

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

**REFUGEE APPEAL NO. 71271/99**

**AT AUCKLAND**

**Before:** P Millar (Chairperson)  
E M Aitken (Member)

**Counsel for Appellant:** Mr R McLeod

**Date of Hearing:** 11 May 1998

**Date of Decision:** 11 November 1999

---

**DECISION DELIVERED BY E M AITKEN**

---

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

**THE APPELLANT'S CASE**

The appellant was born in a small village in the southern part of Sudan close to the border with Kenya. He is a member of the Ngua tribe as was approximately half the population of his small village. He bears the identifying facial marks of this tribe which are placed on each child after birth. The Ngua are a sub tribe of the larger Latuke tribe.

The appellant's parents were also born in the same village. His father worked as a blacksmith and his mother tended a large portion of land where she grew vegetables which provided not only food for the family but a small income. The appellant was one of three siblings of whom his youngest, a brother, died from illness at the age of about 10 years. His family are all Christian and the appellant was brought up in a relatively religious environment within the Anglican Church. His father was an elder in the village church.

The appellant attended the local primary school but was sent to the nearest city for his secondary schooling where he boarded with a church friend of his father. He completed his schooling in 1984. During the secondary school years, his school was closed down from time to time because of attacks on it by Muslim fanatics who periodically raided various parts of southern Sudan from the north. On one occasion, the appellant's school was closed for a two week period after it was damaged by a fire started during one of these raids. However that was the longest single period over which the school was closed.

The appellant was unable to go on to further study because his family did not have the financial resources to send him, although he would have liked to. He therefore returned home and thereafter assisted his father in producing farm tools and bicycle stands which they sold locally. He also acted as a Sunday School teacher. In 1990 he married a woman from the same village and their first child, a son, was born at the end of 1991. The couple's two other children were born in 1993 and 1995.

Prior to 1993 the appellant was aware that Muslim fanatics from the north would make random but regular raids in parts of the south, and had in fact had direct experience of this whilst at secondary school. He was also aware that these groups regularly attacked villages, killing and kidnapping people. However apart from the raids on his school, he had no other direct experience of these raids until 1993. In the early part of that year his sister attended a Christian rally in a nearby village, having gone with other church members. It was a rally which the appellant himself had attended in previous years, also as part of a church group. His sister did not return from this outing. From the information provided by the church to the appellant's family, it appears that the rally was attacked by a Bali El Arab group from the north whose members kidnapped his sister and a number of other young women attending the rally. She has never been seen or heard from since. The appellant is aware that this type of abduction is not uncommon in the south of Sudan and told the Authority that neither he nor his family members sought any official assistance in seeking to locate his sister as they, like other villages, believed it would be to no avail given the situation that prevails there.

Later that year, four soldiers from the Sudan Peoples Liberation Army (SPLA) approached the appellant's father. They were armed. They told him that they had a job for him and sought his assistance in filing down a number of shells which the soldiers claimed did not fit properly into their weapons. The appellant's father

initially refused to assist them because he was afraid that the shells would explode while he was working on them. When he was threatened with death, however, he complied, ensuring first that the appellant and other family members were well away from the workshop.

The appellant's father's efforts in this regard were successful and he filed down a number of shells for the soldiers on that occasion. None of them exploded. Thereafter the soldiers returned about five times over the next six to eight months with the same request. Having considered there to be little or no danger to him in carrying out this job, the appellant's father enlisted the help of the appellant who thereafter helped his father with this task. During this time, however, the attitude of the villagers towards the appellant and his family slowly but perceptibly changed. In 1993, a popular Christian leader was killed in the city of Juba. Local inhabitants were unsure whether this was at the hands of northern Muslim fanatics or the work of the SPLA. Then in 1994, news reached the appellant's village that fighting had broken out between the SPLA and the Nuer Party led by Riek Machar. The general feeling of the villagers was that southern tribes should not be fighting one another but united in their efforts to resist attacks from the north. As a consequence, they were unimpressed with the appellant's father's efforts in assisting the SPLA which they interpreted as providing assistance for one group of southern Sudanese to attack and kill another. They therefore started boycotting the appellant's father's business and ostracised the family. They did not accept that the appellant's father was effectively forced to work for the SPLA.

