDPs and also of relocating IDPs to camps away from the capital. Clearly too, extreme caution has to be exercised when evaluating promises by the Khartoum authorities to adhere to the Guiding Principles on Internally Displaced Persons and give proper notice of relocation intentions. However, we do not consider that the evidence in this regard establishes that Darfuri – or non-Arab Darfuri - IDPs have been singled out for any special treatment. Nor do we consider that merely by virtue of being subject from time to time to relocations, sometimes involving force and human rights violations, means that IDPs in Khartoum State face a real risk of serious harm or of ill-treatment contrary to Article 3 or of unduly harsh conditions.

245. Another plank of the submissions reliant on Mr Verney's (and Ms Maguire's) written and oral evidence was that there is starting to be a further worsening of the

situation for Darfuri IDPs in Khartoum as a result of the significant level of departures of southern IDPs back to the South which observers are beginning to see. However, even leaving aside the December 2005 ACCORD seminar experts' doubts that such returns will ever happen on a large-scale basis, it is not immediately obvious to us why such departures should result in increased vulnerability for remaining non-Arab Darfuri IDPs. As for "safety in numbers", the numbers would still be very large. One might say that it is equally arguable there would be more plots to go around the remaining IDPs, fewer people competing for cheap labour work and less pressure on scarce resources such as water, sanitation and shelters. This is a topic requiring evidence to be looked at with some care. But, leaving aside any doubts of this kind, it remains that neither Mr Verney nor Ms Maguire has been able to point to any specific evidence in support of this "increased vulnerability" thesis.

**Medical facilities**

246. Earlier when outlining the expert and background evidence, we said we would deal with the evidence relating to medical facilities when examining its specific bearing on the issue of internal relocation. That is what we turn next to do.

247. We have to keep to the fore here the fact that the February 2006 UNHCR Position paper stated at paragraph 7 that in Khartoum, "[e]specially hard-hit are undocumented IDPs, female-headed households and those who arrived in Khartoum after 1996" and includes in its closing recommendations that "[d]ue attention is paid to the particular protection needs of especially vulnerable asylum-seekers from Darfur, such as female heads of households, *medical cases* or victims of past persecution" (emphasis added) .

248. So far as the background evidence is concerned, this reveals the following picture. Medical services in Sudan are covered at paragraphs 5.145 to 5.164 of the respondent's COI Report on Sudan (April 2006). From these, we learn that average life expectancy at birth for a Sudanese person was 56 years in 2003, that varying ecological conditions in the country, poor hygiene and widespread inadequacies of diet resulted in high incidence of fatal infectious disease and that, according to the Foreign and Commonwealth Office in August 2005, medical facilities in Sudan are not comparable to western standards. A number of observers commented on regional disparities in health provision. According to the World Health Organisation in April 2005, the infrastructure network and workforce in the North of Sudan were quite developed in absolute numbers, although up to a third of health facilities were reported not to be fully functional. Services and coverage were worse in the South, where there was an absence of infrastructure, poor transport and low technical and managerial capacity of local authorities. Public health financing was low and skewed towards hospital services and urban areas. Encyclopaedia Britannica ("The Sudan: Administration and Social Conditions" (2004)) considers that most of the country's small number of physicians were concentrated in the urban areas of the North, as were the major hospitals. Most trained nurses and midwives also worked in the North. Reliefweb extracted portions from the World Health Organisation's April 2004 Report "Health Services in Darfur States", which stated that there was an acute shortage in the number of health facilities, health personnel and support of services in the three states of Darfur, as compared to other northern states.

249. So far as HIV-AIDS is concerned, the COIS April 2006 report notes at paragraphs 5.155-6 that a joint United Nations Programme reported in June 2004 that Sudan was

by far the worst affected country in the region [North Africa and the Middle East]. The epidemic was most severe in the southern part of the country. The Foreign and Commonwealth Office considered in April 2004 that no anti-retroviral therapy was available in Sudan through the state medical scheme but in July 2004 it advised that a Dr. Hamdoun, an importer of antiretroviral drugs in Khartoum, had no problem importing such drugs and that supply more than met demand. So far as mental health care is concerned, the World Health Organisation reported in 2005 that most major initiatives of the mental healthcare system in Sudan were formulated in the mid-late 1990s. There were only 0.2 psychiatric beds per 10,000 population, 0.09 psychiatrists and 0.17 psychologists per 100,000 population in 2005. Many mental health professionals including most psychiatrists were said to have left for other countries. It was also recorded that since mental health was not integrated in primary care level, most of the therapeutic drugs were not available at that level. Although the WHO considered that special attention had been given to migrants, the elderly, refugees, the displaced and homeless and children, the UNHCR stated in March 2006 that, contrary to the WHO report, there were no special programmes in Sudan for the mental health of refugees.

250. Mr Verney`s report contained a subsection dealing with medical facilities in Khartoum. He pointed out that as a proportion of total government spending of GDP, health expenditure in Sudan has remained at very low levels even in comparison with other developing countries. In urban areas the quality in the private sector is higher than in the government facilities, but barely accessible to the majority of people on grounds of cost. The availability of health care facilities in Khartoum was highly variable but generally low in quality, and access depended largely on the patients' wealth or that of his or her family. Mental health facilities were generally very poor and limited in availability and non-existent elsewhere in the country. In IDP camps medical facilities were fragmentary and inadequate to basic needs and mental health care facilities non-existent.

251. At pages 277 to 298 of the respondent's main bundle there are listed the projects contained in the OHCA Consolidated Appeal: Sudan Work Plan 2006. Pages 299 to 313 contain details of specific Sudan projects running, or due to run, in 2006. There are some 117 health projects listed in the work plan for 2006, covering a wide range of health issues in various different parts of Sudan. The project details for Project Sud-06/H73 (primary healthcare for internally displaced persons in Omdurman el Salaam Camp, Khartoum State) reveal that the objective of the project is to provide sustainable improvement of the health status of the target population in the OES Camp, to reduce morbidity and mortality and achieve effective mitigation of the negative affects of demolitions on the health status of beneficiaries. The appealing agency is MEDAIR. As of the date at which the work plan was last updated (14 June 2006) 17% of the necessary funds had been covered for this project. Ms Maguire told the Tribunal in oral evidence that a project could not begin to run until it was 40% funded. In her closing submissions, Miss Giovannetti pointed out that Ms Maguire produced no evidence to show that 40% was the figure needed before any of the relevant projects could begin. The Workplan specifically stated that *redevelopment* projects were only included if they had obtained 30% funding but *humanitarian* projects had no such limitation.

252. Sud-06/H75 is a project proposed by what Ms Maguire described as a small French NGO, aimed at improving access to basic health services and health education for vulnerable families affected by demolitions and the replanning process in Shikan

and Al Fateh Camps, Khartoum. As at 14 June, it was funded to the tune of 22%. Sud-06/H80 is a project by an NGO called GHF to provide primary health services and rehabilitation of health facilitates for IDPs in Khartoum State. Its funding as at 14 June stood at 20%.

253. The Tribunal considers that the existence of these projects, none of which was referred to by Mr Verney or Ms Maguire in their reports, shows that firm proposals are in hand to effect improvements in what it must be accepted is an extremely basic level of healthcare available to IDPs in Khartoum State (estimated as numbering some two million (see paragraph 123). What is also noteworthy from the Work Plan is the number of projects proposed across the length and breadth of Sudan, which reinforces the observations made by the bodies to which we have earlier referred in this part of the determination, as to the generally low level of provision for healthcare in Sudan as a whole.

254. It is clear from the opinions in *Januzi* that medical care is a factor that may need to be considered in determining whether there exists a "relocation alternative" within the country of that person's nationality. At paragraph 20 of the opinions, Lord Bingham quotes from the UNHCR *Guidelines on International Protection* of 23 July 2003. Under the heading "*Economic Survival*" those guidelines provide as follows:-

> *"The socio-economic conditions in the proposed area will be relevant in this part of the analysis. If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative".*

255. It is equally clear, however, that, as with other aspects of life in the place of alternative relocation, a person's access to medical facilities is to be compared with the position in the appellant's country as a whole, rather than the United Kingdom. This is emphasised by Lord Bingham in paragraph 20 where, having quoted from the UNHCR guidelines, he finds them "helpful, concentrating attention as they do on the standards prevailing generally in the country of nationality".

256. Although appellants H, G and M were, of course, three of the four appellants whose cases were before the House of Lords in *Januzi*, it is relevant to observe that Mr Januzi himself raised medical issues as a reason why he could not re-locate from his home, near Mitrovica, to another part of Kosovo such as Pristina. His case was that it would be unduly harsh, in the context of his untreated severe psychological distress, for him to be required to live in a place where he had no family, friends or community ties. As Lord Hope observed at paragraph 52 of the opinions, "the submission that account should be taken of the extent to which conditions in Pristina fall below those which are regarded internationally as acceptable was an essential step in that argument".

