

MH (Darfurians: relocation to Khartoum?) Sudan [2006] UKAIT 00033

ASYLUM AND IMMIGRATION TRIBUNAL

Date of hearing: 11 January 2006

Date Determination notified: 03 April 2006

BEFORE:

Th Mr Andrew Jordan, Senior Immigration Judge
Mr D.G. Zucker, Immigration Judge

BETWEEN:

MH APPELLANT

-and-

Secretary of State for the Home Department RESPONDENT

For the Appellant: Ms C. Ganning of Halliday Reeves, solicitors
For the Respondent: Mr P. Keane, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sudan who said he was born on 8 September 1986, although the Secretary of State disputed this. At the hearing before the Immigration Judge, the appellant was due to be 18 within a few days and the Judge concluded in paragraph 27 of the determination that there was no adequate material to dispute the appellant's age and accepted that he was born on the date claimed. No challenge is made to that finding. The appellant is now aged 19.
2. The appellant stated that he entered the United Kingdom on 6 March 2004, whilst still a minor, avoiding immigration controls. It is accepted that he claimed asylum on that day. The Secretary of State rejected his asylum claim in a decision made on 15 April 2004. On 21 April 2004, he made a further decision to issue directions for the appellant's removal to Sudan. This decision gave rise to a right of appeal which the appellant exercised by serving a notice of appeal on 4 June 2004.
3. When the appeal came before the Immigration Judge, Mr A.B. Caskie, on 3 September 2004, he allowed the appeal in a determination promulgated on 27 September 2004 both on asylum and human rights grounds.

4. The Secretary of State appealed and the Tribunal determined that the Immigration Judge had made a material error of law and directed that the appeal be heard afresh. In so ordering the Tribunal set out its reasons in these terms:

"1. This was an appeal by the Secretary of State against the decision of an Adjudicator (now Immigration Judge) Mr A. B. Caskie, sitting at North Shields on 3 September 2004, allowing the appeal on asylum and human rights grounds of the appellant, a citizen of Sudan, against the decision of the respondent to refuse asylum and give directions for his removal. Since permission to appeal was given, but the appeal had not been heard by 4 April 2005, it proceeds as if reconsideration had been ordered on review by the present Tribunal.

2. We had full submissions from the parties and were satisfied that the grounds were made out by Mrs Pettersen (HOPO). Although Miss Ganning took us through the objective material that had been before the Adjudicator, she did not identify any passages in the objective material to support or justify the conclusion reached by the Adjudicator. We were satisfied that there would have to be a reassessment of the objective evidence and in the light of the additional evidence to be submitted and as the proceedings were being conducted by video link we were satisfied that the case would have to be adjourned for a consideration of the objective evidence on another occasion.

3. The error of law was that the Adjudicator misinterpreted the objective evidence or there was no satisfactory evidence to support his decision.

4. We decided to adjourn for the reasons given and therefore the case will be reconsidered on its merits at a future date by the Tribunal."

5. In his interview, conducted in Liverpool on 5 April 2004 in Arabic, the appellant stated that he was a Muslim from the Tama tribe and came from outside Kobabiya in Darfur where he and his family had land which they farmed and on which they reared livestock. The family consisted of the appellant's parents, two brothers and two sisters. They were attacked in July 2003 by the Janjaweed militia supported by the Sudanese government. The appellant managed to escape from the attack and was told by his father that his two brothers had been abducted by the militia. On the following day, the bodies of his brothers were found. His father sold crops and livestock in order to enable the appellant to move to Taweela where he stayed with his maternal uncle for five months. In his answer to question 37 of his interview, the appellant stated that members of the Zaghawa, Massaleit, Tama and Fur tribes formed a group called Equality and Justice Party [JEM] and that government troops targeted young people in the area on suspicion of involvement in what was perceived to be an anti-government party. The appellant decided to flee and travelled by lorry to Port Sudan where he fled from the country.

