

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73378

AT AUCKLAND

Before: P Millar (Chairperson)
S Joe (Member)

Counsel for Appellant: K Gore

Appearing for NZIS: No Appearance

Date of Hearing: 4 and 16 December 2002

Date of Decision: 11 December 2003

DECISION

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

INTRODUCTION

[2] The appellant is a 34 year old single male who arrived in New Zealand on 1 September 2001. He applied for refugee status on that date and an interview with a refugee status officer was scheduled to take place on 7 December 2001. The appellant did not appear for the interview and his application was dismissed by the RSB in a decision dated 7 December 2001 on the basis of his non-appearance.

[3] It is from this decision that the appellant appeals to the Authority.

[4] By letter dated 21 July 2003 the Authority brought to counsel's attention some country information and a decision by the Authority on the issue of

statelessness. In an undated letter received on 12 August 2003, counsel made submissions on that information. These submissions have been taken into account in the preparation of this decision.

THE APPELLANT'S CASE

[5] The appellant was born in the town of H in the Nuba mountain region of south-central Sudan. His father was born in the Republic of Chad and left that country when he was 17 years old to find work in the Sudan. The appellant's father comes from the Bonga watai tribe and is Muslim. He worked as a farmer.

[6] The appellant's mother was born in H and she is from the Bongo and Nuba tribes.

[7] The appellant's father had four wives and from his marriage to the appellant's mother they had seven children, three boys and four girls. Two of the appellant's father's wives are deceased and the other two live with him. The appellant's oldest brother, now 30 years old, lives with the appellant's parents, working as a farmer and shepherd. The next oldest brother also lives and works with the appellant's parents. He is 25 years old. The appellant's sisters also live with the appellant's parents.

[8] From his first marriage, the appellant's father had two sons and two daughters. He had two daughters and one son from his second wife. His third wife is the appellant's mother. From his marriage to his fourth wife, they had twins, a son and daughter. All of these persons live with the appellant's father and work as farmers or shepherds.

[9] The appellant attended school when the family lived in H until 1986. In that year, the family had to flee from that area because of the conflict between the government and rebels from the south. The rebels confiscated the appellant's father's stock and grain. They forced the family from their land.

[10] The family went to the area of ALJ, two hours by car from Khartoum. They rented land from others in the area, built their own home and farmed that land.

[11] From 1986 until 1989, the appellant attended a high school in the area; 10 percent of the students being African, the rest Arab. The Arab students taunted the appellant because he was African from the Nuba mountains. The appellant nevertheless completed school, sitting and passing his final exams. However, he could not attend university as his parents could not afford the fees. In 1988 the government withdrew assistance for students at university to spend money on the war with the rebels in the south.

[12] On completing high school the appellant worked as a builder's labourer in the local area and lived at home with his parents.

[13] In March 1991 and at the end of 1991, the security department of the government came to the appellant's family home in ALJ asking for the whereabouts of a relative who was in a rebel group advocating the rights of Nuba people. They insulted the family verbally but did not beat anybody. Only the appellant's parents and his sister were home on both occasions. The family told the authorities they did not know the cousin's whereabouts. The appellant said that this person had disappeared at about that time and they had heard on the radio that he was wanted because he was in a rebel group. The security department officials did not ask the appellant's parents about anybody else or raise any other matter with them.

[14] The Sudanese authorities have not since visited the appellant's family about the appellant's cousin.

[15] At the end of 1991, or early 1992, the appellant went to live in Khartoum and supported himself by selling books. The appellant obtained books from former students and would sell them to students, doing this in the grounds of the university campus in Khartoum.

[16] Also, in early 1992, the appellant commenced studies at an institute of computer science in Khartoum. This was a privately run institute and the appellant would attend classes in the evening. He would sell books during the day to support himself and also to pay the institute fees.

[17] In June 1992, the appellant was approached by a student who was from the Khartoum student union. This person observed that one of the books the appellant was selling was stamped with the seal of Khartoum University. The

student said that the book was stolen and told the police. The police then came, arrested and detained the appellant for three days. All of his books were confiscated and, in addition, the appellant received 75 lashes. While detained, the police said the appellant was homeless and had come to Khartoum to steal. They said he was working illegally. He was also kicked and hit with a black hose. They asked him many times about his identification and he said that the authorities would not give him an identification card. However, the appellant showed them a student card issued to him by the institute which had his name and class on it. He was released after three days.