257. *Januzi* decides that a relocation alternative in the country of nationality is not to be ruled out because the situation in the place of potential relocation lacks the basic norms of civil, political and socio-economic rights that are regarded as acceptable internationally. As Lord Hope states at paragraph 54 of the opinions, this does not necessarily mean that a person will fail in a claim to be regarded as a refugee if there is no essential difference between the conditions in the area of proposed relocation and conditions in the rest of the country of nationality; it simply means that *this* factor is irrelevant:-

*"It is the fact that there is a difference between the standards that apply throughout the country of the claimant's nationality and those that are regarded as acceptable internationally, and this fact only, that is irrelevant. The fact that the same conditions apply throughout the country of the claimant's nationality is not irrelevant to the question whether the conditions in that country generally as regards the most basic of human rights that are universally recognised – the right to life, and the right not to be subjected to cruel or inhuman treatment – are so bad that it would be unduly harsh for the claimant to have to seek a place of relocation there. As Mr Rabinder Singh QC for the Secretary of State observed, one does not need to rely on the European Convention on Human Rights to conclude that if conditions are that bad relocation there would be unduly harsh."*

258. No specific evidence relating to the state of medical facilities available to appellants H, G or M in their home areas in Sudan has been submitted. As is apparent from the general evidence regarding medical facilities in Sudan, however, it cannot be assumed that the situation was markedly different from the overall low standard that prevails in Sudan. No evidence was submitted – nor any submission made on behalf of the appellants – to show that healthcare in Sudan is so bad as to fall within the description set out in paragraph 54 of the opinions in *Januzi*.

259. Nor does the evidence show, in the Tribunal's view, that the health facilities available in the squatter areas and camps for displaced persons in and around Khartoum are so bad as to deprive those who live there, not just of the "basic norms of civil, political and socio-economic rights that are regarded as acceptable internationally" but also of "the most basic of human rights that are universally recognised – the right to life, and the right not to be subjected to cruel or inhuman treatment". If the position were otherwise, the NGOs listed in the Sudan Work Plan 2006 would, we consider, be focusing their attention to a far greater extent upon those camps, in response to what would be likely to be regarded, by those NGO's at least, as a humanitarian crisis amongst the 2 million or so people who live in these areas and camps.

260. The analysis that we have just conducted has been in the context of determining whether, in general terms, it would be unduly harsh to expect an appellant to relocate to Khartoum, if the evidence shows a real risk that the appellant may find himself having to live there in a camp or squatter area. Before leaving the topic of health facilities, however, it is useful to remind ourselves that, where an appellant bases his claim on a medical condition for which he is being treated in the United Kingdom and which he asserts cannot be treated at all, or as satisfactorily, in the place to which he is to be returned, the issue of whether it would be contrary to article 3 to remove that person is to be determined by reference to the test expounded by the House of Lords in *N v Secretary of State for the Home Department [2005] UKHL 31.* In essence, that test requires it to be shown that the medical condition has reached such a critical state that there are compelling humanitarian grounds for not removing the person concerned to a place where he would face acute suffering and be unable to die with dignity. A case based on article 8 must show a truly exceptional state of affairs (*Razgar* [2004] UKHL 27; *Huang* [2005] EWCA Civ 105).

**Risk to persons of Darfuri origin**

261. By way of summarising our conclusions on the proposed risk category of persons of Darfuri origin, we would emphasise three particular points.

262. First of all, we do not find that persons of Darfuri origin generally will face on return a real risk to their safety: we do not consider that the evidence establishes that they are being or would be targeted on return to Khartoum either at the airport or subsequently. In this regard, we are not able to accept the underlying assumption made by Mr Verney and Ms Maguire that the Sudanese authorities would employ a catch-all, blunderbuss approach to returnees of non-Arab Darfuri origin. The history of Sudan over recent years is such that the present Government of Sudan will be well aware that its citizens have, for some time, sought to relocate to other countries. Until recently, a state of war existed between the North and South of Sudan, as a result of which large numbers fled the South. The same is true of the conflict in the Nuba mountains. The government will also be aware that, at various times, there are those who have fled Sudan asserting a fear based on political grounds. Whilst the Tribunal accepts that, on the respondent's own figures, relatively few people have been returned from the United Kingdom to Sudan, certainly in the past two or three years, we have seen no evidence to show that there has been an absence of such returns on the part of other European countries, or other countries to which asylum seekers and others may have gone. Bearing in mind the sophisticated nature of the Sudanese regime, the Tribunal does not consider it remotely likely that that regime is unaware of the fact that many of those who left Sudan in recent years failed to secure international protection, either because their claims were not regarded as credible or because in reality the Sudanese authorities had no significant adverse interest in them. It is also significant in this regard to recall that Mr Verney told the Tribunal that in his view a substantial number of those claiming asylum in the United Kingdom in the wake of the Darfur situation were doing so as (non-"genuine") opportunists or, in some cases, as people who in reality were the persecutors, rather than the persecuted.

263. Secondly, even assuming returnees of Darfuri origin will not be able to obtain an identity document, we do not think that people in this category generally will be compelled to live in a squatter area or an IDP camp. The burden of proof is on an appellant to show a reasonable likelihood of having to live in such a place. This will involve showing that it is not reasonably likely that the returnee of Darfuri origin will have any money, or access to money, or access to friends or relatives who may be able to assist in helping the returnee to establish him or herself. As Mr Verney acknowledged, there are non-Arab Darfuris living in Khartoum otherwise than in such areas and camps. Some amongst those who are settled in this way work in the police and immigration services if not also in other government jobs. Such persons cannot in any sense be described as being at the margins of society. Their existence means that it cannot be assumed that returnees of Darfuri origin would return to Khartoum destitute and lacking in ability to make contact with Darfuris in Khartoum who are settled and who may at least be able to steer them away from having to live in the worst areas of Khartoum.

264. Thirdly, even if we are wrong about this and so returnees of Darfuri origin have to be considered on the basis that they would be left with no alternative but to live in IDP camps or squatter settlements, we still do not think that the conditions they would face in such places would in the general run of cases give rise to either persecutory harm, ill treatment contrary to Article 3 or to undue hardship in the context of a claim for international protection under the Refugee Convention.

265. Although straightforward comparison between living conditions for IDPs in Khartoum and those for IDPs in other parts of Sudan (and Africa) would be over

simplistic, we are not persuaded that the specific features of the situation faced by IDPs in Khartoum, when properly analysed, give rise either to persecutory harm, ill treatment contrary to Article 3 or difficulties which are unduly harsh or unreasonable in the context of claims for international protection. In this regard we particularly bear in mind the fact that most people in Sudan live at subsistence level and that over 70% of those who live in urban conurbations are slumdwellers. Considered thus the living conditions, even for non-Arab Darfuris in Khartoum who are IDPs, are not markedly different from the living conditions in Sudan as a whole.

**Particular risk categories**

266. It will be apparent from the above that we do not accept any of the very general or relatively general risk categories advocated on behalf of the appellants in this case. Accordingly our firm view is that asylum claims or Article 3 claims submitted by non-Arab Darfuris faced with return to Khartoum should be considered on their individual merits. A person cannot succeed merely because he or she is an involuntary returnee or a failed asylum seeker or a person of conscriptable age or a person who is of Darfuri origin or of non-Arab Darfuri origin. However, as previous Tribunal panels have done when considering the "relocation to Khartoum" issue, we do think that the evidence justifies identification of some particular risk categories and some particular factors which may be of special relevance in considering an individual claim; and, given the voluminous amount of evidence we have been presented with in this case, it is appropriate that we subject this to our own analysis rather than simply adapting those identified in previous Country Guidance cases. It should be borne in mind that some of these risk categories may operate in combination so as to create a real risk, even if each one, on its own, would not do so.

**Persons from Darfur "hotspots"**

267. Both Mr Verney and Ms Maguire stated that the risk to a returnee would be aggravated if the latter would be as regarded as coming from a "hotspot" in Darfur. Ms Maguire referred to places regarded by the authorities as hotbeds or strongholds of rebel activity: for example at page 20 of her report she wrote:

> "As mentioned above, because the SLM/A and the JEM control large parts of Darfur, and because the armed conflict is between rebels and the GoS, the latter perceive the civilian population of Darfur as partisan to the rebels. This is especially so if the person concerned is from an area considered to be a rebel `stronghold`. Men of less than 40 years old, are suspected of being aligned with the rebel groups (sharing the characteristics with the rebel leadership) and so are more likely to be detained for questioning".

268. Mr Verney suggested that a person whose village had been attacked by the Janjaweed would as such be at risk because that village had necessarily been targeted.

269. The Tribunal was not given any comprehensive list of places regarded by the witnesses as being "hotspots". Reference was, however, made inter alia to West Darfur as being such a spot. The Tribunal finds some difficulty with this aspect of the evidence. Most commentators appear to regard the armed conflict in Darfur as having gradually extended geographically. Most view the rebel groups as operating as mobile guerrilla groups rather than being attached to any fixed place. Most too regard the Janjaweed incursions as extending to a terror campaign against the civilian population, rather than being confined solely to a military operation against rebels. It would

appear from pages 3 and 4 of the Aegis Report "Safe as Ghost Houses" that even Ms Maguire draws a distinction between what happened during 2003, when the Janjaweed first began to be used by the Sudanese authorities, and the position since 2003, where the Janjaweed attacks appear, in the view of Ms Maguire, to have turned into "a concerted campaign to raid, destroy, loot, kill and rape their way across and around Darfur". We consider that the Sudanese authorities can be taken to be aware of the wide geographical sweep of the Janjaweed and governmental operations aimed at non-Arab Darfuris in Darfur. In the Tribunal's view it is not possible, therefore, to infer that a person whose village was attacked by the Janjaweed would, for that reason alone, be regarded on return to Khartoum as a member or active supporter of a rebel movement.