6. The appellant also claimed that as a member of the Tama tribe he suffered discrimination in employment and education. He claimed that, should he be returned to Sudan, he would be killed by the government because he fled the country.
7. In paragraph 32 of his determination, the Immigration Judge accepted the core of the appellant's account. In particular, he accepted the appellant is a citizen of Sudan who had lived for much of his life in western Darfur and was a member of the Tama tribe who was at risk of persecution if he were to return to his home area as a result of his ethnicity. In paragraph 33, however, the Judge noted the Secretary of State's contention that the appellant could relocate to another part of Sudan. The Judge summarised the background material by stating that none of the material indicated that any of the population fleeing from Darfur had fled to Khartoum. Accordingly, he was not satisfied that the absence of material about such individuals facing persecution in Khartoum established those from Darfur were safe in Khartoum. He said, in paragraph 34:

"Despite concluding that there is no evidence of the population of Darfur facing any difficulties in Khartoum I consider that the reason for this is not because the population of Darfur are not facing difficulties in Khartoum. It is absolutely clear that an enormous number of individuals (in excess of 200,000) have fled from Darfur to Chad where a further 1.2 million are internally displaced. It is clear to me that there is no evidence of any of the population in Darfur seeking refuge in Khartoum. I accept the evidence presented to me that a great many of the horrendous results which have occurred within Darfur are caused by, encouraged by or linked to elements of the Sudanese state. I also consider that the evidence before me indicates that there are efforts by the Sudanese government and their official and unofficial agents to ethnically cleanse the Darfur region. Against that background it appears to me that any individual emanating from Darfur who arrived in Khartoum would be at substantial risk."

8. Finally, in paragraph 35 of his determination, the Immigration Judge made an alternative finding that, even if he were wrong in his assessment as to the reason for the absence of evidence of difficulties faced by the Darfurian population in Khartoum, there was a serious possibility that if the appellant were returned to Sudan and were to attempt to take up residence in the area of Khartoum, he would be at risk of being forced by the Sudanese authorities to return to the Darfur region. It was for those reasons that he allowed the appeal.
9. The Secretary of State claimed in the grounds of application that, in essence, it was perverse of the Immigration Judge to find that the fact that there was no evidence that those from the Darfur region were persecuted in Khartoum might be explained by the fact that there were no Darfurians in the Khartoum area. It was

this finding that the Tribunal determined was not supported by any of the background material.

10. In the light of our identification earlier of a material error of law, we were invited to make a fresh assessment of the risk on return using background material that was not before the Immigration Judge. Indeed, this fresh material (identified later in our determination) was not before the Tribunal in the series of cases in which the Tribunal has sought to provide guidance about the general risk faced by Darfurians who have been displaced by the conflict and have re-settled in and around Khartoum. The appeal, therefore, raises the issue as to whether the earlier decisions can now be supported by current information.

Tribunal guidance on risk to Darfurians

11. Before proceeding further, we should summarise past Tribunal cases seeking to give guidance on risk to Darfurians. In **AE (Relocation-Darfur-Khartoum an option) Sudan CG [2005] UKAIT 00101**, (promulgated on 3 May 2005), the Tribunal presided over by its President, reviewed the decisions of the IAT on internal relocation in Sudan, referring specifically to **AA [2004] UKIAT 00167** (22 June 2004), **AB [2004] UKIAT 00260** (17 September 2004) (both referring to persons from the conflict in southern Sudan) and **MM [2005] UKIAT 00069**, the latter promulgated on 9 March 2005. In **MM**, the Tribunal relied upon the UNHCR letter of 18 May 2004 and reached its decision on the understanding that there was only one example of the authorities moving into a camp to evict residents and forcibly relocating them to the outskirts of Khartoum. Based on that single example, the Tribunal satisfied itself that evictions were not being systematically carried out sufficient to establish a real risk. We now know there is evidence of more than a single example of closure.
12. It is apparent that in **MM**, the Tribunal considered evidence from Mr Verney but concluded his evidence did not establish a systematic violation of human rights of those displaced Darfurians in Khartoum. In addition, the Tribunal considered the risk faced by returnees to Sudan after a long absence, particularly those originating from southern Sudan. Notwithstanding the finding that the ethnic origin of the appellant in **MM** was likely to result in his being questioned at the airport, the attendant risk did not establish the risk of persecution or Article 3 ill-treatment.
13. The Tribunal in **AE** had before it the Global IDP Project report dated 24 March 2005 which referred to the position of IDPs in and around Khartoum. In particular, consideration was given to whether the government was genuinely committed to dealing with the problems faced by displaced families, the vast majority of whom are living in squatter areas and four overcrowded camps.
14. In addition, the Tribunal in **AE** considered the Amnesty International paper of 4 April 2005 which asserted that there was no internal flight alternative for

Darfurians in Khartoum or central Sudan. In paragraph 35 of its determination, the Tribunal concluded that there was no evidence in the background papers to support a suggestion that the Massaleit from Darfur or indeed any individual member of an African tribe from that region would be automatically at risk on return to Khartoum or as an internally displaced persons in or around Khartoum. The Tribunal identified members or supporters of opposition parties as facing a specific risk. So, too, those suspected of supporting such groups or perceived to sympathise with the armed groups. The source for this categorisation was the Amnesty International paper of 4 April 2005 entitled "Risks of Refoulement for Sudan's refugees" in which it was said:

"..arrests have been carried out mostly of suspected supporters of opposition groups including Darfuris from African ethnic groups accused of sympathising with the armed groups".

