

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75655

AT AUCKLAND

<u>Before:</u>	R J Towle (Chairman) B L Burson (Member)
<u>Counsel for the Appellant:</u>	I Uca
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	6 & 7 December 2005
<u>Date of Decision:</u>	29 September 2006

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, a national of Sudan.

[2] The appellant is in his early 30s. He claims he will be persecuted because of his race and political opinions imputed to him by the Sudanese authorities. The determinative issues in the appeal are both his credibility and the well-foundedness of his fear of persecution.

INTRODUCTION

[3] The appellant arrived in New Zealand on 9 December 2004 and claimed refugee status on 23 December 2004. He was interviewed by the RSB on 16 and 21 February 2005 and, in a decision dated 29 June 2005, his application was declined. He has appealed against that decision.

THE APPELLANT'S CASE

[4] What follows is a summary of the appellant's case as presented to the Authority. The credibility of his account will be assessed later.

[5] The appellant and his family belong to the Barno tribe, a black African tribe originating from the north Darfur region of Western Sudan.

[6] The family moved from Darfur to Khartoum in the 1960s to escape the poverty and discrimination faced by African tribes in that region from government-backed nomadic Arab tribes.

[7] The appellant was aware, from a very early age, of discrimination against him because of the colour of his skin. At school, he was ridiculed and harassed by classmates and treated in a derogatory and discriminating way by school teachers.

[8] By 1979, the appellant was showing early promise as a sportsman and his obvious talents had come to the attention of coaches in the martial arts. He made good progress and, by 1986, the national selectors persuaded him to give up his normal schooling. The appellant had been raised by his family in a traditional way. He believed that a sound education was important for his development and resented being pushed by the national selectors into a rigorous sporting regimen. However, he was a young man and felt that he had no option but to comply with these demands and expectations.

[9] In Sudan, national sporting teams are often coached and supported by the military establishment and successful sportsmen are nurtured from an early age. They are subjected to intensive training and any sporting successes are held up as an example of national pride and performance, particularly among the armed forces and ruling elite.

[10] Between 1983 and 1989, the appellant developed an outstanding reputation in major youth league tournaments around the country. He became a well-known sportsperson in the media, despite his youthful years.

[11] In 1989, the appellant was selected by the national coach, CC, to be part of a national team to compete in Egypt. CC was a senior officer in the Sudanese military and was closely linked with the Sudanese Ministry of Internal Affairs. He

was a powerful and influential figure in both the sporting and political life of the country.

[12] Despite the appellant's reluctance and youthfulness, CC falsified the appellant's age and issued him with a passport so that he could participate with the national martial arts team in Egypt.

[13] Before the team departed, the appellant and other leading members of the team were told that on their return, they would be required to train Sudanese special forces and military police in various aspects of the martial arts. The trainees would then be sent to the conflict areas in the south of the country. They were told that in return, they could expect privileges and incentives. The appellant was singled out for particular attention because of his promising future as a sportsman and as a role model for the armed forces.

[14] At the time, the appellant was very concerned by the prospect of training soldiers to kill African tribes in the south. Given his own family's experiences and its legacy of discrimination, he was deeply uneasy at the prospect of being coerced into such training on his return.

First departure from Sudan in 1989

[15] The appellant and the national team left Sudan at the end of 1989 and travelled to Egypt where they participated in regional championships. At the conclusion of the meet, the team underwent further professional training and most of them returned to Sudan shortly afterwards. The appellant, faced with the unpalatable predicament of training the armed forces, decided to abscond.

[16] Despite the benefits of complying with the army's request, the appellant felt this would require him to act against his beliefs and conscience. Also, he felt that he had a promising career in martial arts that he could better develop by staying outside Sudan.

[17] When the authorities in Sudan learned that he had absconded, his father and brother were questioned on a number of occasions.

[18] In 1990, the appellant travelled to Libya with the help of a friend. For the next three years, he remained in Libya, where he earned a reasonable income as a martial arts instructor and participated in a number of tournaments and

championships around the region. This enhanced his skill and reputation in martial arts in North Africa and the Middle East.

[19] In early 1994, he travelled to Egypt where, with the help of someone he bribed at the Sudanese embassy, he renewed his Sudanese passport. He then travelled to a tournament in Saudi Arabia where he remained for much of 1994. In late 1994, he was arrested by the Saudi immigration authorities because his visa had expired.

First return to Sudan 1994/1995

[20] In late 1994, the appellant was deported by sea from Saudi Arabia to Sudan. On his arrival at Port Sudan, he tried to conceal his identity but this was quickly revealed to the Sudanese authorities who searched his personal effects. The port authorities contacted military headquarters in Khartoum, where it was established that the appellant was, indeed, the former sports champion who had unlawfully absconded from the team in 1989/1990. He was questioned by the port authorities but not physically ill-treated.

