



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00374/2018

THE IMMIGRATION ACTS

Heard at Field House  
On Monday 17 September 2018

Determination Promulgated  
On Thursday 01 November 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

OOA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Seelhoff of A Seelhoff Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

Anonymity

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Although an anonymity direction was not made by the First-tier Tribunal, as a protection claim, it is appropriate to make that direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION

BACKGROUND

1. By a decision promulgated on 2 July 2018, I found an error of law in the decision of First-tier Tribunal Judge E M M Smith promulgated on 23 February 2018. I set

that aside (whilst preserving the findings at [16] to [32] and [34] of that decision) and gave directions for the re-making of the decision. My earlier decision is annexed hereto for ease of reference.

2. It was envisaged by my directions that the re-making of the decision would follow country guidance to be issued by this Tribunal following a hearing in August 2018. Events have since moved on and the country guidance cases are now listed for hearing in February 2019. The Respondent had indicated in his statement of case a willingness to adjourn the hearing until after the country guidance case but Mr Seelhoff for the Appellant indicated that the Appellant wished to press ahead with the hearing. I therefore declined to adjourn the hearing.
3. For the purposes of re-making, I received a skeleton argument from each party setting out their respective cases. I also received a bundle from the Appellant of 227 pages to which I refer hereafter as [AB/xx]. The Respondent filed three documents as follows:
  - (1) The Home Office Country Policy and Information Note ("CPIN") entitled "Sudan: Return of unsuccessful asylum seekers" (version 4.0) dated July 2018;
  - (2) The Home Office CPIN entitled "Sudan: Non Arab Darfuris" (version 1.0) dated August 2017;
  - (3) A document entitled "Joint Report of the Danish Immigration Service and UK Home Office fact finding missions to Khartoum, Kampala and Nairobi: Conducted February-March 2016" dated August 2016 (hereafter referred to as the "FFM report"). The FFM report appears also in the Appellant's bundle and since it is paginated within that bundle I refer hereafter to the page numbers in that bundle when referring to the relevant parts of the FFM.
4. I refer hereafter only to that evidence which is relevant to the issues I have to consider. I have however read and taking into my consideration all the material before me.

### **FACTUAL POSITION OF THE APPELLANT**

5. As noted at [1] above, I preserved the factual findings made by FTTJ Smith in the decision promulgated on 23 February 2018. It is appropriate to set out the relevant parts of those findings as well as the relevant factual background in order to set the background evidence which I have to consider in context.
6. I begin with the factual background to the Appellant's case and the facts of his claim which appear at [6] to [8] of FTTJ Smith's decision as follows:

"[6] The facts of the appellant's account are set out fully in the letter of refusal. Whilst I do not propose to set it out in any detail, in essence the appellant claims that he was born in Melit, Darfur and 4 months after his birth he and his family moved to Khartoum [I pause to note that the Appellant was born in October 1992]. His father was a trader. The family are members of the Berti Tribe. The appellant is married and his wife lives in Sudan.

[7] The appellant attended Almushriq University between the ages of 19 and 23 in Bahri Alinkathe and graduated in Telecommunications and

Engineering. In 2013 whilst the appellant did not take part in the demonstrations regarding fuel poverty he assisted some of those that did by providing water and taking one person to hospital. On the 29<sup>th</sup> September 2013 the appellant states he was arrested whilst walking on a street and then detained for 6 weeks. In that time he was tortured. He was accused of planning and taking part in the demonstrations. He was released on the 15<sup>th</sup> November 2013 and was required to report every week for the following 3 years. He failed to report on one occasion and was arrested on the 22<sup>nd</sup> January 2016 and accused of attempting to escape. He was detained for 11 days and then released when he claims the authorities could not find anything on him.

[8] The appellant then decided to leave Sudan and his father arranged and financed an agent. The appellant travelled to Libya where he remained for two months and left on the 2<sup>nd</sup> June 2016 and travelled to Italy. In Italy he remained for two weeks and in that time was fingerprinted and given documents to leave Italy within 10 days. The appellant travelled to Calais in France where he remained for 14 weeks. Whilst there he approached the authorities with a view to claiming asylum and was provided with an appointment in a month and a half's time. He decided he couldn't wait and by lorry came to the UK arriving on the 30<sup>th</sup> September 2016."

7. The Judge's findings on the Appellant's claim appear at [16] to [32] and [34] of the Judge's decision and read (so far as relevant) as follows:

"[16] It follows that much turns upon the credibility of the appellant in terms of his account for the reasons why [he left] Sudan.

[17] I have considered all the evidence before me including the interviews of the appellant, his witness statements and his oral evidence.....

.....

[19] Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 requires me to take into account as adversely affecting the credibility of the appellant's account any behaviour which I consider was designed or likely to result in concealment of information or to mislead or delay consideration of a claim....It was possible for this appellant to have claimed asylum whilst in Italy but he failed to do so even though he was encountered by the authorities and fingerprinted. When the appellant arrived in France he remained for 3 ½ months and states that he did approach the authorities with a view to claiming asylum. He therefore knew of his entitlement and took advantage of it. Having been told that an appointment would be provided 1 ½ months later he decided not to remain in France and entered the UK illegally. However, the appellant was content to endure the conditions in France for 3 ½ months and it therefore makes no sense that he did not seek asylum when he arrived or wait until he was seen. I do not accept that this appellant truly sought asylum in France and his failure to do so in Italy supports my finding that he only intended to travel in the UK. I am satisfied to that extent section 8 applies to this appellant and I will factor it into my consideration of his credibility.

[20] The appellant accepts that he has never been politically active in Sudan or indeed in the UK. He accepted in his evidence to this court that following his detention in 2013 he was released because the authorities as he

put *"had nothing on me"*. Having been released he was required to report weekly and did so he claims for 3 years and again in that time the authorities had no reason to further detain the appellant because of involvement in politics. He was detained because he had failed to report on one occasion. Again, following his detention for 11 days the appellant was released because the authorities could still not find a reason to detain him further or connect him to any political activity. The appellant does suggest that following his release he was required to continue reporting and it was not for a further 2 months that he decided to leave Sudan.

[21] Whilst the appellant was detained after the demonstrations in 2013 there is no suggestion that any proceedings were instituted against him for the actions he took in helping individuals.

[22] In 2016 when he was detained he alleges that he was tortured by the use of hot rods on his arms and back. There is no suggestion that in 2013 similar torture was perpetrated against him when in fact there appeared to be evidence of his assisting those who participated in the demonstrations whereas in 2016 he had simply failed to report. It seems incredible that the authorities who, over a period of 3 years had found no evidence that the appellant was politically motivated, should torture him for a single failure to report having reported for 3 years without issue.

[23] In his screening interview when asked why he feared returning to Sudan (q4.1) the appellant stated *"I will be detained and tortured. The Government. Because of a demonstration in 2013."* There is no suggestion that he had been tortured in 2016, his only reference is to the 2013 demonstration. By the time the appellant is again interviewed he now includes in the SEF interview (q113) that he was arrested again and then discloses the torture in 2016. However, in the months between February when he was released and April when fled other than verbal abuse there is no suggestion the authorities took any action against him. It is incredible that this appellant who had not been politically active and had been released on bail for over 2 months should take it upon himself then to flee as opposed to fleeing when he had been released in the February if he truly believed to be in fear of his life.

[24] During his evidence Mr Madanhi put to the appellant whether it would be possible for him to relocate in Sudan and having said he could not he was asked why. He replied *"Because I failed to comply with the condition not to leave Sudan"*. If in fact the appellant was placed on that condition and that condition alone it is remarkable that he should do the very thing he had been told not to do. Had he not done that there is no evidence that his life was in danger. It appears the appellant has created his own difficulty. The appellant confirmed that he is in touch with his family on a regular basis and they have not been troubled by the authorities.