15. Mr Peter Verney also gave evidence to the effect that there were reports of arrests and detention of students, lawyers, merchants and traders as well as those who are perceived to sympathise with rebel groups.
16. The Tribunal went on to consider the position adopted by UNHCR on 18 May 2004 to the effect that the Sudanese of non-Arab Darfurian background returning to Sudan faced heightened risk of scrutiny by the security apparatus and that internally displaced persons from Darfur often faced protection risks including forced relocation and forced return. The Tribunal noted that in the area around Khartoum there are some 1.8 million internally displaced persons of whom some hundreds of thousands are from the Darfur region, most of whom will be from the "African" tribal groups. The Tribunal rejected the submission that all of these persons faced a real risk of persecution or ill-treatment contrary to Article 3. The Tribunal distinguished those who were, or were perceived to be, active sympathisers of armed rebel groups or persons connected with opposition political groups as being potentially at risk. Accordingly, the Tribunal found the appellant would not face of violation of his rights if relocated in the Khartoum area or by being singled out at Khartoum airport on return.
17. These two different divisions of the Tribunal in **MM** and **AE** were each concerned to consider whether Sudanese nationals from the Darfur region were at risk of persecution or of violation of their human rights. Whilst the wider humanitarian situation in Sudan inevitably causes disquiet, the Tribunal's assessment, variously expressed, was to the effect that those from the Darfur region were not at risk. These decisions were followed in **LM Sudan [2005] UKIAT 00114** promulgated on 30 June 2005, in which the US State Department report for 2004 (not before the earlier Tribunals) was also considered.
18. The Court of Appeal cited both **MM** and **AE** in **Hamid [2005] EWCA Civ 1219**, (decided on 25 October 2005), as justifying the decisions of the Adjudicators or Judges in the three cases before it. It approved the Tribunal's approach in **AE** that,

however badly a person may have been treated in his home area, if there is not a real risk of persecution in the area to which he would be returned, (i.e. Khartoum), he will not be able to establish a right to refugee status. In **BA (military service – no risk) Sudan CG [2006] UKAIT 00006**, decided in January 2006, the Tribunal when dealing with the current political situation, rationalised country guidance cases affecting Sudan and determined that none of the existing country guidance cases, save **AE (Relocation-Darfur-Khartoum an option) Sudan CG [2005] UKAIT 00101** and **TM (Persecution- Christians – Individual – General) Sudan CG [2002] UKIAT 04849** were to be considered as furnishing current country guidance.

The background evidence

19. Ms Ganning sought to persuade us that a combination of recent material and material not properly considered previously establishes that those from Darfur are currently at risk, notwithstanding the earlier assessments of risk. We are able to see that the government re-acts swiftly and forcibly to events when its security is threatened, such as in the aftermath of the attempted coup or the death of the Vice-President. We accept that it re-acts vigorously against opponents or those it deems to oppose it. This state of affairs was clearly in the minds of the Tribunal when it assessed the general risk to those from Darfur in **MM** and **AE**. We do not, however, seek to compartmentalise the background material so as to exclude that information which pre-dates those decisions. Rather, we approach our assessment of risk on the basis all of the background material, including that already considered and found insufficient in itself to establish a risk.
20. At page 279 of our bundle, we were referred to a report dated 31 October 2005 prepared by Mr Peter Verney, who it will be recalled, prepared reports for the Tribunal in **AA**, **MM** and **AE**. In paragraphs 68 to 70 of our report, he says:

68. Many Sudanese from marginalised areas such as South Sudan and Dafur live in Internally Displaced Persons (IDP) 'camps' on the fringes of Khartoum. Camps which host Darfuris have been raided by the Sudanese security forces and Dafuris have been arrested and detained incommunicado. Many IDP camps are raided by the police in attempts to relocate IDPs in the camps (without advance warning or the right to appeal) further into the deserts on the outskirts of the capital, often with no access to basic facilities, such as water, housing and transport. The UN has denounced such practices by the Sudanese government in recent months.

