

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75968

AT AUCKLAND

<u>Before:</u>	R J Towle (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for INZ:</u>	No Appearance
<u>Date of Hearing:</u>	6 December 2006
<u>Date of Decision:</u>	19 February 2007

DECISION

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

INTRODUCTION

[2] The appellant claims that because of his political views and those of his father, he would be forced to undertake military service against his will if he were to return to Sudan. The determinative issue in this appeal is the well-foundedness of the claim.

[3] The appellant arrived in New Zealand on 21 March 2006 and lodged a claim to refugee status on 23 March 2006. He was interviewed by the RSB on 27 April 2006 and, in a decision dated 24 October 2006, his claim was declined. He has appealed against that decision.

THE APPELLANT'S CASE

[4] The following is a summary of the evidence presented by the appellant. The credibility of this evidence is assessed later.

[5] The appellant is a single man in his mid-twenties. His father is a Sudanese national and his mother is a Yemeni national. The appellant and his three younger siblings were all born in Saudi Arabia and are nationals of Sudan. Despite their mother's Yemeni nationality and the fact that they have spent most of their lives in Saudi Arabia, neither the appellant nor any of his siblings has acquired any rights to a nationality other than Sudanese.

[6] The appellant's father was born in Sudan. He was an active member of the Sudanese Communist Party (SCP) which provided him with a scholarship to study medicine in Russia. After completing his studies, the appellant's father did not return to Sudan as he was opposed to the then-government. The SCP also became a banned organisation in Sudan and many of its members were arrested and ill-treated.

[7] As his return to Sudan was out of the question, the appellant's father travelled to Yemen looking for employment. He did not find work that suited his profession but met the appellant's mother, a Yemeni national, during this time. They married and, together, moved to Saudi Arabia where the appellant's father found employment in a hospital in Riyadh where he worked for the next 24 years.

[8] During this period the appellant's father never returned to Sudan because he did not support the politics of the regime and feared he would suffer problems because of his known association with the SCP and his extended absence from the country.

[9] The appellant does not have a deep knowledge of his father's political views because he is a private and reserved man. However, over the years at their home in Riyadh, the appellant overheard many conversations between his father and visiting fellow Sudanese nationals in which they discussed political affairs and developments in their home country.

[10] The appellant does not know, specifically, the degree of his father's involvement with the SCP in Sudan prior to his departure because these matters were never discussed openly between them. However, he was aware that his father had been a member of the banned organisation and that his many years in

exile were due, in part, to his fears of what might happen to him if he were to return to Sudan.

[11] Until recently, the appellant's father enjoyed a stable career as a doctor at the Riyadh Hospital. However, he has now reached the age of retirement and is exploring the options of remaining legally in Saudi Arabia or returning to Sudan. Again, the appellant has not discussed these matters with his father in any detail.

[12] The appellant's mother studied literature but after her marriage to the appellant's father was not allowed to work. The appellant's younger sister completed her schooling in Saudi Arabia and is presently enrolled at a private university in Khartoum. This expensive course is paid for by the appellant's father. The appellant's two younger brothers are still at school in Riyadh and, at present, no plans have been made for their future.

[13] The appellant was born and raised in Riyadh. His schooling years were uneventful.

[14] In 1997, he travelled with his family, on his mother's passport, to Yemen for the purpose of securing Yemeni citizenship. He was refused because Yemeni citizenship could only be acquired on patriarchal lines. When he became too old to travel on his mother's passport his father had no other option but to apply for a Sudanese passport for him at the embassy in Yemen. This was duly issued without difficulty.

[15] The appellant completed his schooling in mid-2000 and began to discuss his future options with his parents. His father was not in favour of the appellant returning to Sudan both because he did not support the regime in Khartoum and because of the serious risks that the appellant would face if he had to perform military service on his return.

[16] In addition to sharing his father's concerns for his physical safety, the appellant also opposed military service on the grounds that he did not agree that Sudanese should be "killing each other".