270. However, we do think, although not constituting a risk factor in itself, that the finding of a reasonable likelihood that a non-Arab Darfuri originates from a village known to be closely associated with the current rebel leadership is a relevant consideration when examining the individual merits of a claim: there is evidence that the rebel leadership`s origins are known. Hence where an immigration judge is presented with credible and specific evidence regarding the history of the particular place from which a person claims to emanate, this consideration will be relevant. Similarly, we consider it would also be a relevant, albeit not necessarily decisive, consideration if the person concerned had spent any significant time in Chad: as Ms Maguire emphasised, the recent flare-up between Sudan and Chad would be something in the minds of the immigration and security authorities in Khartoum.

**Activists**

271. We have already noted in a number of places evidence showing that persons in Sudan who have been involved with opposition political parties or movements or who have identified themselves as anti-government by speaking out against the authorities would be at greater risk as a result of surveillance than ordinary returnees. Although the extent to which the regime cracks down on oppositionists appears to fluctuate, we think it safe to infer that those who have been activists involved with opposition parties or movements or who have spoken out against the government continue to constitute a current risk category (we deal separately below with persons who rely on sur place activities).

**Students, merchants/traders, lawyers, journalists, trade unionists, teachers, intellectuals and tribal leaders**

272. At paragraph 16 of his report, Mr Verney states:-

> "16. It is not necessary to have a history of political involvement in the sense of party activism to be regarded as a rebel or rebel sympathiser. The most publicised cases of arrests outside Darfur have been those of persecuted Darfur students, community leaders, traders, lawyers and others with some measure of access to human rights bodies. However, it is not only these most articulate and well-connected members of the community who are potentially at risk. Less prominent individuals have simply disappeared without trace."

273. It is fair to say that students and merchants/traders have been suggested in previous determinations of the Tribunal and the IAT to be particularly at risk. Reference has also been made in the background materials to problems faced by (at least politically active) students (COIS April 2006 6.42-6.45), some journalists (see e.g.

COIS ibid. 6.12-6.13) and some trade unionists ( 6.68). The COIS 2006 report also states at paragraph 6.54 that:

> "Amnesty International (AI) and the Sudan Organisation Against Torture (SOAT) recorded in October and December 2004 and January 2005, that Darfuris residing in Khartoum and other areas of north Sudan were arrested and detained, apparently on suspicion of supporting the armed opposition groups in Darfur…The vast majority of the cases reported by AI and SOAT involved students, educated persons, or influential members of a tribe or community, such as Sheiks and Omdas…".

274. However, it seems to us that when analysed in detail the evidence about arrests and detentions does not demonstrate that all students, merchants/traders, journalists, trade unionists or intellectuals are being targeted but only those who have been identified through their political activity or their expression of anti-government views. We note too that what Mr Verney appeared to say in his oral evidence to the Tribunal was that the kinds of people he describes in paragraph 16 of his report are not targeted *because* they are, for example, traders or merchants but, rather, because they are more likely than others, if they encounter difficulties with the authorities, to seek to publicise those difficulties via human rights bodies. There is currently not enough evidence, in our view, to treat any of these categories (save for tribal leaders) as being risk categories in themselves.

275. Some light is shed by the Amnesty International list of political detainees in Sudan, set out at pages 161 to 170 of the appellants' bundle "B". Although in some cases it is difficult to ascertain from the list whether one, or more than one, individual is referred to in the first column, it appears that in the period spanning, roughly, mid 2004 to mid 2005, Amnesty recorded the detention of some 330 people, in the whole of Sudan. Of these, around 160 were arrested in Khartoum. 27 of the Khartoum detainees (not being students) are recorded as belonging to the Popular Congress. This party, also referred to as the People's National Congress or Popular National Congress Party, was founded in June 2000. According to the COI Report on Sudan (April 2006, page 143) the BBC reported that the Sudanese authorities arrested the leader of the Popular Congress and other members of that party in the Spring of 2004. In September 2004, the Government of Sudan accused the party of plotting to overthrow the current regime and there was a mass arrest of party activists – including students – in Khartoum and Darfur and tight security controls on the capital followed. The leader of the party was released by the Government on 30 June 2005 but "many other members of the party are known or believed to still be in detention". Of the 27 Khartoum students specified in the Amnesty International list of political detainees, all but five are recorded as being "Popular Congress Student Council". One of the five is described as a "member of Darfur Student (sic) Association". The purport of the list is confirmed by what is said at paragraphs 6.42 – 6.45 of the COIS April 2006 report.

276. At page 248 of the bundle of appellant H there is a press release of 1 October 2004 from the Sudan Organisation Against Torture. This records the arrest on 23 September 2004 of two University of Khartoum students, both belonging to the Ma'alia tribe in Darfur, who were respectively the secretary and chairperson of the Darfur Student Association at the University of Khartoum.

277. Also highly pertinent is the evidence from the December 2005 ACCORD seminar report. At that seminar, Dr Alizadeh and Dr Schodder, considered the situation of students since summer 2005. Dr Schodder stated that:-

> "Since summer, students have been targeted very much. More and more students from Khartoum University have been arrested and tortured. Students who were active in student unions or who were in contact with Darfuri students or Nuba students – various activities that were not in line with the official student movement of the regime. As in many countries, students appear to be politically more sensitive and more active, but there is no real development of new opposition forces in any organised way yet, and it would certainly not be permitted by the regime."

278. The reference to Darfuri students is not, we consider, to be taken as suggesting that a person of non-Arab Darfuri ethnicity who lives in Khartoum will as such be persecuted if he happens to be a student there: indeed Ms Maguire at one point saw being a student in Khartoum as giving a Darfuri legitimacy. Dr Schodder is referring to what the authorities would regard as subversive behaviour. Students in Khartoum who make a point at the present time of seeking to forge contacts with students in Darfur can only be doing so, in the authorities' eyes, in order to make some political statement that is by implication critical of the government.

279. The conclusion to be drawn from this evidence regarding the position of students is, the Tribunal finds, that a person is not currently at real risk in Khartoum of being detained and ill-treated by the authorities merely by reason of his being a student. That is so, whether or not the student originates from Darfur. Such a person is, however, at real risk of detention if that person is a member of a student organisation that the Sudanese authorities regard as hostile to their interests. If a returnee was, prior to leaving Sudan, a student in Darfur, he is likely to be questioned closely about his activities. If the authorities have reason to believe for instance that he was a member of the Darfur Students Association, ill-treatment is reasonably likely. A non-Arab Darfuri who has been a student in Khartoum or elsewhere in Sudan (outside Darfur) might also be at risk if he had been actively involved with anti-government organisations or movements. Being a student in one or more of these situations is thus a risk factor, and will need to be weighed carefully by a judicial fact-finder, but it is not automatically something that will entitle a person to refugee status in this country. Although there is less detailed evidence available, we consider that what we have said about students also applies to teachers (and intellectuals), a number of whom feature on the list of detainees.

280. Of the 160 or so people arrested in Khartoum as political detainees, according to Amnesty International, eight are described as tribal leaders. It is difficult on the state of the evidence to say what the level of risk is for a Darfuri tribal leader, identified as such by the authorities, residing in Khartoum. But in the event of any trouble in Khartoum involving non-Arab Darfuris, they seem an obvious target for adverse attention. The Tribunal considers that, in all the circumstances, it would be appropriate to conclude that such a person may well be at real risk.

281. The position is, however, otherwise in relation to merchants/traders and lawyers. Looking at the column "Occupation/Affiliation" in the Amnesty International list, it cannot be said that either of these groups is disproportionately represented. In any event, as has already been observed, they are more likely than other groups to be able to make the fact of their detention known to the outside world. It must also be borne in mind that there is a large non-Arab Darfuri population in Khartoum that has been

resident there for a considerable period of time. We know from the appellants' own evidence that non-Arab Darfuris in Khartoum are employed by the government, for instance as police. We also note that Mr Nourain is a non-Arab/black African Darfuri who was formerly a lawyer and judge, who served as an MP from 2001 to 2005 "as a member of the ruling party" (page 1 of his statement). Against this background, it cannot be said that the Sudanese Government targets non-Arab Darfuris merely because they happen to have a professional qualification or have shown some aptitude for commerce.

282. There is scant evidence regarding journalists, one of whom featured in the Amnesty list. The US State Department report (2006) notes that "journalists were arrested and detained during 2005". As regards trade unionists, paragraph 6.89 of the COIS April 2006 report records Freedom House as stating that "the situation of activists in Sudan is one of concern and trade unionists, among others, had been harassed, intimidated, arbitrarily arrested, detained and tortured".

283. On careful consideration, therefore, we consider that to the extent that students, merchants/traders, lawyers, journalists, trade unionists (and intellectuals) face risk it will be because they come within the Activist category identified earlier; they do not constitute risk categories in their own right.

**Risk on return for *sur place* reasons**

284. A further risk category we were asked to identify was that arising from the *sur place* activities of a national of Sudan in the United Kingdom.

285. It seems to us that asylum claims made by Sudanese asylum-seekers raise two distinct, albeit sometimes interrelated, types of *sur place* claims: one concerns knowledge on the part of the Sudanese authorities of activities undertaken in the UK; the other concerns knowledge on their part - in at least some detail - of facts about a person's asylum claim. We shall deal with these separately.