69. The areas of the capital in which the displaced people of southern and western Sudan live, whether in camps or more permanent settlements, have frequently been raided by the authorities in search of suspected rebel sympathisers. In the last few months, encampments such as Soba Aradi have been the targets of security police operations to remove inhabitants further

into the desert. In long-established settlements such as Hajj Yousid and Souq Sitta, the authorities closed off the area and conducted house-by-house searches in August 2005, following the unrest that was triggered by the death of Vice-President John Garang. These actions have resulted in a number of gross human rights abuses against innocent civilians. Darfuri people in the capital are now being treated in the same way that Nuba and Southern Sudanese have been in the last decade. Often their treatment is worse, according to my eyewitness (see below).

70. People fleeing from Darfur to Khartoum are demonstrably not safe. For example, between January and February 2005, some 750 people who had fled to Khartoum from Darfur were sent to a school in Mayo camp, Khartoum, to be looked after by a group of local voluntary associations. They included young and old men and women, and young children from the Fur, Zighawa, Massaleit and other, smaller African tribes. At the end of February, the police raided the school, using batons and tear gas indiscriminately. Although a few terrified individuals managed to run away, there is no news of what happened to the rest. They may have been imprisoned, killed or detained indefinitely, according to an investigation by the Aegis Trust published in June 2005."

21. In paragraph 130 of his report, Mr Verney refers to the repeated and highly disturbing accounts of forcible relocation and other security police actions against the Darfuris and Southern Sudanese in displaced people's camps and longer-established settlements around Khartoum. He states that the political climate worsened significantly following the death of the Vice-President in July 2005 and areas of the city with Darfuri and South Sudanese populations were sealed off and searched house-by-house.
22. On 2 December 2004, Amnesty International published a report "*No one to complain to...*". This report has been in the public domain for well over a year and has been referred to in cases before the Tribunal but does not appear to have been expressly considered in the reports to which we have earlier referred. The Amnesty report draws upon earlier material prepared by Amnesty International and observations derived from the visits made by its representatives to the Sudan, including what was then the most recent visit between September and October 2004. The report deals with events up to November 2004 referring to further arbitrary arrests, detention without trial and torture by the Sudanese authorities throughout October and November 2004 in relation to the conflict in Darfur and to the alleged coup d'etat. On page 5, it is reported that arbitrary arrests and prolonged incommunicado detentions without charge or trial increased in the run-up to and during the conflict in Darfur. In section 2.2, entitled "*Arrests based on the origin or personal affiliation - as a means of intimidation*", the report states:

"In Khartoum since 2002 people originating from Dafur have been routinely subjected to arrests. Such practices have continued throughout 2004 (13). Many arrests carried out by the security forces named above do not seem to be for any reason other than belonging to particular ethnic groups, usually those represented in the dark for armed opposition groups (Zaghawa, Fur, Masalit and other small groups) or to families who enjoy a certain social status in those groups."

23. The source for part of this material, identified at footnote 13, is the Amnesty International report of June 2004: *Dafur, incommunicado detentions, torture and Special Courts*. The December report then goes on to deal with what is described as a snapshot of the situation in Darfur. Specific reference is made to named individuals who have been arrested and detained. These include the President of the Sudan Liberation Army (SLA) and one of his relatives, a human rights defender. Reference is made at page 7 to the arrest of three students on 11 October. Further, from the same page, we see that security officers arrested three young men, one a trainee lawyer, one unemployed and another whose occupation is not identified, after finding in their bags a demand for compensation for a house burnt down by the Janjaweed, a poster about a symposium upon human rights and a membership card of the Justice Party. They were accused of belonging to armed groups or the Popular Congress. The same report refers to the arrest of other students including the General Secretary and the Chairman of the Darfur Students Association. The report continues:

"Often displaced camps around the capital are raided by the security forces and persons from Dafur arrested. There seems to be no other reason for their arrests than their area of origin. Several IDPs from Dafur living in Mayo camp were arrested at the beginning of October."

The report then identifies a lawyer, an engineer, several students and a 15-year-old child.

"The risk of being kept in prolonged incommunicado detention is very real. Some Dafurians arrested since February 2004 are still detained without charge and mostly incommunicado. No reason was given for their arrest. Amnesty International believes that they were arrested on account of their ethnicity."

A number of named individuals are described including a leader of the Fur clan, a lawyer, a merchant, a bank employee and a student.