[18] As regards identification, the appellant said that at his birth his family were given an "ageing certificate" issued by the midwife at that time. The appellant was not given a birth certificate as the government stated that he and his family were from Chad and they were not Sudanese. When the appellant attended intermediate school in ALJ, he was given a student identification card. The appellant claimed that when a person turns 15 years old in the Sudan, they must have an identification card but he could not obtain one as he did not have a birth certificate. Instead he relied on the student identification card given to him by the intermediate school. As already stated at the institute of computer science, the appellant was given a student identification card.

[19] Also in about June 1992, the appellant went to the city of O where he applied for citizenship. However, he was told that he could not obtain Sudanese citizenship as his father was Chadian and the appellant himself was regarded as being from Chad.

[20] The appellant decided at this time to leave the Sudan in the light of the arrest and detention for three days. Also, the appellant felt that Africans were treated unfairly in the Sudan in light of his experience at school. He disapproved of the use of Arabic as the teaching medium at university. Further, the African families were taxed heavily by the authorities in the appellant's local area in ALJ, with much of their produce being taken from them and very little left over to live on. Arab families were treated more leniently in this regard.

[21] Also the appellant wished to leave the Sudan as he did not wish to be called up for military service. In this regard the appellant said that when someone turned 17 or older they were eligible to be called up to perform military service. Usually, if one was a student, they would not have to perform military service but if at the

time, the government was in need of recruits, they would even call up students. The appellant believed that if he was called up he would be sent to the south of the country to fight and he did not wish to do this because he did not believe in violence and also he felt that he would be killing his own people.

[22] The appellant also believes that if sent to the south of the country he will be killed. The appellant said he had a maternal uncle, two friends and a nephew all taken to fight in the army at the time he was living in the Sudan and whom he understands were killed in the south.

[23] The appellant said that he himself managed to avoid being made to perform military service once he left school. He said that he “used to escape” whenever the authorities came to his local area. While living in Khartoum he would also run away to his local area staying for two or three days if he felt there was a chance that he could be apprehended in Khartoum by the authorities.

[24] Sometimes there would be an announcement on the radio or television that the following day was an emergency day which meant that the authorities could apprehend people to perform military service. The appellant said that on these occasions he would simply stay inside in his home.

[25] While studying at the institute, on three occasions the appellant was stopped by the authorities and his identification checked. He was stopped once on the outskirts of Khartoum and on the other two occasions he was in Khartoum. Twice he was on a bus and the other time he was stopped in the street. The appellant showed the officials his student ID card from the institute and was allowed to go without any further trouble.

[26] The appellant paid 1,000 Sudanese pounds to a person who used his contacts within the government to obtain for the appellant an ID card, passport and visa to leave the Sudan. These documents were issued in the appellant’s own name. The Authority understands the appellant obtained these documents in 1992. The appellant stated that one needed an ID card to obtain a passport and the issuing authorities would check if the applicant had completed military service. Through the contacts of this individual the appellant was able to obtain a passport although he had not done military service.

[27] On 18 September 1992 the appellant left Sudan, taking a boat to a town near the border with Egypt and crossing the border into that country. He proceeded through Sudanese Customs to do so, showing the officials his passport and left the country without difficulty. The appellant then remained in Cairo for two months before spending four days in Syria. He then travelled to Lebanon where he remained until April 2001. The appellant left Lebanon because he had lost his employment. While in Lebanon, the appellant met another Sudanese person, Mr X, who periodically would return to the Sudan to visit family. The appellant gave this person some money which he asked him to take to the Sudan and give to the appellant's family. Mr X carried out this request and also, on return to Lebanon, reported to the appellant about his family. The appellant learned from Mr X that in 1994 the authorities took a half-brother of the appellant for military service. The appellant understands that this person has not been seen since and the appellant is certain that he was sent to the south of the country to fight. This half-brother lived in a separate house in another village. He has not been told of any other family member being taken for military service or that the family have been visited or bothered by the authorities in any way.