286. **(1) *Sur place* activities.** *Sur place* activities, as they are sometimes called, can take a variety of forms: for example, presence at a demonstration ostensibly held to complain about a foreign country; an asserted connection with a group or body that is said to evince some hostility to that country but about which little or nothing is known; or leadership of, or other strategic or high-level involvement with, a body that is shown to be putting serious pressure, whether directly or indirectly, on the government of a foreign country.

287. In addition to assessing precisely what is being asserted by way of *sur place* activities, the motivation of the person engaging in them is also likely to be highly relevant. The leading case continues to be *Danian v Secretary of State for the Home Department* [1999] EWCA Civ 3000. In that case, the Court of Appeal held that a person may have a well-founded fear of persecution for a Refugee Convention reason, notwithstanding that he or she has cynically manufactured that state of affairs by engaging in opportunistic activities in the country of claimed asylum. However, paragraph 28 of the judgment of Brooke LJ deserves particular scrutiny. In that paragraph, he quoted from a letter written to the appellant's solicitors by the Deputy Representative in the United Kingdom of the United Nations High Commissioner for

Refugees. Having found that, in the opinion of UNHCR, the legal position was as just stated, the letter continued as follows:

> *"We realise that this may encourage the misuse of the asylum system by persons who, without having real protection needs, want to create a refugee claim for themselves through irresponsible/opportunistic actions. This consideration is, no doubt, an important one, as the misuse of the asylum system may eventually be detrimental to the interests of bona fide asylum-seekers and genuine refugees. For this reason, UNHCR would not object to a more stringent evaluation of the well-foundedness of a person's fear of persecution in cases involving opportunistic claims.*
>
> *In this connection, it should be borne in mind that opportunistic post-flight activities will not necessarily create a real risk of persecution in the claimant's home country, either because they will not come to the attention of the authorities of that country or because the opportunistic nature of such activities will be apparent to all, including to those authorities."*

288. Brooke LJ held that this letter "correctly sets out the guidance which should be followed by appellate authorities and courts which are faced with an issue of this kind". Paragraph 28 of his judgment concludes as follows:-

> *"I wish to end this judgment by saying that nothing in it should be read as giving any kind of green light to bogus asylum-seekers. If the UNHCR's guidance is followed, in the vast majority of cases of the type I have been considering the claim for asylum will be peremptorily dismissed without any real difficulty. It is only in what Lee J in [Mohammed v Minister for Immigration and Multicultural Affairs* [1999] FCA 868 (Federal Court of Australia)] *describes as an extraordinary case that a genuine entitlement to protection from refoulement may arise, and in such a case the claim should be tested on the principled basis I have set out in this judgment. It should not be rejected peremptorily on a basis that appears to have no sound foundation in international law".*

289. It is often argued before this Tribunal that regimes of countries from which asylum-seekers most frequently come to these shores are inherently paranoid in nature and will not scruple to distinguish between those returning failed asylum-seekers who have engaged in *sur place* activities in the United Kingdom as a result of genuine and entrenched hostility towards that regime and those who have engaged in such activities as an opportunistic device to enhance their chances of being able to remain here. However, what the judgments in *Danian* make clear is that, far from being accepted uncritically, such an assertion must be supported by cogent evidence.

290. In the light of these observations, we turn first of all to consider whether and, if so, to what extent, activities undertaken in the United Kingdom which might broadly be described as expressing opposition to the authorities in Sudan may lead to a real risk of persecution or other serious harm upon arrival of the person concerned in Khartoum. In doing so we must inevitably bear in mind our earlier findings rejecting the contention that there is a general risk on return to failed asylum seekers, including those of Darfuri or non-Arab Darfuri origin.

291. We recall first of all what was said about political activities in exile by Dr Alizadeh in the December 2005 ACCORD seminar. He stated:

> "Of course, the Sudanese government observes activities of Sudanese nationals in Europe. Each consulate or embassy has at least two security officers who deal with intelligence information. Each event that is related to Sudan is attended by people from the embassy who observe and report – not to the minister of foreign affairs, but directly to their headquarters in Khartoum. The security apparatus, consisting of both internal security and intelligence service, monitors the activities of Sudanese citizens abroad."

292. We have noted elsewhere the June 2006 American University of Cairo report`s references to Sudanese government officials monitoring the sit- in in Cairo by Sudanese asylum-seekers.

293. Whilst neither Mr Verney nor Ms Maguire`s evidence dealt significantly with the issue of *sur place* activities, both their reports did emphasise the sophisticated nature of the Sudanese security and intelligence services and the fact, which we also accept, that the NSIS maintain a special desk of its own at the Sudanese Embassy in London. Ms Maguire's evidence highlighted, at page 17 of her report, the particular sensitivity of the Government of Sudan towards the United Kingdom and the United States of America due to the negotiations at the UN Security Council regarding Darfur and the imposition of sanctions. Those two countries have been portrayed in the local press as threatening to invade Sudan and have been referred to as "Crusaders". As a result "people from Darfur and/or those Sudanese who speak out about the situation there are likely to be targeted for detention and punitive treatment if it is considered that they have given information to the 'Crusaders'". Later on the same page, Ms Maguire pointed out that the UN's High Commissioner for Human Rights has stated that there is a stark difference between the latitude granted by the Government of Sudan for civil society capacity-building and the government's reaction "to people speaking out about human rights concerns or being suspected of having any affiliation with the rebel movements".

294. Although we were unable to place any significant reliance on Mr Nourain`s evidence, it is important to recall that his written report highlighted the story he had been told by a Sudanese official that a returnee had been shown by that official, on return to Khartoum, a video of the individual attending a demonstration outside Sudan. The official had stopped the video at a point where the individual was apparently shown on the video and had asked that individual if he was the person depicted. The latter had been unable to say anything. Mr Nourain believed that he had been told that about this sometime in 2002. In cross-examination, Mr Nourain was asked whether a person who had not been involved in demonstrations, and who had no activity with rebel groups, would be at risk on return. The witness replied that if the returnee were from a Massaleit, Fur, Zaghawa, Berti or other tribe from Darfur, then he would be at risk, whether or not he had been involved in politics. It would be better to send such a person to somewhere other than Sudan. Asked if he had been told what had happened to the person who had been shown a video depicting that individual in demonstration, Mr Nourain replied that he had not. He had, however, been told by the official that they had "power" and "were everywhere". In answer to a question from the Tribunal, the witness repeated that a returnee would be regarded as being "anti-government" whether or not he had been politically involved.

295. As has already been said, the Tribunal does not regard the evidence of Mr Nourain as being reliable in any material respect. His story about being told of a returnee being shown a video of a demonstration in which that person is said to have featured is no more than a single, vaguely sourced, anecdotal remark from as long ago as 2002. We know nothing about the nature of the individual concerned, nor of the nature, size, location or purpose of the alleged demonstration. It is also not credible that, although Mr Nourain claimed to have been told this story, he knew nothing of what was supposed to have happened to the individual in question. Indeed, Mr Nourain told the Tribunal that he has never met someone who has been deported to Sudan.

296. Nonetheless we have earlier explained that we have approached our assessment of the risk to the appellants on the basis that includes certain activities in the United Kingdom. The question thus arises, how are we to evaluate this type of evidence in these cases and that of others who rely in whole or in part on *sur place* activities?

297. Immigration judges are frequently faced with the production of photographs of an appellant who is said to be demonstrating (often outside the London embassy of the country of the appellant's nationality), in connection with the submission that, as a result of attending that demonstration, the appellant is likely to have been photographed by embassy staff or security operatives of the country in question. But even before one brings to bear the careful scrutiny of such evidence that the *Danian* principles require, it is manifestly difficult to see how a photograph of members of a crowd of demonstrators is likely to lead to the authorities at an airport in the appellant's country of nationality identifying the appellant as a person who took part in the demonstration. Even in the unlikely event that they would be able to do so, however, the appellant would have to produce cogent evidence that they would for that reason be reasonably likely to regard him as more than an apolitical opportunist.

298. Immigration judges are also familiar with letters produced by appellants, which purport to come from United Kingdom branches of resistance armies or political organisations active (or formerly active) in the appellant's country of nationality. Such letters are often highly problematic. Their authors rarely appear before the Tribunal to give oral evidence and it is often difficult to ascertain whether the organisation in question exists in any meaningful way, let alone whether the government of the country concerned is reasonably likely to be interested in its activities.

299. On the evidence before us, we do not consider that *sur place* activities in the United Kingdom will put a Sudanese citizen at real risk on return unless those activities are reasonably likely to be regarded by the Sudanese government as being significantly harmful to its interests. We say this based on the evidence in the Danish 2001 Report about returnees to Sudan at the time when Sudan faced international criticism about the war in the South (paragraphs 131 and 181) and the government's awareness that some of its citizens may say critical things about it whilst abroad in an attempt to secure a permanent residence there (paragraph 262). The precise nature of the risk, if any, from *sur place* activities will need to be considered on a case by case basis, bearing in mind that there is no evidence of which we have been made aware that the Sudanese authorities are unable to see opportunistic activities conducted abroad for what they are (see above).

300. The Tribunal wishes to record that it has not been referred to any evidence about the nature and extent of the activities of Sudanese intelligence officials specific to the United Kingdom beyond the existence of an NSIS desk at the Sudanese Embassy in London.