[21] The appellant was forced to sign an undertaking that he would not attempt to leave Sudan again, and that after a brief visit home, he would report to the military/sporting headquarters at the Ministry of Internal Affairs in Khartoum.

[22] On his return to Khartoum, the appellant stayed with his family for a few days and then moved into a dilapidated part of the city to avoid having to report to the sports and military authorities. Unfortunately, he was caught during a routine search of public transport and was recognised. He was taken to the military police headquarters where he was questioned and interviewed. Fortunately, his interviewer was a benevolent officer who knew of his uncle's reputation. He was given the option of training troops – in which case he would remain in the national team and enjoy privileges – or being sent forcibly to the south with other military recruits to participate in the *jihad*. Despite his moral reluctance to the former option, he felt that he had no choice and he agreed to train recruits in basic self-defence and martial arts.

[23] After only months, the appellant decided to escape. He travelled overland to his ancestral village in the Darfur region and found sanctuary with members of his extended family. His brother then assisted him in his onward journey to Chad

and then Libya. In Libya, he renewed his Sudanese passport with the help of an intermediary whom he bribed.

[24] After he had left, the special forces, military police and ordinary police went to his home and questioned members of his family.

[25] Between 1995 and mid-2001, the appellant lived and worked in various parts of the Middle East and North Africa. He participated in many martial arts tournaments and supported himself by teaching and participating as a 'prize fighter' in professional contests.

[26] During this period, he was too scared to return home and lived a precarious and often illegal existence in a number of countries in the region. In an effort to regularise his status, the appellant applied for refugee status with the United Nations (UN) in Lebanon in 1998 but did not wait for the outcome because he feared arrest and expulsion from the Lebanese authorities. He tried to enter Europe and claim asylum but was forcibly expelled from Greece to Turkey in 1999. He was unable to lodge his claim in either country.

[27] In 1999, the appellant travelled to Southeast Asia where he was sponsored to participate in a number of regional tournaments. While he was in Thailand, he applied for refugee status with the 'UN office in Bangkok' where his initial claim was declined. He wanted to pursue an appeal but abandoned it under pressure from his sports agent/promoter. Instead, he began to explore other ways to regularise his status in Thailand.

Second return to Sudan mid-2001

[28] In early 2001, the appellant attended a tournament in Cyprus. Following a financial dispute with the promoter, the appellant was reported to immigration officials and he was deported by air to Khartoum. On his arrival, the appellant was immediately identified. The authorities knew he had absconded in 1990 and 1995 and wanted to know the reason for the many visa entries in his passport. He was accused of being a traitor against the state. He was questioned by different departments, including immigration, security, military police and intelligence sections.

[29] After the initial interrogation, the authorities returned his passport, wallet and bag and he was taken to the military headquarters in Khartoum where he was held in detention in a converted changing room. Over the next few days, he was questioned by the authorities and accused of being a traitor and 'opposing the government.'

[30] On one occasion, he was taken out in front of recruited soldiers and abused by the commanding officer. He was told to co-operate with their demands or else he would have more serious problems. The officer then instructed the soldiers to attack the appellant. During the ensuing fight, the appellant's right arm was broken. This was put into plaster and he was returned to his cell.

[31] Seven or eight days later, the appellant was transferred to the hospital for a medical appointment. Taking advantage of this opportunity, the appellant escaped out of the toilet window of the hospital clinic and made his way to the home of a close friend.

[32] Over the next two weeks, he remained in hiding while his friend made arrangements for him to escape. He boarded a train to northern Sudan and his friend obtained a 'courtesy' exit visa that was endorsed in his passport.

[33] In mid-2001, he crossed the land border into Egypt and made his way to Cairo where he again applied for refugee status with the UN office. The Egyptian authorities were hostile towards Sudanese asylum-seekers during this period and there were lengthy delays with the UN processing of his claim. Fearing imminent deportation, he decided to leave. He contacted his former agent in Thailand who arranged for an invitation to return to Bangkok in mid-2001.

[34] Between 2001 and mid-2004, the appellant was based in Thailand and participated in a number of martial arts tournaments in the region and further afield, including Australia and Russia.

[35] In early 2004, the appellant married someone he had known for a number of years. The marriage was short-lived and he divorced later the same year. In the meantime, relations with his manager deteriorated and the appellant realised that his legal status in Thailand was becoming increasingly precarious.

[36] At the end of 2004, the appellant was invited to a sports tournament in New Zealand and was granted a work visa for that purpose. He travelled to Auckland and claimed refugee status two weeks after his arrival.