[28] The appellant left Lebanon on 18 April 2001 and flew to Thailand then Malaysia. He left his Sudanese passport in Malaysia and came to New Zealand, arriving in this country on 1 September 2001.

[29] Since his arrival in New Zealand, the appellant has not directly contacted his family as they do not have a telephone or postal address. He has, however, contacted his friend, Mr X, in Lebanon to whom he speaks by phone once per month. He sent Mr X some money which he asked Mr X to take to his family. Mr X told the appellant that in January 2002 he saw the appellant's family but did not mention if any of them were having difficulties with the government, nor did he say that any male member of the family had been called up to perform military service.

[30] The appellant believes that his two brothers should have performed military service by now but may have been able to avoid doing so by staying away from checkpoints.

THE ISSUES

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

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

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

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

ASSESSMENT OF THE APPELLANT'S CASE

[33] Before the Authority can determine the framed issues an assessment must first be made of the appellant's credibility.

[34] The Authority questioned the appellant closely over two hearing days and has found no reason not to believe the account he has put forward. His account was materially consistent with his statement which he provided to the RSB and the Authority accepts his account is credible.

[35] The Authority will now proceed to assess and determine each ground raised by the appellant as a basis of his refugee claim.

Nationality - Sudan

[36] The Authority notes that while living in Sudan the appellant and his father both unsuccessfully applied for citizenship of that country. The reason their applications were unsuccessful was because the appellant's father was born in Chad.

[37] The Authority notes that according to the 1957 law of Sudanese nationality (in operation when the appellant lived in the Sudan) birth in the territory of the Sudan does not automatically confer citizenship and nationality is only obtained by the child of a native born Sudanese father or of a naturalised Sudanese father. Additionally, Sudanese citizenship can be acquired by naturalisation if a person resided in the Sudan for 10 years and fulfils a number of other conditions under that law (the appellant being able to satisfy the Minister of the Interior that he is of full age and capacity; he has been domiciled in Sudan for a period of 10 years preceding the date of the application; he has an adequate knowledge of the Arabic language; he is of good character and not previously been convicted of a criminal offence involving moral turpitude; he intends, if naturalised to continue to reside permanently in the Sudan; if he is a national of any foreign country that he has divested himself of that nationality; that he is of sound body and mind and not suffering from a permanent infirmity which renders him a burden on the community). The Authority does not know precisely under which ground the appellant attempted to obtain nationality.

[38] However, the ground on which the appellant based his application is of no consequence to the outcome of this appeal. Nor is the ground of a decline that his father was Chadian or that the appellant was regarded as being from Chad. This is because country information establishes that under the Sudanese Nationality Act 1993, the Citizenship law now in force in the Sudan any person born before the 1993 law was enacted is regarded as Sudanese if either he or his father was born in Sudan (*"Sudan Assessment"* Country Information and Policy Unit, Home Office United Kingdom October 2002 at 4.45). The Authority has not been able to obtain the precise date this law came into effect but the Authority would assume that the law was in force from or after 1993 and therefore after the appellant stopped living in the Sudan.

[39] The Authority is not aware of any country information indicating that this law is applied in a discriminatory manner against potential applicants nor, in particular, against persons of the appellant's ethnicity or background. As the appellant was born in Sudan, according to this country information he can obtain Sudanese citizenship. This was put to the appellant by the Authority at the appeal hearing and he said that he was not aware of this law. Counsel submitted that given the appellant has no valid documentation as to his identity because he is African and in view of his cousin's activities in a rebel army the appellant may not be granted citizenship.

[40] However, the appellant was never harassed or of interest to the authorities because of his cousin. He was detained on only one occasion in his life in Sudan and this was not related to the activities of his cousin. He was of no further interest to the authorities after that time.

[41] As regards counsel's submission that the appellant has no valid documentation as to his identity the Authority notes that the appellant received an "ageing certificate" when he was born which he used to obtain identification when he was at school and also at the institute of computer science which he attended. He therefore in his life in the Sudan has been able to obtain valid documentation as to his identity and birth place.

[42] In the light of that information and the fact that the law clearly states that someone born in the Sudan will be granted Sudanese citizenship, the Authority finds that he is a Sudanese national.