In about October 1994 the soldiers returned to the village again requesting assistance in filing down shells. On this occasion the appellant's father refused to comply with the request advising the soldiers that he did not want to participate in a war that effectively saw one southerner fighting another. This caused a heated argument during which the appellant's father was shot below the waist. The soldiers then left the village and the appellant and his other family members sought the assistance of the village nurse. However due to a severe shortage of medication, there was little that she could do and the appellant's father died two days later from his injuries. His death was greeted with some considerable approval by many of the villagers in light of their attitude towards him and the family generally.

After the appellant's father's death, life became increasingly difficult for the family. The appellant did not try to continue his father's business given the local attitude. Instead the family survived by working the farmland and producing vegetables.

Fighting also intensified that year in the region of the appellant's village to the point where, on one occasion, many of the villagers fled, including the appellant and his family. They crossed the border into Kenya and spent about a week in a border town where they stayed in local markets and churches. After this time the majority of villagers decided to return home as they had heard that there was no shooting in or around their village. Upon return, the appellant found the family property undamaged although other houses had been burnt. The only obvious effect on the appellant was the loss of his father's tool box which had been left behind the house when the family fled.

From that time (late 1994) until late 1996 the appellant and his family continued to live off the land. However his wife came under increasing pressure from her family to leave the appellant and return to them. This pressure started after the appellant's father first complied with the SPLA request to file down shells and the pressure increased as the attitude of other villagers towards the appellant's family became more hostile. In about August 1996 the appellant's wife's father threatened to disown his daughter if she did not return to the family and, unable to withstand this pressure, she left the appellant in August 1996, taking with her the couple's youngest child. The other two children remained in the care of the appellant and his mother.

In about December 1996 the SPLA soldiers returned to the village for the first time since the appellant's father's death. On hearing of this death, they asked the appellant himself to file down the shells. He responded that his tool box was missing and that therefore he could not do the job. It appeared to him that the soldiers did not believe him and ordered him into their van. He was then taken through the countryside until the van stopped at an empty hall or warehouse in the Didinga Hills region. Upon arrival, the appellant was beaten severely about the head and body. One soldier extinguished a cigarette on his left cheek. The beatings were particularly severe around his head and face causing an injury to his right eye. He was unable to see out of it for the next two weeks.

The appellant was then detained in the hall or warehouse together with a number of other people from different tribes. The appellant did not become aware as to why other people had been detained and did not ask how long they had been there. Over the next four months he remained in this hall with the other prisoners. Like them he was not allowed out at all. He was fed infrequently and told nothing. In about April the prisoners heard gun shots outside the hall. To this day the appellant remains unaware of what caused the shooting. However during the

chaos that ensued the door to the warehouse was forced open and the appellant and others sought to escape. In the process, the appellant recognised SPLA soldiers as being involved in the conflict but was unable to identify their opponent. Like other prisoners, he fled the area on foot. After a period of time he recognised the general area as being in the Didinga Hills and determined to make his way once more across the border into Kenya. He headed for his village but was too fearful to return because he feared reprisals not only from the SPLA but also from the local villagers. He therefore bypassed his village and crossed the border into Kenya with the help of local farmers. Once in Kenya he sought the assistance of an acquaintance of his father Z, who agreed to shelter him. He stayed there for about four months. During this time he was too fearful to return to the village nor did he feel he could ask his host to go back to his village to inquire about his family. The appellant explained that given that Z was already taking a risk in providing him with shelter, he did not feel he could ask him to take any other risks on his behalf.

After about four months living with Z, the latter returned one day from the local market to tell the appellant that it was no longer safe for him to remain with him and that he had arranged for him to be taken to a safer place. He did not at any time provide the appellant with any other details as to where that place might be or who might be taking him. Later that month, a man returned home with Z and the appellant was instructed by Z to go with him. This man, whose name the appellant was never told, then drove the appellant for several hours through Kenya. The appellant was unaware where he was going but eventually came to an airport. He remains unaware of the name of the airport and how his associate was able to get him out of Kenya. He simply did what he was told and eventually boarded an aeroplane.