[37] Since he left Sudan in 2001, the appellant has had little news of his family. Both his parents have died of natural causes. He has heard that one brother was arrested by the security forces in 2001 and has since disappeared. The appellant has no other details of the circumstances of his brother's disappearance. Another brother was killed by Arab militia (*Janjaweed*) in Darfur in 2001 and one of his sisters married and moved to Darfur in 2003. She was killed by the *Janjaweed* in an attack on their ancestral village in 2004. The appellant's other younger siblings presently live in Khartoum. In his absence, they are being looked after by a friend. Their schooling is intermittent because of the family's dire financial circumstances and because of the trauma suffered by the family over the years.

Evidence of YY

[38] Another Sudanese national, YY, gave evidence. He is a member of the Nuba tribe – which is also of African descent – and was a talented Sudanese sportsman before he came to New Zealand and claimed refugee status in 2000. He was granted refugee status on the basis of his race and imputed political opinions.

[39] YY described to the Authority how promising young athletes are selected in Sudan and co-opted into supporting the Sudanese army. He confirmed that the appellant is a well-known sports personality in the country and that qualified trainers, such as the appellant, are in short supply in the army. YY believed that the authorities would get some kudos from having the appellant train their recruits.

[40] Many sports teams in Sudan are managed by corrupt government officials who are closely linked to the Sudanese regime. These officials exploit promising or renowned athletes for their own personal gain. All national teams are managed and administered by the military and prominent sportsmen have no option but to co-operate with the demands of their managers.

Documents produced

- (a) various certificates and diploma indicating the appellant's qualifications and participation in martial arts;
- (b) photographs showing appellant as participating in sporting events during the period 1989-1998, in various countries;
- (c) photographs, numbered 1-2, showing the appellant in training in Sudan;
- (d) handwritten summons by airport authorities in Khartoum, dated 7 May 2001 and English translation;
- (e) photographs, numbered 3–10 showing the appellant with his left arm in a plaster cast;
- (f) copy of passports issued 16 November 2003; previous passport No 968626 (undated) exhibit "D";
- (g) supplementary statements by the appellant dated 30 November 2005 and 15 March 2006, addressing various issues raised by UNHCR;
- (h) letter from the appellant's friend in Sudan dated 21 December 2005;
- (i) country information concerning the general human rights situation in Sudan, and Darfur in particular;
- (j) general and country information concerning military conscription and conscientious objection;
- (k) medical certificate and X-rays from Auckland Radiology Group dated 9 December 2005 indicating healed fractures to the appellant's left and right arms.

Submissions

[41] Counsel made submissions to the RSB, dated 22 April 2005, and to the Authority, dated 2 and 29 December 2005 and 27 March 2006.

[42] Counsel submits that the appellant's fear of persecution is well-founded and based on three interlinked grounds:

- (i) his race, as a minority African tribe originating from the Darfur region of Sudan;
- (ii) forced military conscription which the appellant opposes, as a matter of conscience, because of the ongoing conflict against his "fellow" tribes people in the Darfur region and the renowned brutality of the Sudanese armed forces;
- (iii) political opinions he holds, or is imputed to hold by the Sudanese authorities, because of his perceived disloyalty in refusing to help train conscripts and leaving the country illegally on two occasions, and absconding on a third occasion.

[43] Counsel also submits that because of his lengthy absence from the country and the expiry of his passport, he would be of interest to the authorities on his return to Sudan.

THE ISSUES

[44] 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[46] Before determining these issues, the Authority must first assess the appellant's credibility and that of the other witness, YY, in this appeal.

[47] The Authority finds that the appellant has not been entirely candid in important aspects of his claim. For the reasons that follow, we reject as untruthful his evidence concerning:

- (i) his deportation to Sudan in 1994/1995 including his subsequent arrest and coercion into the military service, his escape to Libya in 1995 and his absence of formal contact with the Sudanese authorities between 1995 and 2000;
- (ii) his forced return to Sudan in 2001 and his alleged detention, ill-treatment and escape in that year.

Events in 1994/1995

[48] The appellant claimed to have returned to Sudan in 1994/1995 and was coerced into training military conscripts for about two months under threat of being sent to the conflict zone himself if he did not co-operate. To avoid the dilemma of training soldiers to harm his "own people", he escaped in an illegal and clandestine manner through the land border from Sudan to Libya. In his evidence he said that he was based there for several years but travelled frequently through the region, attending sports events.

[49] The substance and timing of this account is contradicted by evidence sent to the Authority by the Office of the United Nations High Commissioner for Refugees (UNHCR), through its regional office in Bangkok, where the appellant had applied for refugee status in 2000. In rejecting the claim, UNHCR found that:

"[The appellant] worked for the Sudanese military as a physical trainer (karate) from 1995 to 1996. He said that he left Sudan because he had been threatened to be deployed to the southern front if he refused to stay permanently in the army in the capital. He then said that he went on a training course in Libya with the army's consent on the condition that he would return to work permanently.