[17] The appellant has heard many stories about young men of service age – who had returned from the Gulf region – who were treated more harshly by the military than normal Sudanese recruits because they were not regarded as "faithful Sudanese". He has heard many anecdotes of recruits suffering serious injuries, including the loss of eyes and limbs. In particular, a friend of his family told them

of an incident where a young man, forced into military service on his return to Sudan, was severely mistreated by his military supervisors because he was raised overseas. He lost his life as a result of this ill-treatment.

[18] The appellant has never visited Sudan and, therefore, has little knowledge of the conflicts in the south and in the Darfur region in the west of the country. His father used to speak of the instability in the south and how the government was unable to prevent, and had indeed fuelled, the civil war there.

[19] The appellant was, and remains, deeply concerned that innocent Sudanese youth are being forced into military service against their will and coerced into conflicts that are morally wrong.

[20] The appellant is a pacifist who does not agree with war or the taking of life. It is in his nature to be opposed to killing anyone or to bearing weapons. He does not believe that anyone has the right to use weapons unless the danger to society reaches such a level – such as “with Hitler” – that there is no other option but to fight. Even then, those who do not agree with the conflict should be given the right to refuse.

[21] The appellant is particularly opposed to any military service that would involve pitting Sudanese people against each other. He considers people are losing their lives for no purpose and the government is using and manipulating people for their own political purposes. Most Sudanese people do not even know the root causes of the original conflict in the south or in Darfur.

[22] Even if the conflict in the south has now diminished the appellant remains concerned about being mistreated by officers during the training period and the considerable danger posed by unexploded mines.

[23] For these various reasons – which prevail to this day – the appellant’s family decided not to send him to Sudan for his university studies in 2000. Instead, and following his father’s own experience, the appellant decided to enrol in a five-year dentistry course in Russia.

[24] In mid-2001, he travelled from Saudi Arabia to Russia where he enrolled in a twelve-month Russian language course to bring him to the required level of proficiency for his medical studies.

[25] In early 2002, during a mid-semester break the appellant travelled to Moscow and, by chance, met a South African tourist who agreed to sell the appellant a false passport. The appellant was attracted to this proposition because he knew that at the conclusion of his studies he could not go to Sudan and he wanted to have some "insurance policy" even though he had no immediate plans to use the passport.

[26] In mid-2002, the appellant enrolled in dentistry at the university in Russia. After one semester he withdrew from the course because he was struggling with the Russian language and disliked the constant racial abuse that he received from young Russian people in the area. They did not physically assault him but the verbal taunts were humiliating and degrading and he did not want to remain in Russia for another five years in these difficult circumstances.

[27] The appellant returned to Saudi Arabia to discuss the situation with his family. After several months and with his parents' support, he travelled to the Philippines where he enrolled in an English-speaking dentistry course. His tuition and living expenses were paid by his father. He kept in regular contact with his family and visited them in Saudi Arabia in early 2004 using his Sudanese passport. He returned to the Philippines several months later and resumed his studies.

[28] In early 2005, the appellant's legal right to reside in Saudi Arabia was to expire. He intended to return to Saudi Arabia to renew it but was delayed in the Philippines due to outstanding academic commitments in his course. As a result, his permit lapsed and he lost any right to return to Saudi Arabia on a permanent basis.

[29] When he realised that this, effectively, would separate him from his family in Saudi Arabia, the appellant became depressed and discouraged. He lost any interest in completing his studies in the Philippines and became increasingly concerned about his future.

[30] In mid-2005, the appellant heard that his father was reaching the age of retirement and the family may not be able to remain in Saudi Arabia. In the meantime the appellant's sister had commenced studying at a university in Khartoum.

[31] The appellant decided not to withdraw from his university course and used the last of funds provided by his father to support himself in the Philippines while

he considered his future options. He could not be reunited with his family in Saudi Arabia and feared the prospect of return to Sudan – for the same reasons stated earlier.