The appellant had never flown before but did not ask any questions of his guide nor was he told anything. He followed his instructions simply because he had no alternative but to trust this man in whose care he had been placed by his father's friend.

The flight terminated in Frankfurt where again the appellant's guide was able to provide the necessary documentation for him to enter Germany. He then took the appellant to the home of RB and at that point left him there. Thereafter the appellant stayed two days with RB before being taken to one of the Pentecostal churches where he was allowed to reside in the basement area. After several months, however, the church pastor changed and the new pastor expressed

concern at the appellant's status in Germany. This was discussed with the appellant and those in the church who were supporting him. He was advised that he could make an application for refugee status but because he had not done so on arrival, he was told that he had effectively forfeited any chance of being granted such status.

The appellant remained uncertain what to do. However around this time he found an American passport in a public telephone box. From the passport, it was clear it belonged to a black American citizen. On returning to the home of his friends, the appellant showed them the passport and told them that he intended to take it to the local police. However he was advised against this because of the risk that his lack of legal status would become known and he was eventually persuaded to use the passport in an effort to leave Germany for somewhere that he could claim refugee status on arrival.

With money from friends and church goers, and travelling on this passport, the appellant was able to leave Germany and came to New Zealand where he applied for refugee status at the airport. Since then he has written several letters to his friends in Germany in an effort to seek confirmation from them of his account to the Authority. He has however received no reply.

The appellant fears that if he returns to his home village he would still be regarded as an enemy. He believes that by now his family members are likely to have been killed and that the SPLA will regard him as a wanted man for escaping from custody. He further believes that if he were to be returned to Sudan via Khartoum in the north, he would be unable to get out of the city (let alone the general area of the northern part of Sudan) alive given the attitude of the northern Muslims to the southern Christians. If returned to the south, the appellant believes that it would only be a matter of time before he was killed by either the Government forces from the north or the SPLA itself.

## **THE ISSUES**

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

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

such fear, is unwilling to return to it."

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

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

### **ASSESSMENT**

Before the issues can be addressed, however, it is important for the Authority to determine whether the appellant has given a credible account of his experiences on which the Authority can rely.

In this regard, it is fair to record that the Authority had a number of concerns regarding the appellant's account. These, however, related predominantly to his evidence in respect of his activities after leaving the Sudan. In particular, the Authority was unimpressed with the appellant's explanation of finding an American passport in a telephone box which was not only the property of a black person but someone with a similar enough resemblance to the appellant to enable him to subsequently travel on it without the need to change the photograph. Further the Authority is surprised, to say the least, that given the care and assistance, both personal and financial, provided to the appellant during his stay in Germany, and the documentary evidence he was able to provide in respect of the personal details of at least one of those friends, he has been unable to make contact with them since his arrival in New Zealand.

The Authority also has some reservations about the appellant's evidence that a friend of his father some how, the appellant being unable to advise the Authority how, found the money or resources to not only send the appellant far away from the border town in which he had sheltered him, but thereafter to provide an air ticket to fly him from Kenya to Frankfurt.

However, balanced against these factors are the facts that the appellant has given a consistent account of his personal circumstances in Sudan (and post flight). He appeared before the Authority for a relatively lengthy interview during which time he maintained this consistent account. Further, there was no obvious

embellishment of that account despite the appellant being presented with a number of opportunities in which to do so. There were also times when presenting his account that the appellant appeared to be genuinely moved particularly when giving evidence in respect of his sister's disappearance in 1993.

In all the circumstances, therefore, the Authority is satisfied that the appellant has given a credible account at least of his experiences in the Sudan prior to his flight across the border into Kenya. Thereafter, the Authority is satisfied that the doubts which it has in respect of the appellant are not such that the Authority can confidently reject his evidence in its entirety. On the contrary, the Authority has reached the view that instead the appellant is entitled to the benefit of these doubts.