He left because the economic situation in Sudan was not to his liking. He denied having any political affiliation. He mentioned that as a Barno he had faced some discrimination stating he had not been able to buy the land he used to live on, but

apart from that he claimed not to have been personally discriminated. In Libya, he claimed to have co-operated with Sudanese embassy in training self-defence karate. He said that he had been under pressure to do it since actually he was not willing to do the training. Also, he gave the training to revolution group in Libya at the same time for 4 years. The applicant then left Libya in 1998 (sic) and travelled extensively around the Levant going to Syria, Lebanon, Greece and Turkey before arriving in Thailand from Jordan on 13 April 2000 on a Sudanese passport # 968626.

The applicant was rejected on first instance on 12 July 2000. During the interview the applicant had numerous inconsistencies especially with dates. Ultimately he was rejected for a lack of well-founded fear of persecution.”

[50] The appellant was asked to comment on the discrepancies between these accounts. In a supplementary statement, dated 15 March 2006, the appellant explained them on the basis of:

- (a) the superficial nature of the UNHCR interview;
- (b) inaccurate and incorrect recording of evidence by UNHCR as to:
 - (i) his involvement with Sudanese’s military from 1995 to 1996;
 - (ii) his activities in Libya with the Sudanese Embassy and Libyan forces; and
 - (iii) his reasons for leaving Sudan relating to his economic situation and discrimination.

[51] Counsel also addressed these issues in supplementary submissions dated 27 March 2006. She submitted that the UNHCR chronology of events is flawed and marred by “inaccurate recording” and “bad maths”. She submits that the UNHCR record of events is “sloppy, ambiguous and inconclusive” and that the Authority should revert to UNHCR for further clarification over the nature of the interview process of the appellant in 2001.

[52] The Authority has reviewed all of the information and submissions carefully. With respect to counsel, the Authority does not share her rather perfunctory dismissal of UNHCR, which has a mandate and credible reputation for the protection of refugees worldwide.

[53] The UNHCR record, although not lengthy, contains nonetheless specific details of events and activities that include:

- (a) that the appellant was a physical trainer working for the Sudanese military from 1995 to 1996;
- (b) that he went on a training course with the army's consent on the condition he would return to work permanently;
- (c) that he co-operated with the Sudanese Embassy in training self-defence (karate);
- (d) that he also gave training to a 'revolutionary group' in Libya during this four years period.

[54] UNHCR rejected the appellant's claim *inter alia* because of numerous inconsistencies, especially with dates and the overall lack of well-foundedness of the claim.

[55] Having heard the appellant over the course of the hearing, the Authority shares UNHCR's concerns about the appellant's fluidity and inconsistency with dates. Any "bad maths" in the information provided by UNHCR is more likely the product of the appellant's confused recollection of events than any fault in UNHCR's interview process.

[56] Nonetheless, the Authority recognises that many genuine refugees have difficulty in recalling specific dates and the precise sequencing of events. In our assessment of the appellant's overall credibility, we extend some latitude in his lack of precision in dates and we focus on the factual details provided by UNHCR and the appellant.

[57] The UNHCR record of evidence is that the appellant left Sudan in 1995 with the consent of the Sudanese authorities and that he was in contact with the Sudanese embassy on a formal basis while he was in Libya. UNHCR also refers to the appellant's involvement with a 'revolutionary group' in Libya. These are all specific assertions of fact which cannot be easily explained on the basis of misinterpretation, translational errors or poor record-keeping or 'bad maths'.

[58] The two accounts are inconsistent in significant areas. Clearly the appellant was in Sudan for longer periods and under different circumstances from those he described to the Authority. The nature of his activities with the Sudanese and Libyan Governments in Libya also raise serious questions about the credibility of

the appellant's evidence. For these various reasons, the Authority rejects entirely the appellant's account of his detention, military coercion and escape in 1995.

Arrest and detention, ill-treatment and escape in 2001

[59] When the appellant was interviewed by the RSB, and during the early part of the hearing before the Authority, he described in detail the events that led to his arrest, detention, ill-treatment and escape in 2001. He produced photographs allegedly depicting him with his left arm in a plaster cast while he was in detention in 2001. He said that the photograph had been taken by fellow soldiers. He also described, at length, how the photograph had come to be taken and his plans, at that time, to escape from detention and use the photograph as evidence for a future refugee claim.

[60] We find this narrative of events to be replete with inconsistencies and implausibilities.