301. **(2) Detailed knowledge of asylum claim etc. made in the U.K.** We turn to the second aspect of sur place claims made in the context of claims by Sudanese asylum-seekers, relating to knowledge of their asylum claim beyond the mere fact or inference that they have made such a claim. We have dealt earlier with arguments based on the Sudanese authorities perceiving involuntary returnees adversely simply because they would be assumed to be failed asylum seekers, including in particular failed asylum seekers of non-Arab Darfuri origin. But in the case of the three Sudanese

appellants who were before the House of Lords in *Januzi*, it is asserted that, simply by virtue of the high profile given to such cases, the Sudanese authorities are likely to be aware of the nature of the asylum claims made beyond the mere knowledge that a claim has been made. The authorities would thus know that appellant G claimed that his family had links with the SLM and that appellant M had claimed involvement with the SLA in Sudan whilst in that country.

302. These assertions are speculation. We doubt whether Sudanese officials are in the habit of reading United Kingdom law reports, even those relating to the House of Lords. But even if they are, the assertions lead nowhere. For if one assumes that the Sudanese authorities have access to the opinions in *Januzi*, it is also plain that those authorities will be aware that the claims of appellant G and appellant M were not found to be credible, applying the lower standard of proof by which appeals of this kind are judged in the United Kingdom. Given the dearth of evidence regarding difficulties faced by returning failed asylum seekers, we do not accept that the Sudanese authorities are likely to regard appellant G or appellant M (or anyone in a similar position) as other than a person who has tried to gain a better life in the United Kingdom.

303. In this connection we remind ourselves of what we recorded at paragraphs 132-133 as being said by Drs Alizadeh and Schodder at the December 2005 ACCORD seminar.

304. When asked about those passages, Mr Verney pointed out that a returnee would be under surveillance and would not be able to engage in political activities. Mr Verney regarded that as a serious restriction of the person's rights. Where, however, a returnee, such as those in the present appeals, has shown no interest in political affairs whilst in the Sudan, and no genuine, or at any rate significant, interest in such matters whilst abroad, the Tribunal considers that the observations of Drs Alizadeh and Schodder represent the truth of what will happen in the case of a returnee of Darfuri origin.

**Gender**

305. It appears to be common ground that very few Sudanese asylum seekers are female. A married woman needs the permission of her husband in order to leave Sudan. Ms Maguire said in evidence that a returning Sudanese female to Khartoum, arriving without a male, would be regarded as a "peculiar person". It would be assumed that she had left with her husband. We accept the basic thrust of Ms Maguire's evidence on this issue; namely that the Sudanese authorities would not be adversely interested in a female returnee in her own right. Whilst she would be likely to be questioned, the Tribunal does not consider that, unless the authorities had real grounds for believing that the woman in question was in any way involved with a man in whom they had significant adverse interest, she would suffer serious harm, either at the airport or afterwards. Of the 330 or so political detainees recorded by Amnesty International (see above), it appears that very few are female. None of the appellants in the present appeals is female.

306. We note that the February 2006 UNHCR Position paper stated at paragraph 7 that in Khartoum, "[e]specially hard-hit are undocumented IDPs, *female-headed households* and those who arrived in Khartoum after 1996" (emphasis added) and includes in its closing recommendations that "[d]ue attention is paid to the particular

protection needs of especially vulnerable asylum-seekers from Darfur, such as *female heads of households*, medical cases or victims of past persecution" (emphasis added). Although the paper does not cite evidence in support, in this instance we think there is such evidence: we noted earlier that the Rapid Assessment Survey findings on economic activity in the camps and squatter areas commented: "It is no surprise that female headed households (FHH) are most vulnerable in terms of access to income, as data reveals that the higher the ration of FHH in an area, the higher a percentage of household reporting little or no income".

307. However, we have explained earlier that we do not think that involuntary returnees of Darfuri origin, male or female, would normally find themselves with no alternative but to live in an IDP camp or a squatter area. However, if in the particular circumstances of a case this were considered to be a real possibility, then we accept that the circumstances of a female returnee who would on return be a female head of household living in a camp or squatter area would require due scrutiny.

308. We emphasise two matters. First, for a person to succeed in an asylum or Article 3 claim on the basis of one of more of the above particular risk categories, he or she will need to give credible evidence of their personal history and circumstances. Someone who has failed to give a credible account in material particulars cannot be assumed to fall within any of these categories. On the other hand, if a person has given a credible account, it will be necessary to consider his or her position in relation to the above categories or factors with some care, taking into account that his circumstances have to be considered cumulatively. Secondly, we emphasise what is said at paragraph 266 regarding the consequences of a combination of risk factors in Sudan.

**Summary of conclusions**

309. The Tribunal's conclusions as to return to Khartoum are as follows.

(1) The fact that a returnee has unsuccessfully sought international protection in the United Kingdom is likely to be known to the Sudanese authorities, either by way of a generalised assumption (based upon his documentation) or as a result of the questioning which he is likely to receive at the airport from the immigration authorities. However, a person will not as such be at real risk on return to Khartoum, either at the airport or subsequently, simply because he or she is an involuntary returnee of Sudanese nationality (paragraphs 172-182).

(2) A Sudanese national will not be at risk on return to Khartoum either at the airport or subsequently merely because he or she is a failed asylum-seeker. Although the fact of having claimed asylum (and having spent time in the UK) is likely to be known to the Sudanese authorities there, the evidence does not suffice to show that this would make him or her the subject of adverse attention (paragraphs 183-186).

(3) A person who may be eligible for military service will not be at risk on return for that reason alone, even if he or she is or would be perceived as being a draft evader or deserter (paragraphs 187 to 194).

(4) A person will not be at risk on return to Khartoum either at the airport or subsequently solely because he or she is of Darfuri origin or non-Arab Darfuri origin. Neither at the airport or subsequently will such a person face a real risk of being targeted for persecutory harm or ill-treatment merely for that reason (paragraphs 195 to 220).

(5) The evidence does not show that any returnee of either of the origins described in sub-paragraph (4) will, regardless of their personal circumstances, have no option but to live in an IDP camp or a squatter area, if returned from the United Kingdom to Khartoum. It has not been suggested that the Sudanese authorities have a policy of requiring a returnee of either of the origins described in sub-paragraph (4) to go and live in IDP camps or squatter areas. The burden of proof is on the appellant to show a reasonable likelihood of having to live in such a place. This will involve showing that it is not reasonably likely that the returnee will have any money, or access to money, or access to friends or relatives who may be able to assist in helping the returnee to establish him or herself (paragraphs 221-228).

(6) But even if a such a person shows that it is reasonably likely he or she will end up in such a camp or area, conditions there, though poor, are not significantly worse than the subsistence level existence in which people in Sudan generally live. Applying the principle set out in *Januzi,* the conditions in such camps or areas are not generally such as to amount to unduly harsh conditions (paragraphs 229-245).

(7) Health facilities in the camps and squatter areas of Khartoum are, compared with the provision of such facilities in Sudan as a whole, not as bad as to deprive those living there of the most basic of human rights that are universally recognised. A person who bases his claim on a medical condition for which he is being treated in the UK must do so by reference to the article 3 test espoused by the House of Lords in *N* or show truly exceptional circumstances contrary to article 8 (paragraphs 246-260).

(8) Sub-paragraphs (1)-(7) above deal with the general assessment of risk and of likely conditions on return. However we do think that there will be persons who may be able to show that to return them to Khartoum would be contrary to the United Kingdom's obligations under either the Refugee Convention or Article 3 of the ECHR or both because of particular risk factors arising in their case:

i. The fact that a person of non-Arab Darfuri origin is from one of the villages or areas of Darfur which are "hotspots" or "rebel strongholds" or whose village has been raided by the Janjaweed and/or government forces would not in itself give rise to a real risk of persecutory harm, although it would be a significant factor when assessing risk on return if, for example, he was from one the villages from which the current rebel leaderships come or if he has spent some time recently in Chad (paragraphs 267-270).

ii. However, persons whose conduct marks them out as oppositionist or anti-government activists remain a current risk category. Persons in this category may include some (but certainly not all) students, merchants/traders, lawyers, journalists, trade unionists, teachers and intellectuals. Such conduct may take the form of being a political opponent of the government or of speaking out against the government. It may also take the form of being a member of a student organisation that is allied to an opposition party or that is opposed to the government's policies (paragraphs 271-283).

iii. Those who have been tribal leaders of Darfuri tribes whilst in Sudan are also likely to be at real risk on return (paragraph 280).

iv. Not all s*ur place* activities conducted by a Sudanese citizen, whilst in the United Kingdom, will give rise to a real risk on return. Whilst the fact that a person has engaged in such activities may become known as a result of questioning, if not through the work of Sudanese intelligence agents, the authorities are reasonably likely to be concerned only about activities which they regard as significantly harmful to their interests and will not be concerned about a person who is in reality an apolitical opportunist. Nor will mere knowledge on the part of the Sudanese authorities about at least some details of a Sudanese asylum-seeker's claim (e.g. following publicity about a high-profile case) suffice (paragraphs 286-304).

v. A female returnee will not be at real risk unless there is reason to believe her to be associated with a man who is of adverse interest to the authorities. However if a woman shows that there is a reasonable likelihood that she will be returned as a female head of household to live in a squatter area or IDP camp, the circumstances of her case may call for consideration as to whether they would give rise to treatment contrary to Article 3 or undue hardship (paragraphs 305-308).