[32] In late 2005, the appellant met a Nigerian man who provided him with false stamps in his forged South African passport in order to facilitate his travel from the Philippines to Australasia. The appellant then purchased an air ticket and travelled to New Zealand via Australia.

[33] He did not make any effort to contact his family from late 2005 until after his arrival in New Zealand because he feared his father's reaction to his withdrawal from university and did not want them to know he was moving to another country. The appellant later learned from a friend that his family had moved to a new house in Saudi Arabia and it took him some time to re-establish contact with them after he came to New Zealand.

[34] The appellant now finds himself with no options but to apply for asylum in New Zealand. He is unable to join his family in Saudi Arabia on any durable basis and does not wish to return to Sudan because of his fear of harm at the hands of the military authorities. He believes that on his return he would be questioned by the authorities to explain his absence from Sudan, his loyalties would be questioned and he would be forced into conscription. He does not wish to serve his military service for the reasons stated earlier in his evidence.

Other evidence

[35] The appellant has provided the following supplementary evidence:

- (a) A copy of his Saudi Arabian residence permit expiring in 2005 (and English translation); and
- (b) A copy of his Sudanese birth certificate (and English translation).

[36] The appellant's counsel has provided helpful written submissions and country material dated 5 and 21 December 2006. She submits that the appellant faces a risk of serious harm arising from his likely:

- (a) Interrogation and detention on his arrival in Sudan. (His father's association with the SCP would be an aggravating factor);

- (b) Arrest during military round-ups and at military checkpoints; and
- (c) Forced conscription in military activities that are contrary to his moral and ethical beliefs, international humanitarian law and human rights law, and which have been widely condemned by the international community.

THE ISSUES

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

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

[38] 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

[39] The Authority finds the appellant to be a straightforward and candid witness. Although he gave somewhat contradictory accounts as to his contact with his parents over the last two years, these do not impugn the core of his claim.

[40] The Authority accepts as sincere the appellant's evidence that he does not wish to return to Sudan because of a genuine fear that he will be ill-treated at the point of arrival and that he would be forced into dangerous military service to which he is fundamentally opposed. The Authority also accepts that the appellant's father, who was formerly involved in the SCP, and the appellant have genuine concerns about the way the Sudanese authorities may view them if either was to return to Sudan.

[41] In assessing whether the appellant's concerns are well-founded in terms of the test set out in paragraph [38] it is necessary to review the situation currently prevailing in Sudan.

Country conditions

General

[42] The United States Department of State (DOS) *Country Reports on Human Rights Practices for 2005: Sudan* (8 March 2006) provides many examples of the currently deteriorating human rights situation in Sudan. The government's human rights record remains very poor and there have been numerous serious problems, including evidence of continuing genocide in Darfur, for which the government and *janjaweed* continue to bear responsibility. There is widespread evidence of war crimes, extrajudicial and other unlawful killings by members of the security forces and government-allied militias acting with impunity, killings of civilians in conflict, abductions, torture, beatings, rape by security forces, harsh and life-threatening prison conditions, arbitrary arrest and detention, including incommunicado detention of suspected government opponents, prolonged pre-trial detention, executive interference in the judiciary and denial of fair trial in civilian and military courts and forced military conscription of underage men (see also Human Rights Watch *World Report: Sudan* (2007)).

[43] For those detained in Sudan's prisons, the DOS report notes that:

"Prison conditions remained harsh, overcrowded, and life threatening. Most prisons were old and poorly maintained, and many lacked basic facilities such as toilets or showers. Health care was primitive, and food was inadequate. Prison officials arbitrarily denied family visits to prisoners. High-ranking political prisoners reportedly often enjoyed better conditions than did other prisoners. The government routinely mistreated persons in custody. There were credible reports that security forces held detainees incommunicado; beat them; deprived them of food, water, and toilets; and forced them to sleep on cold floors."