[61] The clothes and sunglasses worn by the appellant in photographs that were allegedly taken in detention in 2001 were identical to those worn in photographs taken two years earlier in Turkey in 1999. The appellant said that he had only a limited number of clothes and that this was a coincidence. He also said that he liked these clothes and sunglasses and, despite being in detention, he kept them in case he might escape. The Authority finds this explanation to be implausible to the point of fanciful.

[62] The photographs allegedly taken in detention in Sudan contained a Turkish cigarette advertisement. The appellant offered no explanation and the Authority agreed to a short break in the proceedings. On his return, the appellant conceded that the photograph had, in fact, been taken at a different time and place outside Sudan. He said that under pressure of the refugee procedures in New Zealand, he felt he had to produce some tangible evidence to substantiate what was otherwise a truthful account of his ill-treatment and detention in 2001.

[63] In submissions dated 29 December 2005, counsel states that it is "regrettable" yet an understandable misrepresentation by the appellant who was anxious to provide "irrelevant documentary evidence" to prove certain events which did indeed take place. In this context, counsel rightly drew the Authority's attention to *Refugee Appeal No 71373* (14 August 1999) where the Authority

cautioned against rejecting the credibility of the core of a refugee claim where certain false, yet peripheral, aspects were uncovered.

[64] The Authority rejects the appellant's explanation. The photographs falsely attributed to the incident in 2001, are not 'irrelevant documentary evidence'. The appellant was given every opportunity to explain his case in a forthright and honest way and yet maintained the fiction of this important part of his evidence until he was presented with this insurmountable contradiction.

[65] The photograph of his left arm in plaster also indicates to the Authority that the injury was sustained at some different and earlier occasion. Earlier in his evidence, the appellant said that his left arm had only been broken on one occasion. He was then asked how this could be so if it was broken when the photograph was taken and again while he was in detention. He then changed his account and said that, in fact, his left arm had been broken twice. He also said that the photograph depicting his arm in plaster had been taken while he was being filmed for a movie in Turkey at an earlier time.

[66] In support of that contention, the appellant produced X-rays and a brief report from Dr A Blue, Auckland Radiology Group, 9 December 2005. Dr Blue inspected the appellant's wrists and noted:

"On the right, there is an old soundly united fracture of the shaft of the ulna... . No other abnormality is seen.

On the left, the distal ulna shows slight cortical thickening suggesting an old healed fracture. No other significant abnormality is seen."

[67] Significantly, Dr Blue notes only one injury to the left arm and another healed injury to the right. There is no evidence of a second injury to the left arm despite the appellant's contention that it was broken on two occasions. The medical evidence does not support the appellant's claim as to how these injuries were sustained. It only shows that he has injured both arms in the past – a fact which is unremarkable given the appellant's long career as a martial arts exponent.

[68] The Authority also rejects, as implausible, the appellant's account as to the manner of escape. We are unable to accept as plausible that despite having no money, an injured arm and a military escort, he was able to escape out of a bathroom window, take a taxi to a friend's house and remain in hiding. We also find implausible his evidence that despite his alleged record of illegal departure

from Sudan in 1989 and 1995, he was allowed to keep his passport and wallet while he was in detention in the manner described.

[69] The appellant said that he stayed with his good friend who was working with the police security services after his escape. The Authority asked why the authorities would not come and look for him at his friend's house if he had such a well-known and close friendship. The appellant said, "They [the authorities] didn't know where his house was." The Authority does not find this to be a plausible explanation, given the nature of the security service's apparatus in Sudan.

[70] The appellant said that he was held in detention for about two weeks and, after his escape, stayed with his friend for a further two weeks before leaving the country. However, these dates do not match the dates of entry (10 May 2001) and the date of exit (end of May 2001) that appears in his passport. The appellant explained these discrepancies on the basis that the exit permits were secured by his friend without his assistance.

[71] The appellant's account of the means and timing of his escape from Sudan is also not believed. Initially, he told the Authority that he had travelled from Khartoum to X on one day and had left the country the next, having obtained, in the meantime, an illegal exit visa with the help of his friend. When it was put to him that he got the visa two days before his departure, the appellant changed his account and said that his friend had organised everything, including a "courtesy visa" from the Ministry of Interior. In the overall context of the claim, the Authority is unable to accept this explanation. Rather, it finds that there is a lawful courtesy visa entered in his passport which indicates not only that the authorities were aware of his departure but also that he was accorded some preferential treatment because of his celebrity status.

[72] In this context, the Authority does not place any weight on the handwritten summons allegedly issued by the police officers at the time of the appellant's arrival in Sudan in early May 2001. This document was only produced belatedly after the hearing with counsel submissions on 24 March 2006. Given the Authority's earlier conclusions as to the appellant's lack of credibility on this set of events, the written summons has no weight.