24. Two of those (the unemployed man and a person not otherwise identified), were arrested in possession of material which included a poster referring to a

symposium on human rights and might therefore be construed as demonstrating sympathy for opposition to the government. This leaves the 15-year old. It is possible that he, too, may have fallen into one or other of the classes of those at risk but the reason was not identified by the informant. Even if he did not, the evidence is too scant to infer that it establishes a wider categorisation based on ethnic lines. Although Amnesty believes that arbitrary arrests occur "on account of their ethnicity" (and we accept that this may well be a factor), the detailed evidence provided in the report re-affirms the risk categorisation that was adopted by the Tribunal in **AE**. So far as the inference in this report to these cases as being only a 'snapshot', that does not assist us in identifying any evidential basis for the Amnesty International conclusion beyond what is set out there. If there has been some other Amnesty report giving details of other cases in existence at the relevant time, we are not aware of them. Far from expanding the classes of those at risk, we consider that it supports the conclusion that not all Darfurians are at risk. Overall, the risk of routine detention appears to be in respect of only certain categories of Darfurians, not Darfurians generally.

25. The Human Rights Watch report *Empty Promises?* of 11 August 2004 pre-dates the Amnesty report and was also in the public domain when the decisions in **MM** and **AE** were decided. The report stated that by early August 2004, aside from humanitarian access, there had been little improvement in the humanitarian and human rights conditions for the more than one million displaced persons in Darfur. Incidents of rape and sexual violence, looting, and other attacks on civilians continued to occur on a daily basis. Government plans to relocate many of the displaced communities to resettlement camps, 'safe areas' or to force them to return to their villages despite continuing insecurity raised new concerns of possible forced displacement. The writer remained doubtful as to Sudanese government pledges. In the section entitled 'Forced return and resettlement', it was said that the prospect of resettlement and the notion of 'safe areas' raised the concern that rather than being enabled to return to their homes and lands in safety and dignity, displaced civilians would be forced to remain in camps or permanently re-settled in new locations, confined in their movement and unable to access their lands, effectively consolidating the ethnic cleansing that had taken place and further destroying livelihoods. It was suggested that the government's plan to address the displaced civilians seemed to involve two elements: the forced return of small numbers of communities to their original villages, and the forced resettlement of a much larger population of displaced civilians to new locations. The report went on to claim that the government's record in creating 'safe areas' or 'peace villages' was poor. It described the government as having routinely forcibly displaced or evicted thousands of civilians to inhospitable locations with inadequate conditions, non-existent or minimal access to shelter, water, health care and other objects essential to survival. Humanitarian access had often been provided under unacceptable government conditions. Rape and other forms of violence were prevalent. Nevertheless, under multilateral pressure, the Sudanese government opened up access to Darfur for humanitarian agencies.

26. We do not know whether the above material was considered by the Tribunal in the earlier cases, although there is reference in **MM** (9 March 2005) to a Human Rights Watch report which may refer to the report of 11 August 2004 (or at least a report that contained substantially similarly material). The reports to which we have referred speak of continuing and depressing criticisms of the government's attitude to IDPs and, in particular, those from Darfur. There is clear evidence of attempts to use arbitrary arrests, detention without trial and torture in relation to the conflict in Darfur and the alleged attempted coup d'etat. IDP camps surrounding the capital were raided by the security forces and persons from Darfur arrested. Some of those were held without charge and mostly incommunicado. Incidents of rape and sexual violence, looting, and other attacks on civilians continued to occur on a daily basis in the Darfur region. Government plans to relocate displaced communities despite continuing insecurity raised concerns of forced displacement. There is evidence that the Sudanese government's promises have little value. For those not returned to their home area, IDPs were at risk of remaining in camps or permanently re-settled in a state of partial confinement and without access to services.
27. In a public statement dated 23 August 2005, Amnesty International condemned the forced mass relocation of the entire Shikan IDP camp which took place on 17 August 2005. Amnesty was concerned that the camp's residents had been arbitrarily relocated to camps without their consent where they were deprived of fundamental human rights including the right to health care and education. It is said that on the morning of 17 August 2005, armed police surrounded the IDP camp located in Omdurman, Khartoum, having notified some members of the camp leadership on the previous day that they would be checking the camp for stolen property, following the riots after the Vice-President's death. National security forces arrived with lorries, emptying the camp of its residents. About 1000 families were moved to other camps and about one-third were allotted places to return to Shikan. The report continued that the events of 17 August 2005 followed a trend of similar such actions taken by the government towards the IDP population. It referred to involuntary relocations taking place in Soda Aradi on 14 May 2005 leading to violent clashes, mass arrests and the death of an IDP in police custody. In mid-July, the Khartoum State Governor entered into a verbal agreement with the Consultative Committee of international donors and the UN aimed at monitoring and jointly implementing IDP relocations. Despite these verbal promises, the governor authorised the relocation of Shikan camp without notice to the consultative committee or the camp residents.
28. We have also being referred to an interview conducted with Dennis McNamara, head of the UN's Internal Displacement Division on 30 September 2005 provided through IRIN in which he explains that the UN was already making the necessary intervention to stop the pressure in Khartoum on forcible relocations to unsuitable areas. He accepted in principle that it is possible that those returned might be relocated but the issue was that relocations should be carried out with proper respect for the human rights of the returnees. He did not specifically dispute a