Discrimination

[43] The appellant complained that he suffered discrimination in the Sudan because he was not an Arab. However, the appellant was able to complete intermediate education and attend an institute to learn computer science. In *Refugee Appeal No 732/92* (5 August 1994), the Authority stated that the right to education as proclaimed in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights has generally been interpreted as imposing a duty to provide compulsory primary education available free to all.

[44] The appellant received an education beyond the primary level. While he may not have had the same access to public resources in terms of higher education compared to that available to Arab persons, this does not amount to persecution.

[45] He was never excluded from employment in the Sudan. He was able to work as a builder's labourer for two years after completing his school education and then opening a stall selling books. There is no evidence whatsoever before the Authority that the appellant would be prevented from obtaining similar or other employment on return to the Sudan.

[46] The appellant also complained that the regime took far too much produce from the family farmlands but said that this occurred on lands all over the Sudan. He said that Arab farmers in his local area were given special treatment and not subjected to these methods. However it is clear that the family have been able to support themselves over a number of years and the appellant himself has been able to earn a living and provide for himself in the Sudan.

[47] As the Authority stated in *Refugee Appeal No 71427/99* (16 August 2000) discrimination per se is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution. Not every breach of a refugee claimant's human rights constitutes persecution. Professor Hathaway in *The Law of Refugee Status* (1991) at 103-104, states (verbatim):

“As a holistic reading of the refugee definition demonstrates, the drafters were not concerned to respond to certain forms of harm per se, but were rather motivated to intervene only where the maltreatment anticipated was demonstrative of a breakdown of national protection.”

[48] Accordingly, even if the claimed discrimination was considered on a cumulative basis, it still could not be said to amount to a sustained or systemic violation of core human rights entitlements tantamount to persecution. Accordingly the Authority finds the appellant's fear of persecution on this ground, namely his ethnicity, is not well-founded.

Military Service

[49] Finally the appellant said that if he returns to the Sudan he will be conscripted into the army and sent to the south to fight for the government in the civil war. The appellant said that he would refuse to serve in the government army because of the way the government has treated African persons like him; because he does not wish to fight against other Africans in the southern rebel armies and, more generally, he is opposed to the use of violence to resolve conflicts.

[50] The war in the Sudan has not ended but a cease fire is currently in place (see “*Sudanese Government Rebels Extend Cease Fire Ahead of Peace Talks*” Agence France Presse, 28 November 2003, Relief Web, <http://www.reliefweb.int>, accessed 1 December 2003; “*SPLA to Make First Official Visit to Khartoum of Civil War*” Agence France Presse, 29 November 2003 obtained from NEXIS). The same sources of country information provide that the cease fire was due to expire

on 30 November but has been renewed for a further two months as peace talks continue.

[51] It is hoped and expected by both the government and the Sudan Peoples Liberation Army (“SPLA”) that a comprehensive peace agreement will be signed before the end of the year and that a complete cease fire will be in place by the end of January (see “*Sudan Anger at Sanctions Renewal*” BBC News, 31 October 2003 obtained from the Internet at <http://www.news.bbc.co.uk>, accessed 1 December 2003; “*Sudanese Government, Rebels Extend Cease Fire Ahead of Peace Talks*” Op Cit).

[52] The Justice and Equality Movement (“JEM”) a rebel group based in Darfur has claimed that they will not accept the bi-lateral peace deal between the SPLA and the government and have warned that the peace deal will lead to an escalation of fighting in that area and other areas as rebel groups emerge which feel that their grievances are not being represented (see “*Marginalised Majority to Reject Bi-lateral Deal say Darfur Rebels*” UN Office for the Co-ordination of Humanitarian Affairs, 26 November 2003 obtained from the Internet, <http://www.irinnews.org/print.asp?ReportID=38100>, accessed 1 December 2003).

[53] In the Authority’s view while a cease fire may be in place and it is hoped that a peace agreement will be reached in the near future, at the present time the Authority cannot conclude that such an agreement will be reached especially in the light of possible instability in the Darfur region where sporadic fighting continued killing thousands and displacing more than 600,000 (“*Sudan anger at sanctions removal*” Op Cit). Even if reached there can be no confidence it would hold and lead to the cessation of hostilities for any appreciable period of time. It follows that the Authority cannot be confident the government will cease forcing people to perform military service and fight in the conflict.