[73] The only credible evidence with which the Authority is left is the entry stamp in his passport in early May 2001 and a "courtesy visa" that allowed his departure

to Egypt later that month. None of this indicates any ill-will or coercion on behalf of the authorities against him. To the contrary, the courtesy visa suggests that during his last trip to Sudan in 2001, he was extended some privilege and preferential treatment, probably because of his reputation as an international sportsman.

[74] In summary, the Authority finds that the appellant's account of :

- (a) his difficulties with the authorities and illegal departure from Sudan to Libya and lack of contact with the Sudanese authorities between 1995 and 1999 is not credible; and
- (b) his return to Sudan in 2001 and his arrest, detention, ill-treatment and escape is also not credible.

EVIDENCE ACCEPTED AS CREDIBLE

[75] Notwithstanding the Authority's adverse findings above, there are important and residual elements of the appellant's claim that are not tainted or otherwise impugned. In particular, the Authority accepts that:

- (a) he was raised in a suburb of the capital city, Khartoum, and is a member of a black African tribe, Barno, which originates from the Darfur region of Sudan;
- (b) in his early years, the appellant and his family were the objects of discrimination because of their race and that this had a negative impact on the family's school and career opportunities and their poor socio-economic situation;
- (c) the appellant's sporting talent was identified at an early age and he was projected into a special sporting career which offered him some privileges, opportunities and renown that he might not otherwise have enjoyed as a member of the Barno tribe;
- (d) as a 'cost' of this relatively privileged career, the appellant was expected to co-operate with the armed forces – which are closely linked to the ruling elite – by training army recruits who were destined to serve in the conflict areas of Sudan. This aspect of the claim was corroborated by YY, whose evidence the Authority accepts;

- (e) instead of honouring this commitment, the appellant left the country in 1989. Since then, over the course of the next 14 years, he has competed in many tournaments and has achieved a reputation, both in his own country and elsewhere, as a martial arts expert;
- (f) despite his return to Sudan on two occasions (1995 and 2001), the appellant has sought refugee protection from UNHCR on at least three occasions to avoid being returned to Sudan. On each occasion, he stated that he did not wish to be coerced into supporting the Sudanese armed forces in the conflict areas of the country;
- (g) the appellant has a genuine aversion to helping the military in their operations against civilian or military targets in the south or west of Sudan, particularly those directed against African tribal groups in Sudan;
- (h) the appellant's immediate family have been subjected to various forms of discrimination because of their race. A brother was killed in the Darfur region in 2001; since the escalation of conflict in that region in 2003, a sister and her relatives were killed by Arab militia in the appellant's ancestral village area in North Darfur in 2004; another brother was arrested by the security forces in 2000/2001 and has disappeared; and other immediate family members are in a parlous socio-economic situation in Khartoum.

ASSESSMENT OF RISK AND PERSECUTION

[76] The Authority must now consider, on the evidence it has accepted as credible, whether there is a real chance the appellant will be persecuted if he were to return to Sudan. This assessment is prospective (or forward-looking) and must take into account any relevant changes in the political and security situation in Sudan, particularly since the escalation of violence and conflict in the Darfur region in early 2003.

COUNTRY INFORMATION

General situation

[77] A recent report of the Internal Displacement Monitoring Centre (IDMC) chronicles the history of the conflict in the southern part of Sudan and the massive displacement caused by the conflict see “*Slow IDP return to south while Darfur crisis continues unabated*” (17 August 2006).

[78] It notes that since January 2005, the two chief protagonists to the conflict in the south signed a Comprehensive Peace Agreement (CPA) which marked the official end of the conflict. It provides for an autonomous south with its own constitution, government and armed forces during a six year period, after which a referendum will be held on the final status of the south. However, the report observes:

“...more than one year after the signing of the agreement, there are still unresolved issues. Particularly contentious is the distribution of oil income in the border area between the south and the north which is believed to contain huge oil reserves.”

The conflict in Darfur

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

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

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

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

[83] The Report found that

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

[84] The IDMC report also analyses other conflicts and human rights abuses throughout the country, including Darfur. It notes that

“The CPA was a two-party agreement, excluding rebel groups from other non-Arab marginalised peoples and has not resolved old grievances in the west and eastern parts of the country against the central government. In the western Darfur region, a peace agreement of May 2006 (Darfur Peace Agreement) has - contrary to expectations - led to an escalation of violence. Only one of the rebel factions [...] signed by the agreement [...] have flared up resulting in fighting between former allies. Between 70 and 80% of the estimated two million IDPs in Darfur support the rebel faction that did not sign the agreement ... and the entire agreement is about to collapse.”