question posed to him that almost half of the IDPs are based in the Khartoum area in settlements that are being destroyed on a regular basis giving the occupants little choice but to return to their home area. His response was that the Consultative Committee chaired jointly with the EU and the government and with other donors and UN agencies was supposed to ensure that relocations are properly and fairly carried out to areas that are sustainable. He accepted that this had not been done in the recent past because "the most recent locations were not done properly and were not sustainable. But the idea is to reactivate that Consultative Committee and try and make sure that there is a co-ordinated, agreed, proper process and there is no undue pressure on people to go to unacceptable conditions..."

29. The UN Secretary General, Kofi Annan, noted that, contrary to previous commitments made by the Governor of Khartoum State, there had been new forced relocations of IDPs and squatters in settlements around Khartoum. In the report to the United Nations of 12 September 2005, the Secretary General provided an assessment of the overall situation in Sudan, particularly in relation to the implementation of the Comprehensive Peace Agreement. The process was brought to a severe test when the Vice-President, John Garang, died on 30 July 2005 in a helicopter crash in southern Sudan. The period following the death of the Vice-President was marked by serious violence in Khartoum and several other locations, particularly in southern Sudan, which resulted in a significant number of deaths, arson and damage to property. By the time the funeral of the Vice-President was held on 6 August 2005, there had been some relaxation of the tension. It also led to understandable delays in the implementation of the Comprehensive Peace Agreement and the transition from the caretaker government.
30. On 11 October 2005, Voice of America News reported that thousands of people displaced by the civil war had been affected by land re-planning, apparently for redevelopment purposes following the January peace accord. Under the relocations, displaced people had been moved from ramshackle, but substantial, camps into flimsy shacks in remote desert areas. The displaced persons, it said, were often moved suddenly, without prior notice and in some cases to places where even the most basic services do not exist. Complaints centred upon the lack of services, schooling, transport and water. There were no employment prospects.
31. These events are reflected in the COIS report prepared by the Home Office Science and Research Group in October 2005 in a section dealing with IDPs in Khartoum:

6.276 USSD 2004 stated that "Tens of thousands of persons, largely southerners and westerners displaced by famine and civil war, continued to live in squatter slums ringing Khartoum." **[3b] (Section 2d)** The Global IDP Project's March 2005 Profile reported the UN's 2005 assessment of the mix of IDPs

in Khartoum as being "750,000 from southern Sudan; 510,000 from Transitional Areas; 270,000 from Darfur; 25,000 from Eastern Sudan." [43] (p65) Also that "The major ethnic groups are the Dinka, Nuba, Missiriya and Fur. The smaller groups include the Shilluk 4.1%, Bari 4%, Firtit 3.2%, Nuer 2.3% and Fonj 2%." [43] (p204) Concerning the treatment of different types of internally displaced persons, the Global IDP's Profile also reported the findings of a June 1997 Amnesty International (AI) report:

"Southerners and Nuba are widely seen as second class citizens and as supporters of 'the enemy', exposing them to discrimination and abuse. Sudanese law reinforces prejudice by differentiating between 'squatters' – people who arrived in Khartoum before 1984 (mainly because of drought and famine in western Sudan) – and the 'displaced' – people who arrived after 1984 (mainly southerners and Nuba fleeing the war). Squatters have the right to settle in Khartoum; displaced people do not. (AI 20 June 1997, 'Sudan: abuse and discrimination')" [43] (p87)

6.277 The Global IDP Project's March 2005 Profile stated that "A survey found that three-quarters of IDPs in Khartoum were unemployed, with 44 percent having received no formal education. Over half of them were under 20 years old (CARE/IOM, 28 February 2003)." [43] (p12) USSD 2004 reported that "Southern IDPs generally occupied the lowest paying occupations and were subject to economic exploitation in rural and urban industries and activities." [3b] (Section 6e)