[25] In his SEF interview the appellant was asked how he was treated after he was detained on the first occasion (Q107). He replied *"Very bad treatment we were beaten and tortured"* and later he explained that when he was arrested on the 2<sup>nd</sup> occasion he was burnt on his back (q121). The appellant has produced a report by a Mr R A Snowton of the TCU Decision team (AB p14) which sets out the appellant's claim that on the 2<sup>nd</sup> occasion he was tortured with hot rods on his back and forearm. In a 2<sup>nd</sup> report from Campsfield IRC signed by a Ms Rachel Davis, without producing the medical records she refers to, she provides her account of what is contained within them. This

court does not have the advantage of those records or a report from a suitably qualified Doctor. Instead this court is asked to adopt in favour of the appellant the account that Ms Davis has recorded which states that *“specific mention is given to linear scar over your lumbar region. Also an irregular scar over left scapula. Furthermore circular from contact (sic). That the linear scars on your forearm from contact with hot rods..On the basis of this the medical practitioner has expressed concerns that you may have been tortured”*. Over and above those two reports which Mr Madanhi relied upon the appellant has produced photographs (AB p11-13) of his back. They are not the clearest of photographs but appear to show marks on his upper left shoulder blade (scapula).

[26] Whilst the photographs could support injury to the left shoulder blade there are no photographs of the lumbar region or the forearm. This court is being asked to rely upon the interpretation by a non-medically qualified person (Ms Davis) of part of a Doctors examination. This court has no idea what the Doctor relied upon to come to his conclusions whether the injuries were consistent; the photographs do not show some of the injuries claimed (forearm and lumbar region) and in the absence of the medical notes or medical report this court has no idea whether the Doctor added qualification to his findings. I have no idea whether the Doctor had appropriate documentation before him or whether he simply took the appellant’s version of events down. I have only been provided with a partial opinion of the Doctor’s opinion by a non-medically qualified person....

[27] As an example of the difficulties encountered if this court is being asked to accept the supposed medical opinion in note that in the Istanbul Protocol on Medical Reports paragraphs 186 and 187 of the Istanbul Protocol in relation to the term “consistency” it states....

[28] Whilst the evidence I have been presented with establishes that some injuries are evident on the appellant’s left scapula I cannot discern from that evidence whether they are consistent with what he claims to have happened or whether there are inconsistencies. Accordingly, I am satisfied that I can place little weight on the report from Ms Davis and Mr Smowton. I cannot discount that the injuries shown in the photographs were caused in another way unconnected to the authorities.

[29] Significantly during his evidence the appellant disclosed that in Sudan he was expected to be called up for Military Service which he did not want to do. He had left University in 2015 and it is then that he would have been expected to be called up. He says he was not. I am satisfied that in fact taking into account the appellant was of age to be conscripted into Military Service that his desire not to do so following his education is the real reason he left Sudan.

...

[31] Having been released the 2<sup>nd</sup> time and despite his claim he was tortured the appellant chose not to leave Sudan for a further two months. In those two months nothing of significance occurred other than name calling, yet he took it upon himself to do exactly what he claims to have been told not to do two months before and leave Sudan. I do not accept the appellant fled Sudan because he was in fear. I am satisfied that not having obtained suitable employment despite his University Degree he took it upon himself to leave Sudan to improve his prospects and to avoid Military Service.

[32] I am not satisfied even to the low standard of proof that the appellant has provided a true account of his experiences and reasons for claiming asylum that justifies his claim of fear. I have found that the appellant has no profile with the authorities. Having as he claims been detained twice he himself accepts that they had nothing on him and indeed the reason for that is that he has done nothing. The only reason he claims to have been arrested the 2<sup>nd</sup> time is because he failed to report once. In the three years of reporting the authorities simply left him alone except with the requirement to report. I am satisfied that this appellant left Sudan because having achieved a University education and not having found a job he wanted to avoid Military Service.

....

[34] ... (i) On the available evidence Sudanese draft evaders and draft deserters do not face a real risk of imprisonment as a punishment. Instead they are forced to perform military service under close supervision; (ii) In view of the ending in January 2005 of the north-south civil war, there is no longer a real risk of conscripts or draft evaders or draft deserters being required to fight in the south; (iii) The recent conflict in Darfur (still ongoing) has been characterised by serious violations of international humanitarian law amounting to crimes under international law. However, on the available evidence it is not reasonably likely that conscripts or draft evaders or draft deserters are being or would be required to fight in Darfur; (iv) Accordingly, Sudanese who face conscription, or who are draft evaders and draft deserters do not face a real risk on return of persecution or treatment contrary to Article 3."

8. Based on those findings, the Judge concluded at [35] of his decision that the appellant could return to his parents' home in Khartoum where he has a wife and family.

### EXISTING COUNTRY GUIDANCE

9. The Appellant relies on the existing country guidance AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 ("AA"), the headnote to which reads as follows:

*"All non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062 is no longer to be followed, save in respect of the guidance summarised at (2) and (6) of the headnote to that case."*

10. As is evident from [4] and [5] of AA, the finding of risk for all non-Arab Darfuris was based on the Respondent's own Operational Guidance Note dated 2 November 2009. That in turn arose from events which took place in 2008 and 2009 as set out at [5] of the decision, as follows:

*"[5] Paragraphs 3.9.4 to 3.9.7 of the OGN summarise recent evidence on the situation in Khartoum. On 10 May 2008 JEM launched an assault on Omdurman, Khartoum as a consequence of which there were reports of arbitrary arrests by the Sudanese authorities, extrajudicial executions and ill-treatment of detainees following the attack. The Foreign and Commonwealth Office stated that following the fighting large number of non-Arab Darfuris living in Khartoum were detained. On 4 March 2009 the ICC announced the issue of an arrest warrant against President Bashir for war crimes and crimes*

against humanity in Darfur. This led to the expulsion of a number of international NGOs and the closure of some local human rights organisations, which severely reduced the ability of the local human rights community to monitor and report on human rights violations. There was continued press censorship and intimidation which further increased restrictions on the freedom of expression. A UNHCR report of November 2008 refers to the use by the National Intelligence and Security Services (NISS) of arbitrary arrest against political dissidents in Khartoum which can involve ill-treatment, torture and unofficial places of detention, and it is said that Darfurians may raise the suspicion of the security forces by the mere fact of travelling from other parts of Sudan to Darfur, by having travelled abroad, or having been in contact with individuals and organisations abroad.”