[85] The report notes that

“...forced displacement has been and continues to be an integral part of war strategies, particularly those of the government and serves two immediate purposes. The physical capture or control of the civilian population is also the capture of the enemy’s support base. The local militias used by the government to uproot the civilian population often come from communities already at odds with them, in most cases over access to land or water. Therefore, the uprooting frees land and access to water or other resources which are in turn occupied and used by the perpetrators and their communities or other supporters of the authorities.”

[86] Relevantly, the IDMC report concludes that:

“... this strategy transforms internal displacement from being a secondary consequence of the fighting to a military and economic objective with its own local and national logic.”

[87] Other reports indicate that humanitarian relief has been blocked and aid workers threatened or killed, despite the deployment of a small contingent of peace keeping troops of the African Union in October 2004 United States Department of State *Country Report on Human Rights Practices for 2005: Sudan* (8 March 2006).

[88] Despite a May 2006 peace agreement signed by the Sudanese government and one rebel group, fighting in Darfur has recently increased. The government launched a new offensive in North Darfur in late August while simultaneously resisting international calls for a UN force in Darfur. On 31 August, the UN Security Council approved resolution 1706, which authorizes a UN force of more than 17,500 troops and 3,300 police to be deployed to Darfur, providing that the Sudanese government consents.

[89] Since then and despite intense political negotiations leading up to the 61st Session of the UN General Assembly in New York, President Bashir's government has been able to exploit divisions within the international community on the central issue of state sovereignty and has, to date, refused to permit any deployment of UN peacekeeping forces. The government has recently threatened to eject the existing 7,000-member African Union force whose mandate expires on 30 September 2006 with no guarantee of it being extended. Human Rights Watch, *UN: Sanction Sudanese Leaders for Failing to Protect Civilians*, 15 September 2006.

[90] In the meantime, widespread attacks and violence continue to threaten the civilian population throughout Darfur and limit humanitarian access to the affected populations. A paper published by UNHCR outlines the deteriorating security situation in the Darfur region since August 2005. It refers to a number of well-known documented reports that indicate deliberate attacks by Arab Militia and other identified groups, some with apparent links to the military or police, and rebel groups which have targeted civilians in internally displaced persons (IDP) camps. These have resulted in the killing of men, the abduction of women, looting of livestock and the destruction of villages, crops and water supplies *Sudanese asylum-seekers from the Darfur region*, (February 2006).

[91] In recent weeks the situation has deteriorated further, particularly in North Darfur, where the government has begun a military offensive which includes serious violations of international humanitarian law, such as the bombing of civilian areas. Troops and military equipment are arriving on a daily basis. Amnesty International News Release, *Sudan: Civilians in Darfur held hostage to deadlock between Sudan and the UN*, 15 September 2006.

Internal displacement in Greater Khartoum

[92] There are no reliable data on the population of the slum areas in Khartoum. However, Ahmed (1997: 80) estimates that the displaced in 1977 constituted 35 per cent of the population of Khartoum, 27 per cent of Omdurman and 16 per cent of Khartoum North. In a recent social survey conducted by the Government of Khartoum State, the number of southerners was estimated at 2 million. With a modest assumption that 90% of these southerners live in slum areas together with 1.7 million from other parts of the country, particularly the famine stricken western areas, the population of slum areas total now 3.5 million people in Greater Khartoum *Urban Slum Reports, The Case of Khartoum, Sudan*, Dr Galai Eldin Eltayeb in *Understanding Slums: Case Studies for the Global Report on Human Settlements* (2003).

[93] In his study, Dr Eldin's finds that the tribal structure in squatter settlements and other slums shows a predominance of southern tribes (mainly Dinka, Nuer and Shuluk) and western Sudanese tribes (mainly Fur, Zaghawa, Miseiriya, Baggara, Riseigat, Barno, and Nuba). Those in the inner city slums are mainly from central and northern Sudan. Tribal clustering is a common feature in squatter settlements and outer slums since residents want to preserve their culture, and generate mutual support in such harsh conditions. The evolution of these slums and their residents is also affected by the Islamic and Christian charity organisations providing services to them.

[94] The UNHCR report (paragraph 6) confirms that the large IDP population living in camps and squatter situations in and around the capital are socially and economically marginalised. They live in very poor conditions, despite the limited activities of the UN and non-governmental organisation (NGOs). Harassment and arbitrary violence on the part of the authorities are a regular occurrence.