The effect of the Authority's findings in this regard are that the appellant is a member of the Nguia Tribe from Southern Sudan. He is also a Christian. His family have been targeted by the SPLA from 1993 until 1996 at which time the appellant was detained by them. Thereafter he was able to escape custody and flee across the border.

As the subsequent explanation of country information makes clear, it is difficult to avoid the conclusion that there is a real chance that the appellant, like so many others in Sudan, will come to harm if he returns. A state of civil war has prevailed in Sudan for the past 15 years. On one estimate, more than 1.5 million Sudanese people have died as a result of the civil war with another 4 million internally displaced in a country of 27.5 million persons. (See U.S. Department of State Country Reports on Human Rights Practices for 1998: Sudan, April 1999 at page 392). Further there is clear evidence in this and a number of other reports that the human rights situation in the Sudan is extremely poor with human rights abuses inflicted by both the Government and the major opposition and insurgent forces. Both sides routinely carry out extra judicial killings and killings of civilians. Young boys and young men are forcibly recruited into both the Government armed forces and the rebel groups and there are widespread reports of women, girls and young boys forcibly recruited into slavery. The following extracts from the Department of State report (op cit. at p 393) are representative in this regard:

"The Government's human rights record remained extremely poor, and it continued to commit numerous, serious abuses. Citizens do not have the ability to change their government peacefully. Government forces were responsible for extrajudicial killings and disappearances. Government security forces regularly tortured, beat, harassed, arbitrarily arrested, and detained opponents or suspected opponents of the Government with impunity. Prison conditions are harsh, prolonged detention is



a problem, and the judiciary is largely subservient to the Government. The authorities do not ensure due process and the military forces summarily tried and punished citizens. The Government infringed on citizens' privacy rights. The Government still does not fully apply the laws of war to the southern insurgency and has taken few prisoners of war (POW's).

....

Insurgent groups continued to commit numerous, serious abuses. The SPLM/SPLA continued to violate citizens' rights, despite its claim that it was implementing a 1994 decision to assert civil authority in areas that it controls, and in many cases, has controlled for many years. The SPLM/SPLA was responsible for occasional arrests of foreign relief workers without charge. The SPLM/SPLA again failed to follow through on its promise to investigate a 1995 massacre. SPLM/SPLA officials were guilty of, or complicit in, theft of property of nongovernmental organisations (NGO's) and U.N. agencies operating in the south. The ICRC reported in 1996 that the SPLA had begun to observe some basic laws of war; it take prisoners on the battlefield and permits ICRC visits to them. However, the SPLA did not allow the ICRC to visit prisoners accused by the insurgent group of "treason" or other crimes. It released some POW's during the year."

The Authority therefore concludes that there is a real chance that the appellant, like so many other black civilians from the south, faces a real chance of harm if he returns to Sudan. The Authority is also satisfied given the wealth of country information in respect of the scale and level of atrocities committed by both sides, that that harm amounts to persecution.

The final issue confronting the Authority is whether the real chance that the appellant will suffer persecution on his return can properly be said to fall within the Refugee Convention coming as it does within the framework of a long standing violent and destructive civil war. The RSB declined this application on the grounds (inter alia) that the risk the appellant faces in the Sudan

"... is no more and no less than the generalised threat of violence faced by any southern Sudanese person. [The appellant] is not at risk of persecution because of his civil, political or social status ...."

The RSB officer goes on to note that:

"There is a constant threat to southern Sudanese, especially those living near the north south border, that they will become victim to [one of the northern Arab groups]. However this is a part of a general civil war situation ...."

The decision makes no effort to examine the causes of the civil war nor in particular to determine whether such war is grounded primarily in issues which affect the appellant's civil and/or political status.

The Authority has recently published a detailed and authoritative decision in which it found such an approach to be a misdirection in law: see Refugee Appeal No. 71462/99 (27 September 1999). After discussing the various international approaches to refugee claimants in the civil war context, the Authority held that there is no requirement that such an appellant demonstrate that he or she is differentially at greater risk in a civil war where he or she is at risk of persecution as a result of that civil war by reason of one of the five Convention grounds, notwithstanding the fact that others similarly situated in the appellant's home country may be equally (but no less or more) at risk of such harm for the same reasons.