11. Paragraphs [2] and [6] of the headnote in HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062 (“HGMO”) were maintained. Paragraph [2] has some relevance to the Appellant’s case and reads as follows:

*“[2] Neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) are as such at real risk on return to Khartoum”*

12. It is worthy of note that, prior to the developments which led to the Respondent’s OGN and the Tribunal’s decision in AA, the House of Lords upheld the Tribunal’s decision in HGMO (thereby overturning the Court of Appeal’s judgment) in Secretary of State for the Home Department v AH (Sudan) and others [2007] UKHL 49. The position prior to the developments in 2008 and 2009 was therefore accepted to be that a non-Arab Darfuri would be at risk on return to Darfur but that, in general, it would not be unduly harsh for him to relocate to Khartoum, even if the effect of relocation would be that the appellant would be returning to live in a camp for internally displaced persons (an IDP camp).
13. The events which gave rise to the decision in AA are the mass, arbitrary detention and ill-treatment in detention of non-Arab Darfuris, apparently on the basis of their ethnicity alone, the action taken by the ICC against President Bashir and the expulsion of NGOs from Khartoum with associated restrictions on press freedoms, thereby limiting the information which could be obtained about the plight of non-Arab Darfuris in Khartoum.
14. It is common ground between the parties that, if AA continues to apply, then the Appellant is entitled to succeed. The Respondent’s position, however, is that I should not follow AA because there is now evidence which undermines that decision as to the current conditions for a non-Arab Darfuri in Khartoum. I pause to note that the Respondent does not suggest that the Appellant should return to Darfur. It is accepted that there is a continuing risk in that area. In any event, in this particular case, the Appellant was living in Khartoum before he came here and continues to have family there, including his wife.
15. It is accepted by the Respondent that the Appellant’s case falls squarely within the issue which the Tribunal was deciding in AA, namely whether a non-Arab Darfuri is at risk and can be expected to return to Khartoum. I add in passing that the Respondent also accepts that the Appellant remains a Darfuri for these purposes notwithstanding that he has lived most of his life and all but four months before

leaving Sudan in Khartoum and not Darfur and continues to have family in Khartoum. Based on what is said in MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC), ““Darfuri” is to be understood as an ethnic term relating to origins, not as a geographical term. Accordingly it covers even Darfuris who were not born in Darfur”.

16. The legal position concerning the nature of country guidance cases is set out by the Tribunal in EM and others (returnees) Zimbabwe CG [2011] UKUT 98 (IAC) (“EM”) as follows:

“[70] The relevant Practice Direction is now Practice Direction 12 of the Practice Directions (Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal), dated 10 February 2010, the relevant provisions of which read as follows:-

“12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters ‘CG’ shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later ‘CG’ determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-

- (a) relates to the country guidance issue in question; and
- (b) depends upon the same or similar evidence.

...

12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.”

[71] The proposition that a country guidance case should provide the “starting point” for a subsequent case that relates to the country guidance issue is inherent in the Practice Direction (and its AIT predecessor). Whether the subsequent case is being “set down to review existing country guidance” or not, the effect of Practice Direction 12 and section 107(3) of the Nationality, Immigration and Asylum Act 2002 is to require the existing country guidance case to be authoritative, to the extent that the requirements in Practice Direction 12.2(a) and (b) are met. This is fully in accord with what the House of Lords (per Lord Brown) held in R (Hoxha) v Special Adjudicator [2005] UKHL 19. If the existing country guidance is such as to favour appellants (to a greater or lesser extent), it will in practice be for the respondent to adduce before a subsequent Tribunal “sufficient material to satisfy them” that the position has changed” (Paragraph 66).

17. Although Hoxha is a case concerning the cessation clauses under the Refugee Convention, it is appropriate to set out what is said by Lord Brown in that case concerning the burden of proof in such a case:

“That said, however, it would seem to me appropriate that in the initial determination of an asylum claim under 1A (2) the decision-maker, in a case where plainly the applicant fled his home country as a genuine refugee from



Convention persecution, should not too readily reach the view that he could now safely be returned to it. Not only, as both Lord Slynn and Lord Lloyd observed in *Adan* [1999] 1 AC 293, may historic fear constitute important evidence tending to establish a current fear; so too it justifies some scepticism on the part of the decision-maker as to whether in truth the change in home circumstances is sufficiently clear and firm as to warrant the refusal of refugee status. That essentially is the point I was trying to make in the Court of Appeal in *Mohammed Arif v Secretary of State for the Home Department* [1999] Imm AR 327 where, at p 276, I suggested that, depending always on the particular facts of the case, there might well be "an evidential burden on the Secretary of State to establish that [the asylum seeker] could safely be returned home." Although "some reservations as to the utility of the language of burden of proof" were expressed in the later Court of Appeal decision in *S v Secretary of State for the Home Department* [2002] INLR 416, 431, I remain unrepentant. It seems to me only right that in a case where the Secretary of State is contending that a country once plainly unsafe (like, say, Sri Lanka or Kosovo) has now become safe, he should place before the appellate authority sufficient material to satisfy them of that critical fact...."

18. It is unnecessary for me to decide whether Lord Brown's comments about the burden of proof apply equally to a non-cessation case since both representatives accepted that I should, as is proposed in EM, take the case of AA as my starting point and it is only if I accept the Respondent's position that there is now evidence which shows that the Appellant does not face a real risk on return to Khartoum and that it would not be unduly harsh for him to return there that I should dismiss the appeal. Even if there were no burden on the Respondent, the burden of showing a risk on return for the Appellant is to a low standard. He need show only that there is a real risk of persecution or serious harm on return.

### **THE APPELLANT'S CASE**

19. Against the above background, I can now set out the parties' cases very shortly. The Appellant has produced some background material which he says shows that the Appellant continues to be at risk on return to Sudan. The main thrust of his case, however, is that the FFM on which the Respondent relies cannot be relied upon as the conclusions are not justified by the source material, a lower standard of proof has not been applied to that material and that "when the evidence is properly analysed it is clear that a majority of the sources who felt able to comment on the question of risk on return to ethnic Darfuris did feel that they were at risk on return". In consequence, I am invited to affirm what is said in AA. I should add that it is not the Appellant's case as put forward that it would be unduly harsh for him to relocate to Khartoum (from where he left in any event). Given that he has family in that city, that is perhaps understandable. The issue for me is whether the Appellant would be at risk on account of his ethnicity.

### **THE RESPONDENT'S CASE**

20. Mr Duffy accepted that, although the Respondent has produced two CPINs in relation to returns to Sudan (one general and one relating specifically to Darfuris) reliance is placed in the main on the FFM (which is also the source of much of what is said in the 2017 CPIN). He submitted that the FFM, in particular the

extracts relied upon in the 2017 CPIN justify the Respondent's conclusion that there is no longer a risk on return to Khartoum for a non-Arab Darfuri.

### **THE BACKGROUND EVIDENCE**

21. I can deal very shortly with the material in the Appellant's bundle at [AB/1-105]. The FCO Travel Advice for Sudan is mainly directed at British nationals. Whilst it does refer to risk of arbitrary detention including for foreign nationals, that statement is followed by the advice to take care around areas which may be sensitive to the government such as military installations, underlining the risk to be to those perceived as opponents of the regime. It advises against travel to Darfur but I am not concerned with that. There is also reference to demonstrations occurring at short notice in Khartoum but the advice given relates to risks to foreign travellers. I do not find this evidence of any relevance to the issue I have to decide.
22. The material at [AB/6-27] is on-line comment and reporting on the attitude of the Government to Darfuris, ongoing conflict in parts of Darfur and ongoing displacement as a result, random attacks on those seeking to return to Darfur and sexual violence against non-Arab girls and women, again in Darfur. The same is true of the material at [AB/88-105].
23. The US State Department report at [AB/28-79] does contain some information about incidents in Khartoum (including the 2013 protests which I assume are those in which the Appellant was caught up: see [AB/30]). However, the more recent incidents reported either occurred in the conflict zones in Darfur or involve groups specifically targeted by the government, particularly students, journalists and activists. There is mention of the government taking steps to have those Sudanese who oppose it outside Sudan deported back to Sudan ([AB/39]). However, it is said that the three men deported (who were associated with online news outlets) were all released within a few months of return. In any event, the Appellant does not claim to have been involved in opposition to the Sudanese regime whilst in the UK (or indeed whilst in Sudan). Although the report points to discrimination against Darfuri students being a "pervasive problem" ([AB/72]) and discrimination occurring based on ethnicity ([77]), the report does not point to a risk to Darfuris based on ethnicity alone (as opposed to that ethnicity coupled with some other element which excites interest by the authorities). Similarly, the article at [AB/80-81] relates to arrests of students and that at [AB/83-85] to opposition protesters.