Conduct of Sudanese Government in the Darfur conflict

[44] There are many independent reports that document the complicity of the Sudanese government, through its armed forces and its support, by proxy, of *janjaweed* militia groups, in the commission of war crimes and crimes against humanity against civilians in the Darfur region: see Amnesty International *Beyond any doubt, Sudan uses and supports the Janjaweed in Darfur* Report to United Nations Human Rights Council: Fourth Special Session (8 December 2006);

Amnesty International *Republic of Sudan Report 2006 Overview: Covering events from January-December 2005* (2006); *Refugee Appeal No 75655* (29 September 2006) [79-91].

[45] On 25 January 2005, an International Commission of Inquiry on Darfur reported to the United Nations Secretary-General that:

“Based on a thorough analysis of the information gathered in the course of its investigations, the Commission established that the Government of the Sudan and the *Janjaweed* are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law. In particular, the Commission found that Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity. The extensive destruction and displacement have resulted in a loss of livelihood and means of survival for countless women, men and children. In addition to the large scale attacks, many people have been arrested and detained, and many have been held *incommunicado* for prolonged periods and tortured.”

[46] The government of Sudan has not cooperated fully with the United Nations in establishing an effective international peacekeeping presence in Darfur and has failed to support efforts by the International Criminal Court (ICC), as mandated by the United Nations Security Council, to hold accountable those individuals who may have committed serious human rights abuses. N Grono and D Mozersky “*Sudan and the ICC: A Question of Accountability*” (31 January 2007) International Crisis Group [http://www.crisisgroup.org/home/index.cfm?id=4640 &l=1](http://www.crisisgroup.org/home/index.cfm?id=4640&l=1).

The situation in the South

[47] The January 2005 Comprehensive Peace Agreement (CPA) created high expectations among the millions of Sudanese who suffered the effects of the 21-year civil war. However, since then many southern Sudanese have expressed disappointment in the slow progress implementing the CPA in 2006. Although the United Nations estimated that some 12,000 refugees returned to the region, the majority of the four million people displaced by the war did not, with many citing fears of continuing insecurity and lack of services as the key obstacles: Human Rights Watch *World Report: Sudan* (2007).

[48] Although there was sporadic violence in different areas of the south, the north-south ceasefire agreement has largely held and both the Sudanese Armed Forces and the Sudan People’s Liberation Army made progress redeploying their forces under the terms of the CPA. However, the status of Abyei, a resource-rich

area claimed by north and south, remains unresolved, one of several key areas of friction jeopardising the cohesion of the Government of National Unity and the implementation of the CPA: Human Rights Watch *World Report: Sudan* (2007).

[49] The Sudan Organisation Against Torture's (SOAT) newsletter of November/December 2005 noted that (other than in Darfur):

"The situation in the rest of the Sudan has improved little despite the expectations generated by the Comprehensive Peace Agreement (CPA) and the Interim Constitution adopted in June 2006. The untimely death of Dr. John Garang, the architect of the CPA and the leader of the Sudan People Liberation Movement/Army (SPLM), the slow pace of implementation of elements within the CPA specifically with regards the Constitution coupled with the perception among many of the weakness of Salva Kiir Mayardit, the now leader of the SPLM and the First Vice President have all combined to produce an atmosphere of resignation and disappointment. For the general civilian population in the Sudan, little has changed in the last twelve months."

[50] SOAT's report concludes that, after the signing of the CPA, violence in the South decreased, but insecurity continued due to militia activity. Government forces routinely killed, injured, and displaced civilians, and destroyed clinics and dwellings intentionally during offensive operations. There were confirmed reports that government-supported militia intentionally attacked non-combatant civilians, looted their possessions, and destroyed their villages.

[51] The second anniversary of the signing of the CPA drew attention to the rising tensions between the National Congress Party (NCP)-led government and rebels-turned-politicians. Jane's Conflict Alert *Cracks show in Sudan's peace pact* (1 February 2007).