6.278 A report compiled by the IRC in November and December 2004 on the situation of Khartoum's IDPs recorded that "Although there were some overall similarities/issues affecting internally displaced people in the four different areas surveyed (OeS, WeB, Soba Arradi and Mayo camp), there are also key distinctions that must be kept in mind." [62c] (Key Findings) The report went on to list these distinctions – ethnic and social-economic, what replanning stage each camp had reached, the Crude Mortality Rate, proportion of Female Headed households and education – in more detail, and discussed the impact of the replanning process on concerns such as health, education, returns, leadership structures and the legal status of IDPs in Khartoum. [62c] (Key

Findings) IRC's report stated that:

"In October 2003, the Ministry of Planning in Khartoum State began the re-planning process of two IDP camps, Wad el Bashier (WeB) and Omdurman es Salaam (OeS) and three squatter areas, Mayo Dar Naim, Soba Arradi and Salaama. The process was accelerated during the last months of 2004 and has led to some challenges that need addressing. It is believed that the current demolitions have

affected over 250,000 people in Khartoum

State." **[62c] (Background of the Assessment)**

6.279 In 2004 and 2005, the UN's Integrated Regional Information Networks (IRIN) reported on the worsening conditions for IDPs residing in Khartoum. **[15bf, 15bi, 15ci]** The October 2004 report recorded that, in the Khartoum area, the government had demolished thousands of homes in three official camps. The government claimed the demolitions were part of an area-replanning programme. **[15bf] (p1)** The February 2005 report recorded how the vast majority of those made homeless were unable to afford the plots, or provide the necessary documentation required to purchase a new plot and that, of those that could, 6,000 were unable to afford the construction costs of building a new home. **[15bi] (p2)** IRIN's February 2005 report also outlined how the demolitions had adversely affected the provision of basic services, such as medical clinics, latrines and water points. **[15bi] (p3)**

6.280 IRIN reported in March 2005 that "At least 11,000 internally displaced persons (IDPs) were forced to move following the demolition of the Shikan settlement, 18 km north of the Sudanese capital, Khartoum, a UN spokesperson said on Tuesday. They were now living rough in El Fateh, a desert area north of the capital, she added." **[15ci]** The report added that "More than 13,000 IDPs, displaced by the 21-year-old war that ended in southern Sudan in January, had found shelter in Shikan, a squatter area established in the 1980s. Nuba, Majanin, Arab, Shilluk, Dinka, Masalit, Felata and Khofra were among the ethnic groups in Shikan." **[15ci]**

6.281 In May 2005, the Sudan Organisation Against Torture (SOAT) reported on a violent confrontation between the IDPs and the police when the authorities attempted to forcibly relocate the residents; the report stated that "On 18 May 2005, several people were killed, 14 police officers, 6 civilians including two children and several others were wounded when violence broke out in Soba Aradi Area, with a population of 10, 000 people in Southern Khartoum." **[23ai]** A follow up report published by the same organisation in June 2005 recorded that:

"As a response to the incident, the government of Sudan has deployed extra police, military and security personnel on the streets of Soba. Persons residing in the Soba Aradi Area have been subjected to a government controlled campaign of mass arbitrary arrests and incommunicado detentions. Over 200 people have been arrested including women and children. The whereabouts of many of those are unknown to their families. Furthermore, on 24 May 2005, police officers shut off three out of four water pipes lines and tanks as a method to force people to leave the Soba

Aradi area. At present the population in Soba are facing water shortages." [23aq]

6.282 An August 2005 press release by AI reported that "The organization [AI] is concerned that Shikan's residents have been arbitrarily relocated to camps without their consent, where they are deprived of fundamental human rights – including the right to health care and education." [11h] The report also stated that, on 17 August 2005:

"National security forces arrived with lorries, emptying the entire camp of its residents. 500 families were moved to Thawra camp, 170 families were relocated to Al-Fatah III, and 371 families will be allotted places to return to in Shikan.

Al Fatah III and Thawra are locations lacking the most basic means of survival. Thawra, located 55 kilometres north of Khartoum, was previously a garbage dump, and lacks all essential services. Water, healthcare, and educational facilities are non-existent as the location is no more than a patch of desert. Al Fatah III is better only in that it possesses one water pump." [11h]

6.283 AI noted that "Shikan is mainly populated by southern Sudanese and Darfuris who have been forced to flee their homes due to serious human rights abuses committed during the long-standing conflict, including severe economic deprivation." [11h]

32. The material to which we have referred clearly suggests that Darfurians in Khartoum are just one element of a much wider group of displaced persons. These include persons displaced by the conflict in southern Sudan as well as those from Darfur and persons who are, for one reason or another, squatters or have moved from their homes in other parts of Sudan. Apart from squatters who arrived before 1984 and have the right to settle in Khartoum (see paragraph 28 above), there is little evidence before us to suggest that those from Darfur are treated differently from those in the other groups.