### **The FFM report**

24. I turn then to the FFM report which, as I have already noted, is the main focus of the Respondent's case and the Appellant's criticism of that case.
25. The FFM is a joint mission conducted by the UK Home Office and the Danish Immigration Service which took place in Uganda, Khartoum and Kenya in February to March 2016. The mission involved interviews with twenty-nine sources, including various organisations, Embassies, Sudanese government officials and individuals. The delegation also interviewed a UK based NGO in

London. The representative of Human Rights Watch was not available to the delegation and Amnesty International declined the invitation to meet ([AB/113]).

26. The relevant part of the “Executive Summary” in the FFM report ([AB/115]) is as follows:

“... Persons with a political profile returning to Sudan may be questioned and/or arrested upon arrival at Khartoum International Airport (KIA) depending on the person’s profile seeking asylum abroad would not in itself cause persons from Darfur and the Two Areas problems with the authorities upon return except returnees from Israel. Neither would returnees face severe difficulties with the authorities because of staying abroad for a longer period or travelling with emergency papers. A person’s ethnicity would not generally affect the treatment, he or she would receive on arrival at KIA.

The National Intelligence and Security Service (NISS) acts with impunity. Persons from Darfur and the Two Areas with a political profile are at risk of being targeted by the NISS and its affiliated militias in Khartoum, particularly student activists and persons with an affiliation to rebel groups. The Darfuri and Two Areas communities in Khartoum are monitored by the NISS, principally to identify those with a political profile. Activists at most risk are likely to be those from the Darfuri African tribes of Fur, Masalit and Zaghawa, and persons from the Nuba Mountains.

Persons from Darfur and the Two Areas have access to documents, housing, education and healthcare in Khartoum. However, the quality of these services is low in the poor neighbourhoods surrounding Khartoum where a majority of these persons live. The main factor regarding access to housing and services is the person’s financial resources. There is in practice limited humanitarian assistance provided in Khartoum to those displaced by violence elsewhere in Sudan. Most Darfuris and persons from the Two Areas work in the informal sector as their access to employment in a number of sectors, particularly the public sector, is limited due to discrimination as well as the general adverse economic conditions in Sudan. Those working illegally, for example women selling tea without a licence, are at risk of arrest and prosecution under Public Order laws as well as harassment and extortion by the police.

Persons from Darfur and the Two Areas, and in particular those of African descent, may experience societal discrimination in Khartoum.”

27. If the Executive Summary stood as the only comment on the source material, I would have some sympathy with Mr Seelhoff’s submission that it does not take into account some of the views which are supportive of the Appellant’s case. However, that has to be read with the body of the report which expands on what is said and sets out the various opinions given to the interviewers. The FFM report also sets out a summary of what was said during the interviews and, as is said in the introduction to the report, the notes from the meetings were forwarded for approval and amendment so that the sources could amend or comment on their statements, all were approved, save for one where a diplomatic source was told that the note would be included in the report unless he objected and no

response was received. I am unable to accept Mr Seelhoff's submission that the FFM's methodology is flawed.

28. In any event, the FFM report merely sets out the findings of fact based on interviews with various sources, attributing such weight to the evidence as the FFM sees fit. I have the benefit not only of the FFM's views but also an (approved) summary of the evidence on which those views are based. I am therefore able to consider the source evidence for myself. I deal with the evidence by reference to the issues dealt with in the FFM report insofar as those are relevant to the Appellant's case.

#### Arrival at the airport

29. In terms of what would happen on the Appellant's arrival at the airport, although the FFM notes the view of one Western Embassy source that the NISS security check is conducted without conversation, the two human rights lawyers from Khartoum stated that the purpose of security checks was to gather information about those arriving and that various questions would be asked about where the person has been and why and why they were travelling to Sudan. Reference to their testimony indicates that they also said that persons coming from Uganda, Kenya, Europe or USA may attract the attention of the authorities when compared with persons coming from the Middle East. The examples they gave of this, however, are of journalists, a student coming from Uganda (who it appears was suspected of involvement in a rebel group) and another man who arrived at the airport drunk (it appears also coming from Uganda) and was questioned about contact with communist groups. Both the men who were detained were released after two days and one day respectively. The lawyers considered it less likely that a person arriving in Sudan now would be detained at the airport and more likely that a person of interest would be allowed to transit the airport and would be picked up thereafter.
30. There is reference in the testimony of the Darfur Bar Association ("DBA") source based in Kampala to the risk of detention of Darfuris at the airport on return but that is in the context of "activists". The same source did note that there is a lack of human rights monitoring since the expulsion of NGOs in 2009 which made monitoring of the situation for returnees more difficult.
31. The International Organisation for Migration ("IOM") which is involved in monitoring voluntary returns said that those returning with emergency travel documents would face questioning about how they left Sudan, what happened to their passports etc which questioning would take 10-15 minutes after which the person was free to leave.
32. I accept that the views of the human rights lawyers, based as they are in Sudan itself and who are directly involved in monitoring and assisting those who fall victim to human rights violations are more deserving of weight than the opinion of a Western Embassy source, particularly where, as is pointed out by Mr Seelhoff, there have been very few returns to Sudan from Western countries. I note though that the examples given of those detained at the airport is persons coming from

Uganda who were suspected of involvement with certain groups and journalists who it is accepted by all sources are of greater interest.

### Risk to Returning Failed Asylum Seekers

33. I take into account, as is noted in the FFM report, when dealing with the position of failed asylum seekers, there is a lack of coordination in the returns operations from other countries which means that there is also limited monitoring of returns at the airport by independent groups such as UNHCR although it is noted that IOM is present for voluntary returns. Although there are few examples of voluntary returns to Sudan, the views of IOM are deserving of weight as based on "on the ground" evidence.
34. That brings me on to the examples of returns of failed asylum seekers which are mentioned in the FFM. The source from the European and African Centre ("EAC") said that failed asylum seekers would be questioned about their stay abroad, acquaintances there and why they did not have a passport. The source from the African Centre for Peace and Justice Studies ("ACPJS") also said that those returning without travel documents or with escorts would be subject to questioning.
35. There have been two instances of mass returns which are referred to in the FFM report. The first is a large-scale deportation of Sudanese nationals from Jordan in December 2015. The exact number is not clear. The other is a deportation from Israel.
36. There is a difference of opinion about what happened to the deportees from Jordan. The East and Horn of Africa Human Rights Defenders Project ("EHAHRDP"), the Khartoum based human rights organisation, DBA (Khartoum), the London based NGO, Sudan Democracy First Group ("SDFG") and the two human rights lawyers from Khartoum all said that some of the deportees were arrested and detained on arrival, that some may have been detained for a prolonged period and ill-treated and/or that some were placed on reporting arrangements or travel restrictions.
37. The EHAHRDP representatives interviewed are based in Kampala and are therefore outside Sudan itself. The notes of the meeting record that the representatives stated that "many of those detained were non-political" and that the representatives "believed" that some experienced torture but it is also noted that they could not provide any evidence relating to torture or mistreatment. Although the representatives were of the view that all asylum seekers would be at risk on return, they explained that there was a lack of reporting of human rights abuses in Sudan and it is therefore unclear on what this view is based. In particular, the representatives also "had no information to demonstrate" that "non-political persons" in Khartoum were at risk of routine arrest.
38. The comment of the Khartoum based human rights organisation is in the context of the release of the deportees and the intention of the authorities to paint a better picture of itself with the rest of the world. It also has to be read with the other comments of that organisation that "in itself, applying for asylum would not cause a low-profiled failed asylum seeker problem on return" and that even those with a

political profile returning to Sudan would not be arrested to the same extent as before (although such a person would be interrogated on return and their passport confiscated).