[54] Country information available to the Authority provides that national service is compulsory for all males aged between 18 and 33 pursuant to the National Service Act of 1992 which was introduced in an attempt to meet the increasing personnel needs of the armed forces (see “*Country Assessment the Sudan*” Home Office United Kingdom paragraph 4.17). The penalty for refusing to perform military service is a fine and up to three years imprisonment (paragraph 4.19) it is reportedly difficult to evade military service and a deserter from the army on being

arrested by the authorities would usually be re-conscripted into the armed forces (paragraph 4.19).

[55] This information was provided to the appellant and counsel who submitted country information referring to conscription being carried out by authorities raiding buses and other places to seize young men and the authorities ordering a crackdown on draft evaders because of an increasing difficulty in recruiting soldiers for the war against rebels in the south (see United States Department of State *Country Reports on Human Rights Practices for 2001: Sudan* (March 2002)). The Authority notes that comments to the same effect are made in the most recent Department of State Country Report for Sudan issued in March this year. Counsel also refers to the "*CIA World Fact Book 2002 – Sudan*" page 8 which provides that men aged 15 to 49 are available to be called up to serve in the military.

[56] The appellant said that when one turns 17 one is eligible to be recruited into military service. The Authority notes that the appellant turned 17 in 1986 but does not appear to have been officially called up to perform military service or apprehended by the authorities and conscripted over the six or seven years until he left the Sudan in September 1992.

[57] The appellant claimed that for part of this period he was a student and at that time students were exempt from conscription. For the period he was not a student he said he could avoid being called up by staying at home on days where warnings had been given that persons would be called up for military service, returning to his native village and leaving Khartoum for two or three days if he thought there was a chance he could be caught.

[58] Considered against the appellant's ability to avoid conscription in the time he lived in the Sudan, is the fact that the government still continues to endeavour to recruit persons into military service and this appears to be either by official call-up or taking people from public places. While according to one source of information the age of eligibility ends at 33 (the appellant is now 34) another source provides that the age of eligibility lasts until a male turns 49.

[59] The Authority must also bear in mind the appellant would be returning to the Sudan after a lengthy absence of almost 11 years. Country information available to the Authority concerning the return to the Sudan of Sudanese nationals from abroad provides that in general Sudanese nationals can enter the Sudan without

any problems if they have valid travel documentation (see “*Sudan Assessment*” Country Information and Policy Unit, Home Office, United Kingdom, October 2002, 5.42 and 5.43).

[60] The appellant does not have any form of identification with him in New Zealand at present and will have to apply for travel documentation to re-enter the country.

[61] The Authority must consider that when applying for Sudanese travel documentation to be able to re-enter the country there is the possibility that enquiries could be made as to whether the appellant has performed military service.

[62] Taking those two possibilities together, the Authority cannot be satisfied that the chance of the appellant being conscripted is a remote chance as opposed to a real chance. In the absence of more precise country information on the issue, the Authority finds that the appellant must be given the benefit of the doubt and that there is a real chance he will be conscripted should he return to the Sudan. That could occur either on his actual arrival in the country or after that time when he resumes his life in that country.

[63] The Authority has recognised as a situation where refugee status may be granted the circumstance where a state conducts military action as a matter of government or military policy which is internationally condemned as violating basic international standards (such as violation of basic human rights, breaches of the Geneva Convention standards for the conduct of war or non-defensive incursions into foreign territory). The Authority has held that an individual claimant’s refusal to take part in the activity on grounds of conscience may be interpreted as a political statement and in such cases the infliction of punishment may give rise to the inference that the state intends to impose punishment by reason of political opinion (see *Refugee Appeal No 70472/97* (28 January 1999)).

[64] Country information available to the Authority indicates that the Sudanese government conducts military action against the rebel factions in the south of the country in violation of basic human rights and standards for the conduct of war.