[52] Progress on implementing the deal has been limited, with the southern Sudanese accusing the NCP of attempting to undermine the pact and directly violating aspects of the agreement. The Jane's Conflict Alert makes a cautious prognosis that:

- "(i) Without real and committed co-operation between the two sides, succession of the south is more likely, making implementation of the deal an increasingly large threat to the NCP;
- (ii) The CPA made sense for both parties as long as it was tied to a political partnership, grounded in co-operation and the proper implementation of the agreement, which could have guaranteed the political survival of both parties through the electoral process. However, the lack of progress in implementing the agreement has damaged this partnership, perhaps beyond repair;
- (iii) Although the autonomous southern government is making incremental progress at setting up an administration, its future is tied directly to the will of the ruling NCP, which continues to resist the transformation of the

country's political system that the CPA was supposed to deliver. Instead of pushing for political change in Khartoum, the SPLM is instead withdrawing to Juba and focusing on the south. Barring a significant change in the current dynamics, the long-term prospects for the CPA are shaky.”

Military conscription and military service

[53] Article 18 of Sudan’s draft Interim National Constitution (INC) states that “Defending the Country is an honour and a duty; the State shall care for the combatants, afflicted in war and the families of the martyrs.” (*Sudan Tribune*, draft Interim National Constitution, 16 March 2005).

[54] War Resisters’ International’s (WRI) 1998 survey ‘*Refusing to Bear Arms*’ noted that the law governing military service is the National Service Act 1992, which rendered all males aged between 18 and 33 liable for national service. However, the Danish Fact Finding Mission (FFM) of 2000 reports that “Military service is compulsory for all males aged 18 and over, the recruitment age being adjusted from time to time.”

[55] WRI’s 1998 Survey also noted that:

“The length of military service is 24 months, 18 months, in the case of high school graduates, and 12 months in the case of university and college graduates According to the 1992 law, those called up for military service are not allowed to follow an education or get a job. Men of conscription age are forbidden to leave the country for any reason (art 20).”

[56] The Danish FFM of 2001 reported that:

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

[57] The Popular Defence Forces (PDF) was created by the government in 1990 and has its legal basis in the Popular Defence Forces Act 1989 (War Resisters International, 1998). The Danish FFM of 2001 reported that:

“... under the 1989 Popular Defence Forces Act (attached as Annex 5 [of the Report]), PDF recruits must be at least 16 years old and Sudanese citizens. In 1992 service in the PDF became obligatory for all students, both male and female. Completion of service was a precondition for entering further education”.

[58] The January 2005 Report of the International Commission of Inquiry to the United Nations Secretary-General states that:

“For operational purposes, the Sudanese armed forces can be supplemented by the mobilization of civilians or reservists into the Popular Defence Forces (PDF) ... According to information gathered by the Commission, local government officials are asked by army Headquarters to mobilize and recruit PDF forces through tribal

leaders and sheikhs. The Wali is responsible for mobilization in each State because he is expected to be familiar with the local tribal leaders.”

[59] WRI’s 1998 Survey stated:

“PDF training involves military training, civil defence training and patriotic and cultural education (1989 law, art 14) and is considered to be an instrument of religious indoctrination.”

[60] The Danish FFM of 2001 report noted that:

“The PDF training contained a considerable element of Islamisation, and many Christian students therefore had serious problems when they were recruited to the PDF.”

[61] The Danish FFM of 2001 report noted that:

“Students who go into the PDF before entering further education have to serve 12 months, while those who have not yet been accepted for further education or who have not completed secondary school have to serve for 18 months. State employees and those working in state-owned companies have to undergo a 45-day training programme.”

[62] The National Service Act 1992, contained at annex 4 of the Danish FFM of 2001 report, outlines the general laws and penalties for avoiding or postponing military service. WRI’s 1998 Survey noted that “the right to conscientious objection is not legally recognised.” It also stated that “Avoiding military service is punishable by two to three years’ imprisonment (National Service Law, art 28).”

[63] The United Kingdom’s Foreign and Commonwealth Office stated in a letter of February 2005 that, although they were not aware of specific cases of draft evaders/deserters facing inhuman, degrading or persecutory treatment, they would not be surprised to find that this was the case.