39. The DBA (Khartoum) appears from the record of interview to have the most complete picture of the returns from Jordan as the DBA source and a colleague were present at the airport at the time. The evidence is that the returnees were deported on 18 December 2015 and transferred to the Sudanese authorities still wearing the handcuffs that they had on when they arrived. The source provides evidence that the returnees were “frightened”, that they were made to sign six papers without explanation of what they were and were told not to leave their area of residence without first informing the police in advance. Importantly, though, the DBA source stated that of the 1,053 persons returned, only three of the returnees were detained (although it is of concern that DBA did not know their whereabouts thereafter).
40. The London based NGO is, as its reference suggests, based in London. Its information is based on “monitors” in Darfur and Khartoum. Its information is that 400-700 persons were deported forcibly, that they had their biometrics recorded on arrival and that whilst some persons had been released from detention without problem, others had not. However, it is not clear on what this information is based. The numbers of returnees differs from the very precise number given by the DBA source and it is not clear how many persons are said to have been detained initially or released subsequently.
41. The SDFG is based in Uganda and was formed by a group of civil society leaders during the 2010 elections in Sudan. Its focus is the wider political situation in Sudan but it works via intermediary groups based in Sudan (human rights organisations and grass roots groups) with whom it has day to day contact. Its evidence in relation to the Jordanian returnees is that there were 800 returnees, that they were detained and released after one day and that their documents had been confiscated and their names recorded on an exit ban list. Some of that evidence contradicts the evidence of the DBA source who was present at the time.
42. According to the two human rights lawyers, the deportees from Jordan who were sent back in handcuffs and escorted, were arrested and interrogated on arrival and most were released after one to two days in detention. Again, that contradicts the DBA source evidence about the level of arrests. The evidence also has to be read in the context of the opinion of the same lawyers to which I have already referred that arrest and detention at the airport of even those in whom the authorities have an interest was “less likely to happen now”.
43. Other organisations, specifically, the IOM, EAC and the Khartoum based journalist (1) said that the returnees had been processed smoothly.
44. The IOM is not involved in forcible returns to Sudan. It deals only with voluntary returns. As such, their information about what happened to those returning from Jordan is based on hearsay, it appears from the Sudanese authorities and can be given more limited weight as a result. However, their more general view that being returned as a failed asylum seeker would not on that account alone create a

problem does have to be given some weight given their involvement in voluntary returns, albeit of limited numbers.

45. EAC is based in Khartoum. It was established in the UK in 2013 and registered in Sudan in 2014. Its aim is to provide advocacy services to African migrants wishing to emigrate legally and to support legal migration through effective migration management. Whilst that aim might be said to be a reason to give less weight to its views, I note that the source providing the information is EAC's director who was himself a political refugee from Sudan (although not necessarily a Darfuri). He also provides two specific examples of persons who had returned to Sudan, one in particular having no documentation and apparently having some low-profile political involvement. He reports that the persons concerned were allowed to leave the airport without being detained although the person with no documentation was questioned because the authorities had to establish that he was Sudanese. The EAC director said that a number of the returnees from Darfur had returned there although he had only visited one of their number. He also mentions a return of illegal entrants from Algeria in mid-January 2016 who faced no problems at the airport.
46. The Khartoum based journalist (1) is from Darfur and lives and works in Khartoum. He has not worked as a journalist for five years but works as an activist. He did not have any specific information about how failed asylum seekers from Darfur were treated on return, but he had heard from some of the returnees that, following procedural checks at the airport, they had been allowed to leave and return to their families. He did though note that attempts to contact returnees to interview them had failed because they could not be found. He had assumed that they had left Sudan again.
47. The Israeli deportees are in a different category. The two human rights lawyers based in Khartoum provided evidence of a number of the Israeli deportees being subjected to detention and ill-treatment. However, that has to be seen in the context of the comments of the two lawyers that treatment on arrival "depended on three factors: political opposition activities, affiliation with rebel groups or residence in Israel". That is consistent with, for example, the views of EAC that such persons would be viewed with suspicion that they might be "spies" which may be understandable given what is described by the international consultant based in Khartoum as a "general 'Arabification'" of Sudan.

#### Lack of Exit Visa

48. Although it was not accepted that the Appellant did leave Sudan illegally, I take into account what is said in the FFM report about whether there is a likely risk arising due to lack of an exit visa in a passport.
49. The evidence from the Western Embassy (C) although based on a limited sample, is perhaps the best (ie most detailed) evidence of what happens when a person returns at the airport in terms of documentation procedure. That evidence is that there is a lengthy administrative procedure which may involve the payment of a bribe. The source describes a procedure involving three types of checks. First, there is an immigration desk which involves a check of travel documents

including for exit visas. Second, the NISS desk, involves a check for a person's name against a computerised list. Third, there is a check for goods including alcohol. The source did not consider that someone travelling on an emergency travel document would face problems on that account.

50. The check for exit visas is contrary to the evidence of the Khartoum based human rights organisation that the authorities would not look for such a stamp on arrival. Nor would it be an issue that a person was travelling on emergency papers.
51. In any event, as was pointed out by the source from Western Embassy (B), it was not probable that a person would leave Sudan or return there without such a stamp. As the source pointed out, if a person had bothered to obtain a passport, he would spend the time and money necessary to get an exit stamp.
52. If a person did not have an exit stamp, as is pointed out by Khartoum Journalist (3), the lack of such a stamp is contrary to passport regulations for which Sudanese law provides a punishment of a fine or imprisonment for up to six months. The same source notes however that for a person with no political profile, there would be no problem obtaining an exit visa (which further undermines the Appellant's case that he did not have such a visa). In any event, there is no evidence about how the law is applied and in the view of the source from EAC, the punishment would be a fine (although I note that is based on assumption rather than direct evidence).

#### Risk Based on Ethnicity as a Non-Arab Darfuri

53. I turn then to the nub of the Appellant's case that he would be at risk on return due to his Darfuri ethnicity.
54. As noted at [3.3] of the FFM report, there are four sources whose opinion was that persons from Darfur could be at risk of treatment by NISS or targeted by the authorities due to their ethnicity only. Those are the London Based NGO, Crisis Group, Faisal Elbagir (JHR) and EHAHRDP.
55. According to the source from the London Based NGO, there were two reasons why a person from Darfur could be targeted even if not politically active. The first was that "ethnicity was highly politicised" and the second that "the system by which the NISS in Sudan operated was arbitrary". In relation to the first, the point made is that Darfuris are viewed as potential enemies because of their perceived support of those groups opposed to the Sudanese government. The second reason is based on the law providing immunity to all security and military personnel. However, although the source refers to evidence being irrelevant in some cases where civilians were prosecuted, the FFM report notes that "the source did not have any information on specific cases in which non-political persons were targeted by the authorities, solely on account of their place of origin or ethnic or tribal background". The examples of recent cases of persecution listed by the London Based NGO are all ones involving either students (who all interlocutors accept are a group of interest to the authorities) or activists or both.
56. Crisis Group is an NGO with a regional office based in Nairobi. Some of their information comes from sources inside Sudan via monthly communication but the



source admitted that the organisation collected information based on speaking with sources outside the country and therefore that their observations “were largely limited to anecdotal accounts and secondary sources”.