## Our assessment of the appellants' individual cases

### Appellant H

310. The facts of the case of appellant H are, as has already been noted, set out at paragraphs 35 to 37 of the opinions in *Januzi* (see paragraph 5 of this determination). In his closing submissions, in particular, but also to an extent in his skeleton argument, Mr Mahmood, on behalf of appellant H, seeks to advance a proposition that does not appear to have been put to the Court of Appeal or the House of Lords. This is that the respondent is said to have accepted "from the outset [that appellant H] could not have sought to internally relocate when he was in Sudan" (paragraph 5 of the closing submissions). Reliance is placed upon paragraph 24 of the judgments in *E and Another v SSHD* [2003] EWCA Civ 1032 that "the nature of the test of whether an asylum seeker could reasonably *have been* [emphasis supplied] expected to have moved to a safe haven is clear. It involves a comparison between the conditions prevailing in the place of habitual residence and those which prevail in the safe haven, having regard to the impact that they will have on a person with the characteristics of the asylum

seeker". Reference is also made by Mr Mahmood to paragraph 7 of the opinions in *Januzi,* where Lord Bingham, having noted the fact that the Refugee Convention does not refer expressly to the "relocation alternative", said:-

> "But the situation may fairly be said to be covered by the causative condition to which reference has been made: for if a person is outside the country of his nationality because he has chosen to leave that country and seek asylum in a foreign country, rather than move to a place of relocation within his own country where he would have no well-founded fear of persecution, where the protection of his country would be available to him and where he could reasonably be expected to relocate, it can properly be said that he is not outside the country of his nationality owing to a well-founded fear of being persecuted for a Convention reason".

311. Mention is made in Mr Mahmood's closing submissions to the Canadian case of *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993) 109 DLR (4th) 682I, referred to in paragraphs 8 and 12 of the *Januzi* opinions, which concerned the question of whether it would be unduly harsh to expect a person who is being persecuted in one part of their country to move to another less hostile part of the country "before seeking refugee status abroad". The use of the past tense in paragraph 91 of the UN Handbook (cited at paragraph 7 of the opinions in *Januzi*) is relied upon. The point which is sought to be advanced appears to be as follows: the fact that appellant H could not seek to relocate whilst he was in Sudan affects the general approach to the question of whether it would be unreasonable for appellant H to relocate to Khartoum and, in particular – contrary to what the House of Lords held in *Januzi* – the comparison to be drawn in determining that question is between conditions in Khartoum and those in the "safe haven" of the United Kingdom.

312. Paragraphs 7 to 13 of the adjudicator's determination in the appeal of appellant H record that the respondent's basic contention was that appellant H was not from Darfur at all. The only reference to the aspect upon which Mr Mahmood now attempts to place such importance is at paragraph 12 of the determination. Here the adjudicator set out the respondent's submissions, notwithstanding the latter's disbelief as to the credibility of the appellant's account. The respondent considered that there was no evidence that members of the appellant's tribe would be at risk of persecution on the basis of ethnicity alone in an area of Northern Sudan:-

> "Although the appellant could not have relocated at the time of his alleged problems due to difficulties with movement, on his return to Sudan he would not have to return to Darfur. He would be returned to Khartoum from whence he could move to another area in Sudan."

313. In his written statement, the appellant described his home village of Uruoo being attacked and his moving to Taweela Village, which was also attacked. It was during that second attack that the appellant's mother was killed; his father had been killed in the earlier raid on Uruoo. The appellant then went to Al-Fhyria Village where he "saw an agent" and "gave the agent six million Sudanese Pounds. This money was given to me by my father before he died. I then went to Port Sudan by lorry on the same day". At Port Sudan, the appellant boarded a ship.

314. It is difficult to see how the matter recorded in paragraph 12 of the adjudicator's determination can be regarded as a concession by the respondent that appellant H could at no time have relocated to some other part of Sudan, before he left by ship. Neither the appellant's statement nor his interview record suggests that he tried and failed to seek internal relocation. According to the interview, after the killing of his mother he "ran and I found the [people] smuggler. He told me when he met me he told

me (sic) he would take me to a safe place" (q.71). The journey to Port Sudan was achieved by lorry. The lorry was not, according to the appellant, stopped at any checkpoints. Asked if, had he stayed in Port Sudan, he would have been at risk from the Janjaweed, the appellant replied "I don't know whether they would have killed me or not. I am scared for my life there as well as here" (q.75). In short, the Tribunal does not accept that the respondent formally conceded the impracticability of appellant H relocating when in Sudan; or that appellant H's own evidence so suggested.

315. But, even if we are wrong, the Tribunal does not consider that there is any merit in Mr Mahmood's submissions on this issue. Nowhere in the opinions in *Januzi* is there a statement that the test to be applied in determining the reasonableness of internal relocation differs according to whether a person did, or did not, have a means of access to the place of relocation before that person left the country of his nationality. We have already noted at paragraph 148 the emphasis placed by both Lord Bingham and Lord Hope on the "context of return". The reliance sought to be placed upon the use, in various places, by various courts, of tenses in their judgments and opinions, risks distorting the basic points being made in those cases. The essential task of a court or tribunal is to determine whether a person falls within the definition in Article 1A(2) of the Refugee Convention by reason of a well-founded fear of persecution as at the date upon which the assessment falls to be carried out. It is noteworthy that the verbs in Article 1A (2) are entirely in the present tense. Furthermore, there is no indication at all in paragraphs 15 to 19 of Lord Bingham's opinion in *Januzi*, where he sets out five reasons for preferring the Court of Appeal test in *E and Others* to the "Hathaway/New Zealand Rule", that supports the drawing of a distinction between, on the one hand, a person who can be sent from the United Kingdom to a place of relocation within his country of nationality, but who was not able to access that place whilst in the country of nationality and, on the other, a person who could have done so. It is particularly noteworthy that, at paragraph 17, Lord Bingham derives assistance from the provisions on internal protection contained in Council Directive 2004/83/EC. These provide that, as part of the assessment of the application for internal protection, Member States may determine that an applicant is not in need of international protection:-

> "if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant *can* [emphasis supplied] reasonably be expected to stay in that part of the country".

316. The fifth reason given by Lord Bingham, at paragraph 19, applies equally to both the types of cases to which we have just referred (see paragraph 145 of this determination).

317. We would reiterate what we said earlier, in our analysis of the legal framework, that, whilst it may be relevant in deciding a particular case to have regard to whether a person sought to avail himself of internal relocation, the test is whether return would give rise to a current real risk. The Tribunal accordingly rejects the submissions made on behalf of appellant H, insofar as these concern any historic inability on his part to access Khartoum from Darfur. In the circumstances of appellant H's case, that inability does not materially advance his claim.

318. The Tribunal turns now to the application to appellant H of our general findings regarding Darfur claimants. As regards risk on return, appellant H does not have the characteristics of a person who would be at real risk. We so find, examining the risk factors we have identified, both individually and cumulatively (as we have also done in

the cases of appellants G and M). He is a 33 year old man in apparently good health. There is no evidence whatsoever of his having any political involvement whilst in Sudan, including involvement with rebel groups. There is no evidence to show a reasonable likelihood that the Sudanese authorities would regard him as a rebel by reason of the location and timing of the raids in which members of his family died. He was found "not to be politically active" in the case study on him in the report of the Aegis Trust. Paragraph 37 of the opinions in *Januzi* records the same finding. Those comments and findings are reasonably likely to be available to the Sudanese authorities. His account described in the Aegis Trust document makes no specific criticism of the Government of Sudan.

319. Appellant H has been in contact with the Union of the People of Darfur in the UK and N. Ireland in order to obtain written confirmation that he comes from Darfur. The Tribunal has before it a letter from that Union entitled “To whom it may concern” and written by a Mr Mohamad Noral, who styles himself the General Secretary of that Union. The UDP is said to have been created in November 2003 “in order to support Darfuris who have been touched or affected by the devastating situation in Darfur caused by the Sudanese authorities and their Janjaweed militia allies”. Appellant H is not said to be a member of the Union; he is merely a person who, according to the letter, has undergone a “thorough interview” in order to establish that he is a Darfuri, born in a particular village.

320. Applying the approach to which the Tribunal has earlier referred, we do not consider that the matters referred to in the previous paragraph materially advance the case of a appellant H. The position might be otherwise if there were evidence that he is actively and genuinely involved in the Union of the People of Darfur in the UK and N Ireland *and* that that organisation is a genuine body, which the Sudanese authorities would be reasonably likely to regard as inimical to their interests in a material way, such as by seriously attempting to influence United Kingdom policy towards Sudan. No such evidence has, however, been submitted.

321. We note that the letter is dated 17 June 2006. No explanation has been given to the Tribunal as to why it was thought necessary for appellant H to procure such a document, which merely confirms a fact accepted by the adjudicator who originally heard the appeal, and recorded by the House of Lords. In all the circumstances, we consider the production of this letter to be an opportunistic attempt on the part of appellant H to bolster his claim to remain in the United Kingdom and one which does not materially advance his claim.

322. Likewise, the photographs of a person, said to be appellant H, holding a placard in a crowd of people do not materially advance his claim. Even if the Sudanese authorities could, at Khartoum Airport (or thereafter), make the connection between the returning appellant H and any photographs their intelligence personnel may have taken of the demonstration, if such there be, the evidence falls far short of showing that appellant H's activities, whilst in the United Kingdom, are reasonably likely to lead to the Sudanese authorities regarding him as a threat.