[64] The Danish FFM report of 2001 stated that during round-ups military personnel in civilian clothing stopped vehicles and:

“The authorities forced those passengers who were believed to be the right age for conscription and who could not prove that they had in fact already performed their military service to go with them to military training camps. Many of those who were recruited did not even have an opportunity to contact their parents or relatives to inform them of what had happened.”

[65] A December 2002 Canadian Immigration and Refugee Board (IRB) Research Directorate enquiry response described “The process for reporting for military service; how recruitment calls are made; [and] exemptions from service.” In addition to the above methods of call-up, the chairman of the Sudan Human Rights Group (SHRG), who was consulted by the IRB, stated that local radio and

television announcements occurred asserting that all men eligible for military service should gather together at a specific place, at a certain hour and date.

[66] The same report relayed:

“As well, he [the Chairman of the SHRG] stated that ‘[i]n case of emergency, that is to say, [an] urgent need for fighters, the Military Police usually close main highways and roads and check the passengers and arrest those persons who are eligible for... service.’”

[67] However, in comments submitted to the Advisory Panel on Country Information on 8 March 2006, the Office of the United Nations High Commissioner for Refugees (UNHCR) stated that:

“Some 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 profession and state of health.”

[68] The DOS Human Rights Report, 2005 stated that:

“The government operated ‘reformation camps’ for vagrant children....In the camps, the PDF often conscripted teenage males (and, in the South, some females). Conscripts faced significant hardship and abuse in military service, often serving on the frontline”. (emphasis added)

[69] The Amnesty International Report further notes that to address the needs of the ongoing conflict in Darfur, the government continued to forcibly conscript citizens for military service as part of mandatory military service for male citizens, and government-allied forces and rebels continued to recruit and accept child soldiers in Darfur: See Amnesty International, 8 December 2006, the DOS Report on Sudan (both cited above).

Conscription of returnees to Sudan

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

“These categories include young men of fighting age who are regularly singled out for detention and interrogation. These arrests are often pursuant to an administrative decree dated 28 February 1993 which authorises border officials to arrest returning Sudanese who left after the June 1989 coup and have stayed away for more than one year. Such individuals can be subject to “investigations” and “necessary security measures”. Currently the decree is applied selectively depending on the profile of the returning individual. Young men of a fighting age are particularly susceptible to be targeted.” (emphasis added)

[71] UNHCR also notes that the Sudan Security Act, 1999, allows the security forces to detain individuals for periods of three days for investigation. However, “since the security forces wield considerable power, arbitrary detention for much longer periods persist” UNHCR (*supra*) [para 4].

Return of failed asylum-seekers

[72] The situation for returning nationals, including failed asylum-seekers, is relatively unclear and unpredictable. The Authority, in earlier decisions, has concluded that young men of fighting age might be of heightened risk of apprehension and interrogation on their return to Sudan. Those who have spent extended periods out of the country and are returning without lawful travel documents or passports might be of particular interest to the authorities; *Refugee Appeal No 75655* (29 September 2006); *Refugee Appeal No 75622* (22 February 2006); *Refugee Appeal No 74884* (18 February 2004).

[73] In a Report of the 10th European Country of Origin Information Seminar, 1-2 December 2005, Budapest, (20 April 2006) a senior UNHCR official opined that:

“In the past persons who left the country after the coup and stayed away from more than one year, would be questioned upon return automatically. This is not routine policy anymore; also the practice of arrests straight at the airport is not common anymore at the moment ... 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 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 positive developments but the security is monitoring the situation very closely and it is quite unpredictable.