57. In any event, the evidence provided is that the organisation “has no information on whether a person’s ethnic or tribal affiliation would give rise to increased scrutiny when seeking to arrive or leave the country but considered it likely”. The source went on to say that “whilst the whole community of Darfuris...in Khartoum were under the NISS’ radar, it was first and foremost politically active persons who would be targeted by the authorities. The source added that the level of risk also depended on the political circumstances at the time”. It was also noted that the organisation had no evidence which specifically showed that there was mistreatment or human rights violations against ordinary civilians from Darfur. The source considered though that those from the Fur and Zaghawa tribes were likely to be perceived as “rebel sympathisers” because those tribes were still commonly associated with Darfuri rebel groups.
58. Faisal Elbagir is a human rights defender and journalist working for the NGO Journalist for Human Rights based in Kenya. He is in contact with other journalists and human rights defenders in Sudan, including Khartoum through “informal networks”. He was last in Sudan in 2009.
59. Mr Elbagir’s view is that all persons from Darfur would be at risk from the authorities “although he recognised that in practice the authorities lacked the resources and manpower to systematically target the huge number of persons from Darfur ...who lived in Khartoum”. Mr Elbagir acknowledged that there was no official report of targeting of an ordinary civilian from Darfur based only on ethnic affiliation and he did not himself have details of such persons being arrested or mistreated by the Sudanese authorities; he said that such cases could be found on social media and accounts from families where they were able to speak out. He said that he was sometimes able to verify such reports independently but did not give examples of any cases which had been verified.
60. The source from EHAHRDP was of the view that all asylum seekers from Darfur would be at risk on return but admitted that he had no information to demonstrate that non-political persons were routinely arrested. He was of the view that all tribes would be similarly at risk as it was difficult to distinguish between tribes because of the complexity of tribal dynamics.
61. Other organisations considered that being from Darfur might lead to a perception of rebel sympathies which would lead to greater monitoring of activities. For example, the source from SDFG expressed the view that “those from non-Arab tribes in Darfur...were perceived opponents of the government and could be targeted”. The source did go on to say that it was “predominantly politically active persons who were targeted” but also said that, following the JEM attack in Omdurman (in 2008) “the NISS strategy changed and ordinary citizens were also suspected in Khartoum”. I note that it was in response to the events following the 2008 attack which led to the Respondent’s concession which itself led to the country guidance in AA.

62. The ACPJS considered that those from Darfur were more likely to be suspected of supporting or joining the rebels but went on to say that “[t]ribal origin would be less of a factor for persons from minor African tribes, less commonly associated with rebel groups...”.
63. The DBA source based in Uganda provided evidence that “persons from the Fur, Masalit and Zaghawa tribes were generally suspected of being connected to rebel groups and hence, were more likely to be monitored and at risk of being targeted by the NISS”. However, the source went on to say that “not everyone from these tribes were monitored, and it was mainly activists who were under the government’s radar and targeted”. He said that “[p]ersons from other Darfuri tribes ... would not generally be perceived as opposed to the regime and so would be at no greater risk of being monitored.”
64. The source from a civil society NGO considered that there were “only certain persons in the Fur, Zaghawa and Masalit communities whom the authorities monitored and targeted”. The source had himself been targeted. He is from Darfur and is a Fur tribal leader. He said he was being monitored due to his opposition to a proposed Government referendum.
65. The view of the two human rights lawyers from Khartoum was that those Darfuris from the Zaghawi, Masalit or Fur tribes would be interrogated more thoroughly on arrival but that “deportees with neither political affiliation, nor connection to rebel groups or residence in Israel... were free to go upon arrival and questioning”.
66. The Khartoum based human rights organisation said that “[r]egarding profile of persons from Darfur...the NISS generally targeted persons who were politically active” although said that the “NISS were more suspicious towards those from Darfur...Accordingly, the NISS would most probably treat activists from those areas more harshly than others when they were arrested.”
67. The Khartoum based journalist (1) is himself a Darfuri. The source said that “tribal and ethnic affiliation did not play a significant role any more” when looking at monitoring and targeting by NISS. The source also said that “it was the type and level of activity which was the crucial factor in this respect. Anyone who was active against the government could be targeted and detained regardless of tribal and ethnic affiliation.” That view is largely mirrored by Khartoum based journalist (2), also a Darfuri, although the source did opine that “the NISS were targeting Darfuris more than other groups”.
68. Similarly, Khartoum Journalist (3) also said that those from Darfur were not targeted although IDPs from those areas “were more likely to be suspected of rebel affiliations and treated more harshly if they did come to the attention of the NISS”. The source considered that a distinction could be drawn between those Darfuris who lived in Khartoum for some time prior to the outbreak of the conflict in 2003 and who were integrated there and IDPs coming from Darfur thereafter. The Appellant of course falls into the former category having moved to Khartoum when he was aged only four months in 1992.

69. The UN official based in Khartoum expressed the view that tribal affiliation was “a source of suspicion for the authorities particularly if a person was of African descent”. The source went on to say however that those from the Zaghawa, Masalit and Fur tribes were more likely to be suspected of supporting rebel groups and that not everyone from those groups would be suspected and targeted; “[t]he NISS only targeted those who were suspected of being involved in specific activities supporting the rebel groups”.
70. The UNHCR source had no information about the possible impact of tribal and ethnic affiliation but expressed the opinion that “it was difficult in practice to treat persons differently on the basis of their tribal affiliation...in Darfur alone there were about 400 different tribal groups, and it was difficult to say which one of these groups would be targeted and which one not...”. According to the UNHCR source, “persons from Darfur...did not face any difficulties from the authorities when travelling to Khartoum.”
71. The source from Western Embassy (A) was of the opinion that “[i]f a person from Darfur ...was not involved in any activity they would not be at significant risk of being targeted due to his or her tribal and ethnic affiliation...the main reason for targeting someone was not their tribal and ethnic background, but rather their activities.” That view is mirrored by the source from Western Embassy (B) that “persons with no political profile or low-profiled persons would most probably not face any difficulties with the authorities upon return”. The source also said that “it was primarily returnees’ activities ... which was most important; rather than his or her tribal or ethnic background.” The source did accept as likely that the whole community of Darfuris in Khartoum was monitored by the NISS and its informants, particularly persons from certain tribes such as the Fur tribe but considered that if a person was simply a Darfuri doing business in Khartoum with no political profile, the person would not have any problems with the authorities. The source from Western Embassy (C) considered that Darfuris may face “some hustles” on arrival at the airport due to ethnicity but when asked to clarify said only that they would probably be “treated impolitely and probably asked to pay a bribe”.
72. In the main, the views of those interviewed were that the focus of the authorities in relation to Darfuris is on students, particularly those who had participated in demonstrations, human rights and other activists and Government opponents and journalists, particularly those who reported on human rights issues.
73. As I have pointed out at [10] above, that Darfuris were at risk on return to Khartoum in AA was conceded by the Respondent due to arbitrary arrests of such persons based on their ethnicity alone. Some of the sources cited in the FFM report dealt with the issue of whether such practice continues. The two human rights lawyers from Khartoum said there had not been any incidents on a similar scale to 2008 and that, even in 2013 following popular protests in Khartoum and elsewhere in Sudan the level of arrests was “less intensive” than in 2008. That is expanded upon by Mr Elbagir of JHR who says that the level of arrests depended on the security situation in Khartoum and that at the time of the FFM interview the numbers detained were definitely lower than the 250 persons detained in 2008.

Although he pointed to similar numbers being detained in 2013, those were he said mostly youths and students. This is of course the demonstrations in which the Appellant was caught up albeit not directly.