In the civil war context the Authority went on to hold (at page 26):

“... while the Authority accepts the principle that those at risk of serious harm in a civil war are not by reason of that fact alone entitled to the protection of the Convention, where individuals are at risk of serious harm because of their civil or political status, recognition of refugee status is appropriate. The decision in each case will turn on the evidence as to whether there is a Convention reason for the anticipated harm .... Once the evidence establishes the required nexus, refugee status cannot be denied simply because of the civil war context and it is not necessary that the Convention ground should be the *sole* reason for the fear.”

The Authority concluded this part of its decision thus (at page 29):

“The inquiry mandated by Article 1A(2) of the Refugee Convention in civil war situations is no different from that required in other situations. What must be borne in mind, however, is that the factual enquiry may be more complex and there is a need to ensure that what the refugee claimant faces is not generalised violence, but a specific risk of harm “for reason of” one of the Convention reasons.”

It is therefore necessary for the Authority in this particular appeal to consider therefore the origins of the civil war in Sudan and in particular to determine whether the harm likely to befall the appellant is by reason of his civil or political status.

### **Brief history of the current conflict**

Sudan is the biggest country in Africa in terms of land mass and “ethnically one of the most diverse countries in the world, fragmented into 56 ethnic groups and 597 subgroups”. (Background Paper on Refugee and Asylum Seekers from the Sudan (February 1997) UNHCR Centre for Documentation and Research, Geneva (at page 5) hereinafter referred to as “The Background Paper”).

The Background Paper continues:

“The conventional categorisation of the Sudan in terms of Afro/Arab culture in the north and in African culture in the south is in part a reflection of the countries particular geographical position mid way between the Arab and African Worlds. It is also the result of a historical process that saw the gradual penetration of Arab culture and Islamic religion into the indigenous societies of the north of Sudan...”

“Indeed, one the consequences of this combination of factors is that “[i]nterethnic relations [in the Sudan] are coloured by the historic conflict between Arabs and [the African population]. Southern Sudan was one of the principal catchment areas of the Arab slave trade, and the memories of Arab indignities and slave raids linger in the South. Islam, with its strong assimilationist tendencies, poses a continuing threat to the fragile social structure of the black tribes” (The Encyclopaedia of the Third World, 1992, 3:1800). This process has been met with resistance in the South. Over the years this resistance has grown into a sentiment favouring a separate entity for the south of the country, which arose “as a result both of the colonial policy and of differences between the North and the South, some of which are natural and some man-made. History, economic disparity between North and South, mistakes and blunders of inexperienced politicians and the activities of the missionary societies - each have contributed to the problem” (Beshir, M., 1968, 101). Particularly, the aspiration to an Arab-Islamic cultural identity among Northern Sudanese is “directly linked to the institutionalised discrimination against non-Arab peoples. The Northerners’ sense of social prestige - in the face of discrimination from ‘purer’ Arabs in Egypt and the Gulf - is defended by looking down upon the ethnic groups further south and west” (Verney P., 1995). All of these factors have contributed to a sense of common identity among the southerners, distinct from the one in the North.”

The period of British administration (referred to as “the colonial period” and running from 1898 to 1955) further contributed to the north-south divide. The Background Paper notes:

“The British Colonial administration “had left a country hastily sewed together, in which mutually hostile communities tried to settle their disputes by resorting to force. It was virtually inevitable that, when the British abdicated, the northerners being the strongest of the two sections of the Sudanese people, should attempt to assimilate the south by force. This in turn made the rise of a southern resistance in separatist movement inevitable”.” (At page 6).

In his January 1996 report “Identify Crisis and the Weak State: The Making of the Sudanese Civil War (Writenet, January 1996 (Refworld) Gerard Prunier identifies the “religiously sanctioned Arab culture and political domination, and an armed political and cultural rejection of the same by black Africans” as the root of the past and current conflicts in the Sudan (at page 2).