323. As mentioned in paragraph 318, appellant H featured in the Aegis Trust document of June 2005. There is nothing in the record of the Trust’s interview with appellant H and the other specific references to him that would be reasonably likely to cause or contribute to any risk on return. Appellant H does not assert any rebel or other anti-

government activity. He does not even seek to implicate the government of Sudan in what happened to him in Darfur. He is recorded as having been found by the Home Office not to be politically active. He claims that he will be killed upon identification as a Zaghawa. That is not, however, reasonably likely to be true, as we have already found.

324. The Tribunal considers that, for the reason given earlier, the absence of any specific case examples of mistreatment of returnees as such is significant.

325. For the reasons we have given, the Tribunal does not consider that an adult male in the position of appellant H, even if he were to find himself in a squatter area or a camp for internally displaced persons in Khartoum, would thereby either suffer Article 3 ill-treatment or lack the real possibility of surviving economically.

326. Mr Mahmood submits on behalf of appellant H that any prospect of his being able to work in Khartoum should be discounted since without an identity card appellant H would be unable to work legally, and the Tribunal should discount any possibility (however likely it may be in practice) that he would work illegally. This is on the basis that, just as the Tribunal has in the past found that a person should not be required to lie, a person should not be required to break the law of the country of his nationality.

327. The Tribunal considers that this proposition goes too far. If the evidence shows that a person could only survive, if returned, by engaging in unlawful activities that carry a real risk of significant punishment, it could well be unreasonable, in the context of internal relocation, to expect that person to return. But whilst there may be such cases, the present ones are not of this kind. The Tribunal has not been given evidence to show that what might be described as working “off the books" in Khartoum is a criminal matter, let alone a serious one, as opposed to being a regulatory infringement.

328. Ms Maguire was specifically asked about the issue of unauthorised employment. She said, as did Mr Verney, that most work engaged in by those IDPs who live in camps was not "legitimate". She referred to the difficulties in keeping a job in Khartoum, if one were compelled to live in an IDP camp located a significant distance outside the city. She said that an ID card would be needed for a "real" job but not for such an activity as casual building work.

329. The Rapid Assessment Survey Report (respondent's bundle page 430) has some detailed things to say about economic activity in the camps and squatter areas (see paragraph 124 of this determination).

330. Whilst that report highlights the problems faced by heads of households who are women (as to which see paragraphs 305-307), it makes plain that there is a good deal of economic activity going on in the camps and squatter areas, amongst the displaced persons there. There is also no suggestion that the Sudanese authorities are enforcing any regulatory requirements relating to employment or self-employment. There is no evidence of people being arrested for employment-related infringements. The Rapid Assessment Report is, we find, to be read as giving an accurate general picture of what happens on the ground. It is in this respect to be preferred to the account given by Professor Kalin at page 214 of appellant M’s bundle. That account was of a single visit to speak to an unspecified number of people who had, it seems, been transferred forcibly to a new settlement.

331. There is no evidence to show a reasonable likelihood that appellant H has failed to complete his national service. Even if he might be perceived on return as a draft evader or deserter, the Tribunal has found that this would not on its own place appellant H at real risk on return. Given that his overall profile does not contain anything that would make it reasonably likely the Sudanese authorities would take an adverse interest in him, the military service issue is not something that brings appellant H to the level of being at real risk, even when viewed as part of that profile.

**Appellant G**

332. The facts of the case of appellant G are set out at paragraphs 38 to 40 of the opinions in *Januzi* (see paragraph 8 of this determination).

333. Appellant G is also 33 years old, with no known health problems. His home village was Tawila in North Darfur. That village was attacked by the Janjaweed in March and November 2004. His claim of family links with the SLM was rejected by the immigration judge who heard his appeal. Ms Maguire has supplied an addendum report, relating specifically to appellant G. Insofar as that report attempts to challenge the adverse credibility findings of the Immigration Judge, it deals with matters extraneous to the present reconsideration. Ms Maguire further submits that, since during the current proceedings the appellant has gone on record as a supporter of the SLM/A, that information would be available to the Sudanese National Security and Information Service. We have dealt with this matter in general terms at paragraphs 301-302. As we have found, a reading of the *Januzi* opinions makes plain that appellant G's account of involvement with the SLM/A was not found to be reasonably likely to be true.

334. Ms Maguire states that the appellant is from the area of Tawila "in which the International Commission of Inquiry and, in turn, the office of the Prosecutor of the International Criminal Court have shown particular interest. In my opinion, it is likely, therefore that the security wing of the Government of Sudan will be especially interested in the appellant's account of his experience and that of his family in Tawila during 2004". The attacks on the appellant's village in 2004 occurred at a point when, according to Ms Maguire, the conflict in Darfur had become characterised by Janjaweed raids on civilians. We do not consider that there is any evidence before us to show that the Sudanese authorities are reasonably likely to regard appellant G as being associated with rebels because he comes from Tawila. That is all the more so, given what we have just said about the *Januzi* judgment. As to what Ms Maguire says in her addendum report about the International Commission of Inquiry, any questioning of appellant G on return will disclose that, as is the case, he has not had any political involvement during his time in the United Kingdom. There is certainly no evidence that he has, whilst here, sought to make his account available to the International Commission of Inquiry, or anyone else. That being so, it is difficult to see why, upon return to Khartoum, the Sudanese authorities should see appellant G as a person who is then likely to give his support to international bodies that are investigating what went on in Darfur.

335. As with appellant H, the Tribunal does not find the fact that appellant G is of military service age is a relevant risk factor. As far as we can see, he has never asserted a failure to complete national service. Someone of his age would, we consider, have been likely to have performed his military service. In any event, for the reasons we

have already given, this is not a matter which, in all the circumstances, can advance appellant G's claim to be in need of international protection.

336. As with appellant H, the Tribunal finds that appellant G can live without undue hardship in Khartoum, even if compelled to live in a squatter area or IDP camp. In so finding, the Tribunal has had regard to the written closing submissions of Mr Ali (as we have in respect of our other findings). Mr Ali submits that, whilst conditions for the appellants in Darfur "were not brilliant they were certainly not as appalling or extreme as what awaits them in Khartoum" (paragraph 34(i)). In fact, we have very little evidence from appellant G (or appellant H) as to what standard of living was enjoyed in Darfur but, in any event, as the opinions in *Januzi* make plain, the comparison to be drawn is not between the lifestyle enjoyed by the individual concerned before leaving his home, as compared with what awaits him in the place of relocation but, rather, between conditions in that place and conditions in the country generally.

337. Mr Ali puts considerable weight on the House of Lords' opinions in *ex parte Adam [2005] UKHL 00066*. In that case, the denial of basic support to asylum seekers in the United Kingdom who were compelled as a result to live rough was found to violate Article 3 of the ECHR. Mr Ali submits that that case should be used as a benchmark in deciding whether Article 3 would be breached if appellant G were to have to live in a camp in Khartoum. The Tribunal does not accept this submission. *Soering v United Kingdom (1989)* 11 EHRR439, ECt HR makes it clear that a distinction is to be drawn between foreign and domestic claims based on Article 3. But, in any event, as the *Adam* case makes plain, their Lordships regarded the climatic conditions that persons sleeping rough would be compelled to endure in the United Kingdom at certain times of the year as significant in their assessment. So too was the fact that the Secretary of State prohibited the asylum seekers from working. Those two features alone render comparisons between that case and these unfruitful.

**Appellant M**

338. The facts of the case of appellant M are set out at paragraphs 41 to 43 of the opinions in *Januzi* (see paragraph 8 of this determination). We have, as stated at paragraph 9, taken account of the assertion by appellant M that he has, since being in the United Kingdom, taken part in meetings and demonstrations for the SLM and that he is a "representative for the SLM in West Yorkshire".

339. What we have said at paragraph 320, in respect of the Union who wrote on behalf of appellant H, applies to the "SLM in West Yorkshire". A person who has a history of active involvement with the SLM in Darfur is, we consider, very likely to be of serious adverse interest to the Sudanese authorities and could well be a person who would suffer serious ill-treatment upon return to Khartoum, were the fact of that involvement to become known. The Tribunal has, however, been provided with no evidence to show what the "SLM in West Yorkshire" might be. Given the sophisticated nature of the Sudanese regime, there is not, on the evidence that is before the Tribunal, any reason to suppose that, even if there are individuals in West Yorkshire who have chosen to describe themselves as the SLM in that county, the Sudanese authorities would be reasonably likely to regard those individuals as a threat in any real sense. That is so, even if the individuals do in reality dislike the Sudanese regime but it is all the more so if the reality of the matter is that the individuals are styling themselves as the SLM for opportunistic reasons.