74. The Khartoum based human rights organisation reported that, in 2011, there had been some cases of large-scale arrests with no proof that the individuals were linked with rebel groups but confirmed that there had not been any large-scale arbitrary arrests since 2011.
75. The Khartoum based journalist (1) said that there had not been similar incidents since 2008 and that “[t]oday people were mostly individually targeted depending on their activities”. The Khartoum based journalist (2) said that “although many Darfuri students had been arrested arbitrarily in recent year, there had not been mass arbitrary arrests of civilians in Khartoum since the attack on Omdurman in 2008”. The Khartoum based journalist (3) similarly confirmed that there had not been any cases “on that scale”.
76. The source from SDFG “[w]hen asked about prevalence of mass arbitrary arrest of people similar to those of May 2008, following the JEM attack on Omdurman, ..explained that the situation was much worse in May 2008. At that time the authorities stopped busses, looking at people’s faces and detaining people based purely on their skin colour. SDFG emphasised that this response from the authorities came as a reaction to the particular threat at that time. The source added that at the present time large-scale arrests only occurred within the student community, due to their activity.”

#### Obtaining of a National ID Number

77. Finally, I come to a discrete point raised by Mr Seelhoff in his closing submissions concerning the Appellant’s access to a national ID number which is required to access services and to obtain other types of documents such as a passport.
78. The National Human Rights Monitors Organisation (“NHRMO”) is an organisation based in Uganda. Its representative was last in Sudan in 2011 and the organisation has no monitors inside Sudan. The evidence of its source was based on anecdotal information from other sources in Khartoum.
79. The NHRMO source said that the National Number was introduced in 2011. This is a civil registration system which requires a person to complete a detailed questionnaire about background, religion, place of origin, ethnicity and political affiliation. According to the NHRMO source, there were no “significant logistical difficulties” to obtaining a National Number and no discrimination to prevent any Sudanese national from obtaining one. According to the source, the fact that many Darfuris do not have one is because some groups had voiced opposition to it and there was suspicion that the system was introduced as a way of monitoring. Although the National Number was required to access public services and to deal with civil matters, the source was of the view that it was not needed to rent property or access healthcare services.
80. The Professor in law based in Khartoum was of the view that it was difficult for Darfuris to obtain the National Number because of difficulties in proving that they

ethnically belonged to tribal groups which belonged in Sudan. Particularly for those coming from the conflict areas (which of course the Appellant is not), there may be problems accessing the documentation needed to obtain a National Number.

81. I can deal with this issue quite shortly. The Appellant has family living in Khartoum, namely his parents and his wife. I have no evidence that the Appellant would not be able to access a National Number, if necessary calling upon evidence that those persons would hold about where and when he was born and that he is indeed Sudanese. Further, unlike an IDP, the Appellant would be returning from the UK, either with a passport which would show that he is Sudanese or if he does not have one or cannot obtain one, on an Emergency Travel Document which would also be sufficient indication that the Sudanese authorities accept that he is from that country.

### DISCUSSION AND CONCLUSIONS

82. As I indicated at the outset, the decision in AA forms my starting point. The finding in that case is that all non-Arab Darfuris are at risk on return due to their ethnicity. However, that was based on the Respondent's concession at that time, itself based on events in 2008/9 when the authorities carried out mass, arbitrary arrests of non-Arab Darfuris and expulsions of NGOs which led to a lack of reporting of human rights abuses.
83. I have to decide whether the Respondent has produced sufficient evidence which shows that the position has changed. In reaching my conclusions, I do not intend to provide any specific or general guidance relating to the situation of non-Arab Darfuris returning to Khartoum. That is the purpose of the pending country guidance case. My decision is based on the particular facts of this case and the background evidence before me.
84. As I have indicated, the focus of the Respondent's case is the FFM Report and the focus of the Appellant's case is that, when one reads the material underlying the FFM Report, that report does not provide sufficient evidence that the position has changed. I have explained at [21] to [23] above, why I do not accept that the other material put forward by the Appellant assists me in my consideration of the current position for non-Arab Darfuris who claim to be at risk solely on account of ethnicity.
85. Dealing then with the FFM report generally, that relies on the views expressed by a number of interlocutors: individuals, organisations, diplomatic sources and sources from within the regime. I have not referred to the views of those from within the regime in my analysis of the evidence as I accept that this is not a source to which I can give weight. In relation to the other sources, I have set out in my analysis of the evidence the type and location of the individuals and organisations as well as their aims and motivations and the source of their information. I consider I can give more weight to evidence which comes from individuals and organisations themselves based in Sudan, particularly Khartoum, or whose information comes directly from sources within the country as opposed

to the views of individuals and organisations outside the country whose comment is not underpinned by evidence from sources within the country.

86. Although some of the sources did refer to questioning of persons arriving at the airport, those sources who said that there was a risk of detention at that juncture did so in the context of activists, those suspected of involvement in opposition to the authorities and journalists, all of whom are accepted by all interlocutors to be of interest to the authorities rather than in the context of a non-Arab Darfuri with no profile other than his ethnicity.
87. I recognise that there have been a limited number of returns to Sudan from the West and therefore there is limited evidence as to what happens to Darfuris who return having failed in their asylum claims.
88. There have been two large-scale return operations of Darfuris, one from Israel and one from Jordan. I have explained at [47] why I do not consider that the evidence about what happened to those returning from Israel to be of relevance to what would happen to a non-Arab Darfuri returning from the UK.
89. There is conflicting information about the returns from Jordan. The most complete information and that with the weightiest source comes from DBA (Khartoum) as the source and his colleague were present at the airport at the time of the returns. Of 1053 persons returned, only three were detained and although the whereabouts of those persons is apparently unknown, it is likely in view of the limited number of detentions, that those persons were specifically targeted as being of interest to the authorities.
90. Although I accept that the views of the EAC's director may be clouded by the aim of that organisation, he also provided two specific examples of Darfuri failed asylum seekers who had returned without incident.
91. The Appellant says that he left Sudan without an exit visa. Given the findings of the First-tier Tribunal Judge (whose findings I have preserved) about the Appellant's motivation for leaving Sudan, I do not accept that the evidence shows that this would cause the Appellant problems on return. As observed by the Western Embassy source, it is unlikely that a person would go to the trouble to get a passport to leave and not also obtain an exit visa. The Khartoum based human rights organisation also said that neither this nor travelling on emergency papers would give rise to any problems on arrival.
92. When read as a whole, the evidence does not show that the Appellant would be at real risk of coming to the interest of the authorities on arrival at the airport either because he is a failed asylum seeker or because he has no exit stamp (if he in fact does not). I note that if he no longer has a current passport, it is likely in any event that he would be removed on an emergency travel document.
93. I now turn to the issue at the heart of the Appellant's case that he would be targeted by the authorities on account of his ethnicity alone. I begin by noting that none of those interviewed by the FFM said that the situation remained as it was in 2008.