Since independence was granted on 1st January 1956, there have been relatively few periods of peace in the Sudan. The one significant period spanned the years 1972 to 1983 and was triggered in part by the 1969 bloodless coup d’etat that

brought General Jaafar al Nimeiri to power in 1969. His signature to the February 1972 Addis Ababa Agreement granted autonomy to the provinces in the south under a single regional authority and was:

“... the first serious attempt to give constitutional guarantees for the south’s autonomy. A new administrative structure was set up for the south, including a legislature, an executive organ, a region of administration and district administrations. The regional government was made responsible for the preservation of public order, internal security, administration, and development in the cultural, economic and social fields... However, the accord had certain weaknesses, such as the failure to define the limits of the central government in its relations with the south, which thereby undermined the agreements future.” (See the Background Paper at page 7).

The late 1970’s saw the dissolution of this agreement due in part to an increasing political dependence of the President on the conservative Islamic parties and divisions amongst the southern population. The result of this was a decision to divide the south into 3 regions which was implemented in July 1983, in an attempt to prevent domination of the south by any one ethnic group.

A second significant event in 1983 was the introduction by the President of the “September Laws” which revised the penal code and effectively saw the replacement of it with Shari’a Law. According to one writer on this subject, this decision “marked the formal institutionalisation of Sudan’s Islamic path” which “fragmented more than unified the Sudan” and led to a resumption of war in the south. (Esposito J, “The Islamic Threat, Myth or Reality” New York, Oxford University Press 1992 as cited in the Background Paper at page 8.)

A period of relative peace prevailed from 1985 to 1989 with civilian rule being restored for that period. However, a meeting of a peace delegation scheduled for August 1989 (from which peace with the south looked likely) did not take place due to the successful and again bloodless coup which saw Brigadier General Omar Au-Bashir take power with the support of the National Islamic Front (NIF). Although Bashir declared as a primary aim the resolution of the conflict in the south, this has clearly not eventuated. (An interesting summary of the NIF’s rise to power is provided in the Background Paper at pages 9-10.)

As for the south, one of the consequences of President Nimeiri’s failure to implement the 1972 Addis Ababa Agreement was the rise of the Sudanese People’s Liberation Movement (SPLM) together with the Sudanese People’s Liberation Army (SPLA), its military wing. This movement was formed in about 1983 coinciding, relevantly, with the division of the south into three regions and in

response to the imposition of Islamic law on the predominantly non Muslim south. The SPLA was headed and remains led by John Garang, a member of the Dinka tribe. A socialist-orientated movement, its:

“... ultimate objective was the creation of a “new Sudan” which, as the SPLM-SPLA wrote in 1989 ‘is a concept which strives to establish a new cultural order in the country. It takes as its point of departure the notion that the human beings in any society have equal rights and obligations regardless of race, beliefs, colour etc. The establishment of the new Sudan cultural order demands of necessity a radical restructuring of state power to establish genuine democracy and to follow a path of development that will lead to far-reaching social change’... The important issue that reflected the main position of the SPLA was its stance in favour of a united ‘New Sudan’.” (The Background Paper at page 10).

August 1991 saw a split in the SPLA along tribal lines when Riek Machar, a member of the Neur tribe, led an attempted coup to topple Garang. When this failed, he fled with forces loyal to him, most of whom were also Neur. This faction subsequently became known as the South Sudan Independence Movement (SSIM).

In June 1995, those attending a conference of Sudanese opposition forces agreed to form a common front against the Sudanese Government under the umbrella of the National Democratic Alliance (NDA). A number of groups came together, including the SPLA. In its communiqué issued from the conference this group advocated a referendum in the south offering options of independence, statehood or unity with the north under a federation or confederation. However by December 1995 there was an offensive attack launched against the Khartoum Government in which opposition forces advanced on several fronts. The Government response was to declare a “Holy War” and to call for general mobilisation. There is some evidence that the NDA received and continues to receive support from some of Sudan’s neighbours including Eritrea, Ethiopia and Uganda. The aligning of these neighbours with the southern opposition forces has had, of itself, some impact on the civil war.