[95] Serious human rights violations, particularly violations of the right to housing, have been committed against parts of the IDP population in Khartoum. In 2004, in an attempt to 'redesign' the IDP camp in Khartoum, the Government demolished more than 13,000 houses, schools and health facilities, forcing thousands of people into temporary dwellings or homelessness. Government authorities also forcibly evicted more than 5,000 internally displaced families from El-Salaam and Wad el-Bashir camps in north Omdurman, and from El Salama and Soba al-Arradi squatter settlements in south Khartoum Centre on Housing Rights and Evictions, Evictions Monitor (Vol 1 No 3, August 2005).

Internal flight and risk for returning Sudanese nationals

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

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

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

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

[98] The overwhelming conclusion from these various reports is that people of African descent from Darfur continue to be subject to harassment, intimidation and violence at the hands of the Sudanese authorities and militia groups working with their express or tacit support and approval. Those who are displaced within the Darfur region are not always accessible by the international community. Humanitarian support and protection cannot be delivered safely or effectively because of the on-going conflict. Darfurians who have relocated to Khartoum, either before or after the conflict, are also in a precarious and highly vulnerable situation.

CONCLUSIONS IN RELATION TO THE APPELLANT'S CLAIM

[99] Had the Authority been required to consider the appellant's claim prior to the escalation of conflict in the Darfur in early 2003, we would have had no doubt in declining this appeal. The appellant has not been truthful in several important areas of his evidence and we assess that although his family may have had some socio-economic disadvantages by reason of its Barno race, the cumulative effect of these, at the time of his last departure from Sudan in 2001, would not have risen to a sufficient level of seriousness to amount to being 'persecuted' as that term is explained in *Refugee Appeal No 74665* (7 July 2004). Indeed, the appellant was, at that time, insulated from the worst effects of any discrimination against the Barno because of his reputation as a prominent sporting figure. In particular, we note that at the time he left Sudan in 2001 he found himself in a relatively privileged position, as evidenced by the courtesy visa which he was issued on his departure.

[100] Notwithstanding the appellant's lack of candour as to events leading up to 2001, the Authority must assess whether, objectively, there is a real chance that he will be persecuted if he were to return to Sudan in the future. This is a forward-looking test that takes into account all the evidence, including events that have taken place since the escalation of conflict in Darfur in 2003.

[101] For the following reasons, the Authority finds that there is a real chance the appellant will be persecuted on his return to Sudan:

1. The appellant is a member of the Barno tribe whose ancestral lands lie in North Darfur which is ravaged by conflict. Recent reports indicate that the government is sending substantial military forces to this region and that civilians, comprising African tribes such as the appellant's, are being subjected to violations of international humanitarian law;
2. After members of the family relocated to Khartoum, they suffered low levels of discrimination that affected their socio-economic situation and their education and employment opportunities. Prior to 2003, the cumulative effect of those measures may not have reached the threshold of persecution (*Refugee Appeal No 74665*);

3. However, since then, the situation has clearly deteriorated. After February 2003, the attitude of the Sudanese government towards African tribes from Darfur has become more hostile. This has affected not only people living in Darfur but African tribes who have relocated to other regions, including Khartoum;
4. The appellant's family has been directly affected. Several close members of his family have been killed when they relocated from Khartoum to North Darfur. His younger siblings are living in a precarious and vulnerable situation in Khartoum. Their risk of further forced displacement from squatter areas in and around Khartoum is consistent with country information;
5. As a Sudanese of non-Arab Darfurian background (Barno) returning to Sudan the appellant would face a heightened risk of scrutiny by the security apparatus on his return. The appellant falls within the category of persons of 'fighting age' who may be at risk of interrogation, identified by UNHCR in its recent paper. This is an assessment that postdates, by six years, UNHCR's refusal of the appellant's refugee claim in Thailand in 2000;
6. In addition, the appellant's unique personal profile is likely to attract the additional attention of the authorities. He is a well-known sporting figure who would be returning after five years of unexplained absence and without a current passport. As a Barno, his earlier ambivalence to supporting the military in training recruits will be well known. Whilst this public stature may have protected him in 2001 (during his last visit to Sudan), the Authority is unable to dismiss the possibility that this profile may now work to his detriment in the more hostile and volatile situation that has prevailed in Sudan since 2003 and which has clearly deteriorated further in 2006.

[102] Taking the combined effect of these different factors into account, the Authority considers that on his return to Sudan, the appellant would be at risk of being identified, apprehended and interrogated about his activities outside Sudan, particularly since 2001. Country information supports our conclusion that during interrogation there is a real chance that the appellant would suffer ill-treatment

amounting to persecution at the hands of the Sudanese law enforcement and intelligence apparatus.

[103] For these reasons, the first framed issue in paragraph [45] is answered in the affirmative. The persecution is by reason of the appellant's race and political opinions imputed to him by the Sudanese authorities. The second framed issue is also answered in the affirmative.

CONCLUSION

[104] 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.

.....
R J Towle
Chairman