Our conclusion

33. It cannot be expected that the above is a comprehensive review of the substantial amount of background material relating to Sudan and its present difficulties. The bundle prepared by the appellant's solicitors for the purposes of this appeal ran into some 445 pages and was augmented by additional material in the course of the hearing. The latest background material confirms the trends that were identified in early 2005. It demonstrates that there have been at least two additional closures of IDP camps in May and August 2005. Further, closure has taken place in violation of promises made by the Sudanese government. The breaking of these commitments was prefigured in the information set out as long ago as August 2004 and the report *Broken promises?* Nor can it be said that the

breaches are the action of maverick politicians acting outside the scope of their authority because there is evidence that the decisions have been made at the highest level, namely, by the Governor of the State of Khartoum. We place no weight on the promises made by the Sudanese authorities. Nevertheless, Sudan is the recipient of aid and the donor countries have formed a Consultative Committee which attempts to exercise some control on what are undoubtedly violations of promises made in relation to proper respect for the rights of IDPs. It is clear that the UN are well aware of the breaches – as is amply demonstrated in the interview with the head of the UN's Internal Displacement Division on 30 September 2005 and the report of the UN Secretary General of 12 September 2005. Although the former indicates that the August closure of the camp at Omdurman was carried out in violation of settled procedures, the interview indicates the intention of the international community as represented by the Consultative Committee to influence the Sudanese government in effecting the orderly relocation of IDPs. We are satisfied that the United Nations and the wider international community are aware of the conditions of IDPs and that access to the camps is available to observers. Importantly, with that degree of knowledge about events on the ground, neither the United Nations nor the UNHCR have declared that those in the camps are at risk of persecution or that those returned to Sudan face a similar risk. Whilst the humanitarian concerns persist as to the manner in which the Sudanese government is handling its IDP population, the evidence does not suggest that all IDPs (or all those from Darfur) are at risk or that those returned to the country from abroad face a specific and heightened risk of persecution or ill-treatment. Nor, in our judgment, is it unreasonable in the sense that it is unduly harsh to expect those from the Darfur region to relocate to Khartoum. In this context, we take account of the appellant's personal strengths and resilience. He is a young male, apparently fit, who has shown himself to be resourceful.

34. Since hearing this appeal the House of Lords has issued its opinions in **Januzi [2006] UKHL 5**. We have not had the benefit of submissions from the parties as to the possible implications of this judgment in cases such as this. It is clear that the House of Lords envisages a need for an up-dating country guidance decision dealing with internal relocation in Sudan and we understand that steps are being taken to ensure that this happens as soon as practicable. We have, however, considered whether what is said in **Januzi** requires us to reappraise anything we have said in this determination. We have concluded that it does not. Insofar as that judgment sets out the law dealing with internal relocation, we consider that our approach is consistent with that approach. Insofar as their judgment deals with the factual situation in Sudan and expresses concern about the current situation in Khartoum in the light of the most recent country materials, we consider that our decision takes account of all the background evidence, past and present, having a material bearing on the issue of relocation in Khartoum and can thus properly represent the position of the Tribunal on this issue for the immediate future and (in the absence of a change of circumstances in Sudan now)

until such time as there is a new country guidance case dealing with the cases remitted by their Lordships' House.

35. For these reasons we are not satisfied that the two divisions of the Tribunal in **MM** and **AE** came to the wrong conclusion as a result of their not being shown background material that properly reflected conditions in Sudan in the early part of 2005. Whilst we cannot say that conditions have improved since that date, we do not consider that they have deteriorated to a significant extent and certainly not to such a significant extent that those returned to Khartoum are now at risk, thereby effectively reversing the decisions in all of the various cases that have sought to make an assessment of risk.
36. Our consideration of risk demonstrates that no material distinction arises from our treatment of the asylum and human rights claims.

DECISION

1. The Adjudicator made a material error of law.
2. The following decision is substituted:
 - (i) The appellant's appeal on asylum grounds is dismissed.
 - (ii) The appellant's appeal on human rights grounds is dismissed.

ANDREW JORDAN

SENIOR IMMIGRATION JUDGE