April 1996 saw the South Sudan Independence Movement (SSIM), still led by Riek Machar, and “several smaller southern factions” conclude a peace agreement with the Government. These former insurgent elements then formed the United Democratic Salvation Front (UDSF). However the SPLM, its armed wing, the SLPA, and most independent analysts have regarded the April 21 agreement as a tactical Government effort to enlist southerners on its side. The SPLM/A and its northern allies in the National Democratic Alliance (NDA) carried out successful military offensives in areas along the borders with Ethiopia and Eritrea and in large

parts of the south during the year. “Neither side appears to have the ability to win the war militarily” (emphasis added; see the Department of State Reports, op cit., at page 392).

The view that neither President Bashir’s forces nor the forces of the principal insurgent, the SPLM/A, have the military ability to win the war is recorded in a number of recent reports on the Sudan. See for example the testimony to the United States Senate, Foreign Relations Committee, Sub-Committee on African Affairs, US Committee for Refugee, 23 March 1999 (Internet: <http://www.reliefweb.int>).

This stalemate appears to exist notwithstanding the efforts by, amongst others, the Inter-Governmental Authority on Development (IGAD) led by Kenya which has been involved in peace negotiations since 1993. Rodger Winter, the Executive Director for the US Committee for Refugees who provided the testimony to the above mentioned Committee claims as follows:

“Yet the IGAD peace process remains the most viable hope to negotiate a just peace in Sudan. It is important to understand that the IGAD process is by no means an artificial peace process imposed on Sudan by the international community. On the contrary, it is a regionally created process that includes, directly or indirectly, all important political parties in Sudan as well as governments of neighbouring front-line states. All participants in the IGAD negotiations have a direct, vital stake in the future of Sudan and its stability.

Despite the slow pace of negotiations some progress has occurred. Participants in the IGAD negotiations have agreed on an important Declaration of Principles that could eventually provide a formula for real peace. As part of the IGAD negotiations, the Sudan government and its domestic opponents have agreed in principle on the relationship of religion in government in Sudanese society. They have also agreed on the right of self determination for the people of southern Sudan.

All sides in Sudan’s war - including the government - have already agreed that the principle of self determination for the people in southern Sudan is indispensable to a just peace. This important point is often overlooked. During IGAD peace negotiations in 1997, the Sudan government agreed to the principle of self determination for the people of southern Sudan. The Sudan People’s Liberation Movement and the main opposition political groups in northern Sudan have also endorsed the principle. IGAD negotiations last year began to focus on defining the precise geographical boundaries of southern Sudan within which a Referendum of self determination would eventually occur.

This means that all sides in the Sudan civil war have already agreed in principle what the ultimate solution should be. We are left with a macabre Alice In Wonderland reality: the war in Sudan rages on, people continue to die in staggering numbers, and a massive international relief effort must be sustained even though the combatants have agreed on the solution to end the carnage...”

This agreement in principle appears to remain in force although during talks in

August 1998 agreement could not be reached on a definition of southern Sudan.

This stalemate in the civil war also appears to continue notwithstanding two recent declarations of a cease fire, one in January 1999 (by both the SPLA and the government) and in August 1999 by the government. The latter was however denounced by the SPLA.

In summary therefore the Sudanese civil war is grounded primarily in issues of race and religion: simplistically put, between the fair Muslims from the north against the black Christians and animists of the south. The south remains factionated originally along tribal lines (Dinka against Nuer), those from the latter having formed a general alliance under the leadership of Riek Machar and the SSIM which has in turn aligned itself with the government. Efforts continue to be made towards peace but with little effect. The civil war rages on with a broad consensus that neither side appears to have the ability to win it. An estimated 1.9 million people have died already in the conflict and there are an estimated 4 million people displaced within Sudan itself.

Against this background, the Authority is satisfied that the Sudanese civil war has long been fought over issues of both race and religion, in the north, and issues of race in parts of the south, and that the real chance of persecution faced by this appellant if he returns to Sudan is "for reason of" both his race and his religion. Accordingly, we are satisfied that the appellant is entitled to the protection of the Refugee Convention.

### **CONCLUSION**

The appellant is a person who holds a well-founded fear of persecution for a Convention reason. Refugee status is granted. The appeal is allowed.

.....  
Member