[65] In this regard, in the “*Country Reports and Human Rights Practices – 2002: Sudan*” United States Department of State, 31 March 2003 (“the DOS report”) it is stated that all sides in the fighting were responsible for violations of humanitarian

law. The government continued efforts to strengthen its control of the oil producing areas in Western Upper Nile by routinely killing, injuring and displacing civilians, destroying clinics and dwellings during offensive operations. Government-allied militia intentionally attack non-combatant civilians, looting their possessions and destroying their villages.

[66] According to the DOS report the government and government associated forces implemented a scorched earth policy in this area by injuring persons seriously, destroying villages, driving out inhabitants to create an uninhabited security zone and increasing indiscriminate bombing of civilian locations. Government forces and military militias loyal to both sides raped women and forcibly conscripted men and boys. Both sides continued to lay mines. The government did not apply the laws of war to the southern insurgency, has taken few prisoners of war and did not co-operate with the International Committee of the Red Cross regarding access to or treatment of POWs. Co-operation with UN sponsored relief operations generally was poor with government forces continuing to obstruct the flow of humanitarian assistance. Government forces routinely killed rebel soldiers captured in battle.

[67] The United States government has condemned the Sudanese government's aerial bombings and other attacks against civilian targets in the south and in some eastern equatorial region towns which the United States government said had no military purpose (see "*US Condemns Bombing of Civilian Targets in Sudan*", United States Department of State, 25 August 2000 obtained from the Internet <http://www.reliefweb.int>, accessed 1 December 2003).

[68] The United Nations Emergency Relief Co-ordinator has also condemned attacks against civilians in southern Sudan urging the Sudanese government to refrain from any further such military action these being areas where the UN was distributing food to internally displaced persons (see "*UN Emergency Relief Co-ordinator Urges Sudan to Stop Bombing Civilian Targets*" UN Department of Public Information 9 October 2001 obtained from the Internet <http://www.reliefweb.int>, accessed 1 December 2003).

[69] A further source refers to the Norwegian government condemning an attack by the Sudanese government on a UN food distribution centre in the south stating it was an attack on civilians and not just a single incident but an alarming pattern of behaviour (see "*Norway Condemns Attack by Sudan Government on Civilians*" 21 February 2002 Government of Norway, obtained from Internet <http://www.reliefweb.int>, accessed 1 December 2003).

[70] The United Nations Human Rights Commission has passed a resolution condemning both the Sudanese government and the rebel SPLA for human rights violations in the conflict (see *“Sudan Unhappy with UN Rights Commission Criticism”* Pan African News Agency, Daily News Wire, 20 April 2002 obtained from NEXIS).

[71] In a further report the United States government condemns the Sudanese government’s banning of flights to certain parts of the country, some of which are controlled by the opposition, as continuing a pattern of using humanitarian assistance as a weapon of war. It condemned the shutting down of all humanitarian operations to opposition controlled areas forcing the evacuation of humanitarian staff placing vulnerable citizens even more at risk in particular the risk of not receiving any food (see *“Statement by Andrew S Natsios USAID Administrator Special Humanitarian Co-ordinator for Sudan”*) US Agency for International Development, 3 October 2002, obtained from the Internet, <http://www.reliefweb.int>, accessed 1 December 2003.

[72] A more recent report provides that the Sudanese government is largely responsible for a human rights and humanitarian crisis in Darfur; this claim being based on the testimonies of scores of refugees describing attacks on rural communities by militias which included members of the armed forces or other security forces (see *“Sudan: Humanitarian Crisis in Darfur Caused by Sudan Government’s Failures”*) Amnesty International, AI Index: AFR54/101/2003, 27 November 2003).

[73] In the Authority’s view the country information discussed above provides sufficient basis for the Authority to conclude that the Sudanese government is conducting military action which is internationally condemned as violating basic international standards and so the appellant’s refusal to take part in that activity could be said to be interpreted as a political statement.

[74] Any punishment imposed on the appellant for refusing to participate in the conflict will be persecution on the grounds of adverse political opinions imputed to him by the Sudanese government.

CONCLUSION

[75] For the reasons given above, the Authority finds that objectively on the facts as found there is a real chance the appellant will suffer persecution if he returns to

the Sudan and this persecution will be based on adverse political opinions imputed to him by the Sudanese government.

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

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P Millar
Chairperson