340. The account given by appellant M to the adjudicator was comprehensively disbelieved by the latter. In particular, the adjudicator did not find credible appellant M's assertion that he had been involved in politics in Darfur or in Khartoum or that the authorities had ever targeted him or were ever interested in him because of those activities. Whilst in Khartoum, the adjudicator did not find that appellant M had had any problems and he was a "fit and healthy young man" [now 36]. The only positive findings which appeared to have been made were that appellant M came from Darfur, that he was a businessman, was able to stay with a relative in Khartoum and left that city by air. The adjudicator did not make a specific finding as to whether the appellant had left in an authorised manner. The adjudicator considered that the appellant "may have contacted the SLA in the UK but I am not satisfied that such would bring the appellant to the notice of the Sudanese authorities, nor do I find that even if the appellant attended a demonstration in London 17 December 2004 he would therefore be put at risk. There is no evidence to that effect and I am not satisfied in any event that the appellant is a genuine SLA supporter" (paragraph 20 of the determination). In the light of these findings, the Tribunal does not consider that appellant M's alleged involvement with the SLM in West Yorkshire, even if different from what the adjudicator said about contact with the SLA in the United Kingdom, is anything other than a further piece of opportunism on his part. Applying the *Danian* principles, it is not something that is reasonably likely to interest the authorities in Khartoum.

341. Ms Maguire has submitted an addendum report in the case of appellant M. In this, she states that it will be apparent that appellant M sought asylum outside Sudan and that he left with no legitimate papers and is clearly being returned from the UK. According to her "this will lead to the supposition that he had some reason to fear remaining in Khartoum, which will lead to the belief that the appellant is or was a member of a rebel organisation".

342. The Tribunal does not consider that there is any evidence to support those assertions. In particular, we fail to see why the authorities would regard anyone who exited from Khartoum as being, on that ground, more likely to be of adverse interest than someone who exited from, say, Port Sudan.

343. As with appellant G, Ms Maguire considers that the Government of Sudan "will have followed the House of Lords case closely and will be aware that this appellant is one of those who sought determination at the highest level". We refer to what we have already said on this matter.

344. Ms Maguire considers that appellant M, being a young man without obvious connections in Khartoum, apart from perhaps one relative "and no reason to have lived in Khartoum (such as being a student, or having a job with an international organisation)" is accordingly "likely to be suspected of trying to agitate in Khartoum". This comment may be linked to what follows, where Ms Maguire states that appellant M "is in the same age group as the majority of the rebel leadership (SLM/A and Justice and Equality Movement) and has a level of education (High School) which is more likely to have placed him in contact with senior or middle levels of the rebel leadership".

345. The Tribunal considers that the last comment of Ms Maguire is pure speculation. In any event, if, as contended, the authorities will know about *Januzi*, they will know

what the truth of the matter is; namely, that appellant M is a mere opportunist, who had no legitimate reason to leave Khartoum.

346. Ms Maguire's addendum report states that "the appellant did not complete military service as is obligatory". She considers that he will "face being regarded as a draft evader and subject to detention and questioning in that regard. Such questioning will lead to the disclosure that he sought asylum in the UK". The Tribunal is not aware of any evidence submitted by appellant M, which has been found to be credible, to the effect that he has failed to complete his military service. Our findings in respect of appellants H and G on this issue are applicable to appellant M.

347. Turning to conditions in Khartoum, appellant M has not brought forward any evidence which is reasonably likely to be true, to show that, if returned to Khartoum today, he would find himself so short of resources that he would be compelled to live in a camp or squatter area of some kind. His case falls within that category where a person's credibility is so undermined that he has no reason to be believed in relation to any salient part of his claim to be in need of international protection. There is, in other words, no credible evidence that appellant M has spent all that he possessed in order to reach this country or that he is otherwise without means of assistance or support in Sudan. Even if there were, however, appellant M is a relatively young man with no known health problems who has experience of working in what appears to be an entrepreneurial capacity. He is not at real risk of Article 3 ill-treatment or of falling below subsistence level, were he to live in a camp or squatter area.

348. In his closing submissions on behalf of appellant M, Mr Jacobs attempts to shut out the first part of the analysis we have undertaken in the previous paragraph. He submits that the adjudicator in the case of appellant M “accepted that it is reasonably likely that the appellant will end up in a camp in Khartoum” and that the House of Lords “took the view that the risk to this appellant in having to live in a camp was indistinguishable from the same risk in respect of [appellants H and G], who would also end up in a camp”.

349. The Tribunal rejects that submission. As far as the adjudicator’s findings are concerned, he approached the issue on the basis that, if appellant M were returned to Khartoum, “he may be able to stay with his relatives or he may unfortunately find it necessary to go to a camp. Either way I am not satisfied that it would be either unsafe or unduly harsh for him to do so” (paragraph 21 of the determination). Given the robust adverse credibility findings of the adjudicator and the fact that he twice stated earlier in paragraph 21 that he did not find the appellant had had any problems in Khartoum, on any fair reading of the determination the adjudicator was effectively making an alternative finding that, even if appellant M did find himself in a camp, that would not be unduly harsh.

350. As for the House of Lords, Mr Jacobs’ submission is, the Tribunal considers, founded on a misreading of paragraphs 55 to 60 of the opinions in *Januzi*. Their Lordships were not requiring this Tribunal to undertake its detailed assessment of the evidence on the basis that any returning Darfuri must be assumed, regardless of individual circumstances, to be reasonably likely to have to live in a camp. Of course, that evidence *might* have shown this to be the case but, having been fully considered, it does not do so. Having said this, we have, as the adjudicator did, approached the case of appellant M on the alternative basis that he found himself living in one of the camps.

**Appellant O**

351. On 30 June the respondent withdrew his immigration decision in respect of appellant O. Appellant O is to be granted refugee status.

352. In view of the withdrawal of the immigration decision, the appeal of appellant O is treated as withdrawn by reason of rule 17(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and this determination constitutes notice of that fact under rule 17(3).

**Decision**

353. The appeals of appellants H, M and G are dismissed on asylum and human rights grounds.

Signed

Senior Immigration Judge Storey

Date

**Appendix A**

Background Materials considered by the Tribunal (in chronological order):

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| Udloendinge Styrelsen Report on fact-finding mission to Cairo, Khartoum and Nairobi: **Human rights situation, military service, and entry and embarkation procedures in Sudan** | 08.08.01– 19.08.01 20.11.01- 23.11.01 |
| Paper by Samia Elsheikh and Chamhuri Siwar, Faculty of Economics, Universiti Kebangsaan Malaysia: "**Tenant Households and Poverty in the Gezira Irrigated Areas, Sudan: Analysis and Implications**" | October 2002 |
| Home Office statistics: **Asylum applications received in the UK by Sudanese nationals, 2004** | 2004 |
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| Letter from Jan Shaw, Refugee Programme Director, Amnesty International to White Ryland Solicitors | 20.02.04 |
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| Allafrica.com UN Integrated Regional Information Networks: News: **"Sudan: Darfur is World's Greatest Humanitarian Disaster, Says UN Official"** | 22.03.04 |
| SOAT Sudan Organisation Against Torture: **Arbitrary arrest of two students in Khartoum** | 01.10.04 |
| Amnesty International AFR 54/133/2003 UA 258/04 **Human Rights Defender / Fear for safety** | 08.10.04 |
| Irinnews.org: UN Office for the Coordination of Humanitarian Affairs: **"Sudan: Demolitions render thousands of IDPs homeless"** | 15.10.04 |
| SOAT Sudan Organisation Against Torture: **Arrests and torture of Darfurian Students** | 20.10.04 |
| UNHCR Map: **Darfur Administrative Units** | 24.11.04 |
| Amnesty International: **"Sudan No one to complain to: No respite for the victims, impunity for the perpetrators"** | December 2004 |
| **Africa on the move: an urban crisis in the making** – A submission to the Commission for Africa by Dr Anna Kajumulo Tibaijuka, Under Secretary General of the United Nations | Dec 2004 |
| Freedom House: **Freedom in the World – Sudan (2005)** | 2005 |
| HDR 2005, **Country Fact Sheets: Sudan**. The Human Development Index – going beyond income. | 2005 |
| Home Office statistics: **Removals and voluntary departures of Sudanese asylum applicants** | Jan 2005 – Mar 2006 |
| **Khartoum State Interagency Rapid Assessment Report Nov/Dec 2004** | 19.01.05 |
| Global IDP: **Profile of Internal Displacement: Sudan** | 24.03.05 |
| UNHCR Map: **IDP and Refugee Locations – West Darfur and Eastern Chad** | 05.05.2005 |
| Amnesty International AFR 54/047/2005 UA 116/05 **Fear for safety** | 09.05.05 |

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| BBC News/World/Africa: "**A violent day in Khartoum's suburbs**" | 24.05.05 |
| Amnesty International **Sudan: List of Political Detainees** | 24.05.05 |
| Amnesty International AFR 54/053/2005 UA 136/05 **Fear of Torture or ill-treatment/Fear of Arbitrary Arrest** | 24.05.05 |
| Amnesty International AFR 54/060/2005 **Fear of Torture/Fear of Arbitrary Arrest/Incommunicado detention/Death in Custody** | 16.06.05 |
| Amnesty International AFR 54/061/2005 **Fear of Torture/Fear of Arbitrary Arrest/Incommunicado detention/Death in Custody** | 24.06.05 |
| **Lives in Our Hands: Darfuri asylum seekers facing removal to Khartoum,** The Aegis Trust | 30.06.05 |
| Okenden International article: "**Historic Day in Sudan**" | 08.07.05 |
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| **Sudan Humanitarian Review** | 15.08.05-15.09.05 |
| Amnesty International Public Statement AFR 54/072/2005 **"Sudan: The rights of Khartoum's displaced must be respected"** | 23.08.05 |
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| Amnesty International Press Release **"Sudan: Amnesty International representatives detained and human rights activists harassed"** AFR 54/001/2006 | 23.01.06 |
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