Sudanese Communist Party (SCP)

[74] The SCP is a Communist political party in the Republic of Sudan. Founded in 1946, it was a major force in Sudanese politics (and one of the two most influential Communist parties in the Arab world, along with the Iraqi Communist Party) until 1971, when an abortive *coup d'état* by pro-Communist officers prompted military ruler, Gaafar al-Nimeiry, to launch a wave of repression against the party. Many of the party's top leadership were executed and many others went into exile. The party campaigned as a recognized party in 1986 and opposed Islamic fundamentalism and the imposition of Shari'a law. Following the 1989 *coup d'état* that brought the current President el-Bashir to power, senior members of the party were arrested and yet others went into exile. Despite the waning

influence of communism in pan-African affairs in the 1990s and a blanket amnesty for political detainees in May 1991, the SCP continued to operate primarily in exile; *“Political Handbook of the World 2005-2006”* A Banks (ed) (CQ Publishing, Washington, 2006).

[75] In the 1990s the SCP joined (and remains a member of) the National Democratic Alliance (NDA) which, until recently had its headquarters in Eritrea and was largely a northern grouping of political parties, trade unions, representatives and rebel armies, all of whom opposed Islamic rule.

[76] Banks notes that reformers within the SCP have recently tried to shed the party’s communist orientation in favour of a more populist and centre/left platform but this is resisted by the group’s “older generation of leaders”.

[77] At various times since 1990, the government has made informal, and sometimes ambiguous, overtures to opposition groups in exile to return to Sudan. More recently the SCP has been invited to contribute to the power sharing arrangements under the 2005 interim constitution. These have been treated with some caution and scepticism by those affected, including members of the SCP; “Rights activist: Sudan pardons opposition figure, to offer amnesty to several exiled opponent” *Associated Press* (18 December 2004).

[78] The SCP has gradually re-appeared on the Sudanese political landscape, albeit tentatively, and senior members of the party have cautiously emerged after 16 years in hiding; “Sudan: Communist Party gives nod for top official to come out of hiding” *BBC Monitoring Middle East* (3 May 2005); “Sudanese president receives Communist party leader” *Sudan Tribune* (27 June 2005).

[79] In late 2005, the government invited 20 members of the NDA to join the federal parliament. Although the SCP signalled its support for NDA representation in the parliament it was opposed to any participation of the NDA in the government itself; “Sudan’s parliament speaker welcomes NDA MPs” *Sudan Tribune* (30 November 2005). Since then, the SCP has resurrected its own public newspaper in Sudan and begun to voice public criticism of the government on a number of political issues, including the conflict in Darfur and the implementation of the CPA in the south; “Ex-Sudan opposition MPS reject UN Darfur force blame government” *Sudan Tribune* (24 February 2006); and “Sudanese Communist Party to reissue Al-Midan newspaper” (28 September 2006).

[80] There is a paucity of independent information concerning the treatment of SCP members since the interim constitution was established and how many of the formerly-exiled SCP membership have chosen to return to Sudan. However, the situation appears to be tenuous and unpredictable. For example, a report of the Sudan Human Rights Organisation – Cairo Branch “*The Situation of human rights in Sudan; March-November 2005*” Sudanese Human Rights Quarterly (January 2006) noted that:

“On 7 April, a large group of security forces inspected the dwelling place of ... the Secretary-General of the SCP. Some party documents were confiscated by the inspection. Ironically, the security officers claimed the inspection was a ‘cordial visit’ to know the party’s views on the UN resolution No. 1593.”

Assessment of risk of persecution

[81] The Authority has carefully assessed the appellant’s personal profile and circumstances against this country information and concludes, by a narrow margin, that his fear of being persecuted is well-founded.

[82] It concludes that the cumulative effect of the following factors would draw attention to the appellant at the time of his arrival in Sudan or at some later stage when he is required to perform military service:

- (a) He would be arriving in Sudan as a putative national but without any valid (current) passport, holding only a national identity card;
- (b) He has never been to Sudan and, without any close family or other connections with the country, would have to account for his whereabouts for the duration of his life, including his extended time in the Gulf region;
- (c) He falls within the category of persons of ‘fighting age’, identified in UNHCR’s recent analysis, who may be at risk of interrogation on his return; and
- (d) There is the exacerbating factor that he could be questioned closely about his family relations and that the authorities would learn of his father, a known SCP member living in exile (probably since the first *coup d’état* in 1971). This could increase the authorities’ concerns about the appellant’s own motives for returning to Sudan.

[83] Country information supports the conclusion that there is a real chance of any apprehension and questioning including vigorous interrogation and the risk of ill-treatment either at the point of arrival or later during military service.

[84] The Authority finds that such ill-treatment would be of sufficient gravity to amount to being persecuted and the first framed issue in paragraph [38] must be answered in the affirmative.

[85] The Authority further finds that the appellant's personal and family profile is likely to cause the Sudanese authorities to impute to him an adverse political opinion that would be a contributing factor in his persecution. The second framed issue in paragraph [38] is also answered in the affirmative.

Military service

[86] For the sake of completeness – and assuming that the appellant avoids persecution at, or near, the point of arrival – the Authority also considers the appellant's claim that he opposes military service as a matter of conscience.

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

- (a) Where conscription is conducted in a discriminatory manner in relation to one of the five Convention grounds;
- (b) Where prosecution or punishment for evasion or desertion is based in relation to one of the five Convention grounds; and
- (c) Where the objection relates to being required to participate in military action where the military engages in internationally condemned acts. In such cases it is necessary to distinguish between cases:
 - (i) Where the internationally condemned acts were carried out as a matter of government policy. If so, all conscripts face a real chance of being required to so act; and
 - (ii) Those where the state encourages or is unable to control sections of its armed forces. In such circumstances a refugee

claimant is required to show that there is a real chance he/she will be personally involved.

[88] The Authority accepts as plausible the appellant's evidence, albeit anecdotal, that a young man with his profile could face not only the 'normal' rigours of compulsory military conscription, but also discriminatory treatment because he may be seen as 'unpatriotic' having spent all of his life outside the country.

[89] It further accepts that the anti-government profile of the appellant's father could, plausibly, come to the attention of the recruiting officers, and that this additional factor could taint their perspective of him and exacerbate his situation during the course of his military service.

[90] Without more substantial country information, it is difficult to speculate on the forms of harm the appellant might encounter but in light of Sudan's poor human rights record, these could include increased levels of harassment, verbal abuse, prolonged detention and other privations, including serious physical ill-treatment. In addition, forced conscription could expose the appellant to more severe and dangerous military assignments than those faced by other conscripts and could include, plausibly, service in Darfur or the southern regions of Sudan.

[91] It is not necessary for the Authority to consider in detail the question of the appellant's clear aversion to military service. It accepts that this is based on both his personal moral conscience to any forms of violent conflict and his staunch opposition to the Sudanese government's strategies and conduct in the conflict in Darfur. We note that Sudanese law does not provide any alternative to military service and that the Sudanese military is involved in active operations in various parts of the country, including Darfur, where both regular armed forces and reservists taken from the ranks of the PDF are deployed.

[92] Country information indicates, clearly, that the Sudanese armed forces in Darfur commit, and are complicit in the commission of, crimes against humanity and war crimes. It is also clear that serious human rights abuses are being committed as a consequence of state policies and military strategies – as opposed to excesses by individuals that the state is unable or even unwilling to control.

[93] It is impossible to predict accurately – as the RSB has attempted to do – the statistical chances of the appellant being conscripted to the Darfur region.

Nonetheless, and in view of his particular profile as a member of an exiled and unpatriotic family, the Authority cannot discount the real risk that he will be deployed, in a discriminatory manner, to this or an equally dangerous area of conflict as part of his military service.

[94] In these circumstances, the appellant's objection to military service would meet the proposition set out in paragraph [85](iii)(a) and (b) above.

[95] In addition, the Authority finds that a contributing factor in the appellant's forced conscription and possible military service with the PDF in Darfur would be likely to be discrimination on the basis of political opinions imputed to him by the Sudanese authorities (arising from his 'unpatriotic' and exilic family profile). In this case, the propositions advanced in paragraph [85](a) would also be met.

CONCLUSION

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

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R J Towle
Member