94. The organisations who provided the evidence most supportive of the Appellant's claim to be at risk on account of his ethnicity are:
- (1) A London based NGO whose examples are all ones involving groups of particular interest and who could not provide specific examples of non-political persons being targeted due to ethnicity.
  - (2) A Kenyan based NGO whose representative admitted that their information was based on anecdotal accounts and secondary sources and in any event said that targeting by the authorities was based on political activism or suspicion based on particular tribal associations (and the Appellant is from the Berti tribe and not from one of those tribes of central interest to the authorities).
  - (3) A Kenyan based journalist whose information comes from "informal networks" in Sudan and who has not been to Sudan since 2009. He was unable to provide verified reports of any persons being targeted on the basis of ethnicity alone.
  - (4) EHAHRDP (based in Khartoum) who had no information to demonstrate that those with no political profile were routinely arrested.
95. The Appellant is not an activist or someone who has shown any political opposition to the authorities. He says that he would be targeted because he would be perceived to be an opponent because he is a non-Arab Darfuri.
96. Some sources interviewed by the FFM did identify ethnicity as a possible cause for interest. However, SDFG accepted that it was "predominantly" those with a political profile who would be targeted, ACPJS said that tribal origin would be "less of a factor" for those from tribes not generally associated with rebel groups (said to be Fur, Masalit and Zaghawa; the Appellant is not from one of those groups). In any event, DBA said that it would not be all persons even from those tribes who would be monitored; the main factor was whether an individual was perceived as an opponent. That was confirmed by the civil society NGO source who is also a Fur tribal leader and who was being monitored, according to him, not because of his ethnicity but because of his opposition to a proposed Government referendum.
97. The views of others do not support the Appellant's case. Their views are that it is political activism which is the factor of interest to the authorities and that, whilst tribal affiliation might lead to some suspicion (particularly for those from the Fur, Masalit and Zaghawa tribes), that alone would not lead to targeting by the authorities.
98. UNHCR had no information about tribal and ethnic affiliation as a factor but did not consider that tribal affiliation could be used to differentiate between groups from Darfur. The UNHCR source said that those travelling from Darfur to Khartoum did not experience any difficulties.
99. When the evidence is considered as a whole, it does not support the Appellant's case that he would be at real risk from the authorities now based on his ethnicity alone. The limited source evidence to which I refer at [94] above was unable to

provide specific examples of persons being targeted on grounds of ethnicity alone and the examples which were given are of persons who fall into other groups who all accept are likely to be at risk.

100. I recognise that the Appellant claims that he was arrested in 2013 for helping other students who were participating in other demonstrations and that part of his claim was accepted (and those factual findings preserved). However, he was not himself participating in the demonstrations and he was released by the authorities, he says because the authorities “had nothing on [him]”. He was not detained again (according to the factual findings which are preserved) during his reporting thereafter. Based on his own claim, the Appellant is not someone who would be perceived by the authorities as an activist or opponent.
101. Mr Seelhoff also raised the issue whether the Appellant could get a National ID number. He did so only in his closing submissions. The Appellant has a family in Sudan who could provide the necessary information so that he could obtain that document. He also has a family based in Khartoum to who he could return.
102. For the above reasons, I conclude that the Respondent has provided sufficient evidence to show that the Appellant is no longer at real risk on grounds of his ethnicity as a non-Arab Darfuri on return to Sudan. I also conclude that the Appellant has not shown that he is at real risk on return for any other reason.

## DECISION

**The Appellant’s appeal is dismissed**

Signed  
Upper Tribunal Judge Smith



Dated: 23 October 2018



**ANNEX: ERROR OF LAW DECISION**



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00374/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On Monday 25 June 2018

Determination Promulgated  
.....

Before

UPPER TRIBUNAL JUDGE SMITH

Between

OOA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Seelhoff of A Seelhoff Solicitors

For the Respondent: Mr J Kandola, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Although an anonymity direction was not made by the First-tier Tribunal, as a protection claim, it is appropriate to make that direction. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall

directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## ERROR OF LAW DECISION AND DIRECTIONS

### Background

1. The Appellant appeals against a decision of First-tier Tribunal Judge E M M Smith promulgated on 23 February 2018 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 1 October 2017 refusing his protection claim.
2. The Appellant is a national of Sudan. His protection claim is based on a fear of the Sudanese authorities arising from his participation in demonstrations which he says led to his arrest. He also claims to be at risk on the basis that he did not wish to be conscripted into military service. The Appellant is also accepted to be a non-Arab Darfuri. As such, he asserts that he cannot be returned to Khartoum. That assertion is consistent with the conclusion reached in the country guidance cases of AA (Non-Arab Darfuris – relocation) Sudan CG [2009] UKAIT 00056 as maintained by MM (Darfuris) Sudan CG [2015] UKUT 00010 (IAC) (“the Country Guidance Cases”).
3. The Respondent, relying on what is said in his Country Policy and Information Note entitled “Country Policy and Information Note: Sudan: Non Arab Darfuris” published in August 2017 (“the CPIN”) says that there is evidence post-dating the Country Guidance Cases which justifies a departure from the conclusions in those cases.
4. The Judge did not accept that the Appellant is at individualised risk on return. He found the Appellant not credible in that regard. He also found that the evidence post-dating the Country Guidance Cases was sufficient to justify a departure from the conclusions in those cases, particularly since the Appellant had not produced any background evidence undermining what is said in the CPIN.
5. The Appellant’s grounds are two-fold and focus only on that latter finding. The Appellant contends that the Judge’s conclusions regarding the Country Guidance Cases and the CPIN are irrational and that the Judge has failed to provide adequate reasons for departing from the Country Guidance Cases. It is also argued that the Judge’s conclusions relating to sufficiency of protection from the authorities on return are irrational, having regard to the background evidence and that, here too, that material is said to undermine the CPIN.
6. Permission to appeal was granted by First-tier Tribunal Judge Maller on 19 March 2018 in the following terms so far as relevant:

“... [3] The grounds assert that the Judge ‘completely disregarded’ AA [2009], supra, which was confirmed in MM in 2015. Nor did the Judge consider IM and AI 2016 that Khartoum remains unsafe for people from the Darfur area. That was ‘sharpened up’ in the 2009 decision in AA, and was extended in 2015 in MM.”

[4] It is arguable that the Judge has not given adequate reasons for not following the country guidance cases referred to.

[5] All grounds are arguable.”

7. The appeal comes before me to determine whether there is a material error of law in the Decision and if so either to re-make the decision or to remit to the First-tier Tribunal to do so.

## DISCUSSION AND CONCLUSIONS

8. The Judge referred to the Country Guidance Cases at [33] of the Decision where he said this:

“Mr Madanhi argued that the authorities supported that this appellant should not be returned to Sudan because he is a non-Arab Darfuris. The Country Guidance case of **AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056** held that all non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan. Ms Akhtar argued that there is now good evidence to depart from **AA** which was promulgated in 2015. The evidence now shows that whilst this appellant could not return to Darfur he could relocate to Khartoum. Mr Madanhi argued that **AA** should be followed. This was supported in **MM (Darfuris) Sudan CG [2015] UKUT 00010**. The respondent in the letter of refusal sets out (paragraphs 50-62) why **AA** need not be followed. Mr Madanhi had no evidence to argue against the latest material in regard to Sudan. He accepted that the appellant had said in evidence that his family live peacefully in Sudan where they have lived for many years.

9. The Judge, at [16] to [31] of the Decision, gave reasons for the conclusion at [32] that the Appellant’s claim of being at individualised risk was not credible. The grounds do not challenge that conclusion or the reasoning which led to it. Similarly, there is no challenge to the finding at [34] of the Decision that the Appellant is not at risk on account of being liable to perform military service.
10. In relation to the finding of risk as a non-Arab Darfuri, as Mr Seelhoff pointed out, the approach of the Judge discloses an error. It is for the Judge to provide reasons why he is entitled to depart from extant country guidance; not for an appellant to provide evidence to rebut the later evidence on which the Respondent relies as reason to depart. Here, the Judge has failed to provide adequate reasons. He relies only on what is said in the Respondent’s refusal letter which, as Mr Seelhoff pointed out, consists only of the conclusions of the Respondent on the Appellant’s case relying on the CPIN. The Judge has not carried out any analysis for himself of what the CPIN says, either taken alone or alongside other background material which he had before him (for example, the letter from “Waging Peace” dated 24 October 2017 which appears at [AB/17-22]).
11. Mr Kandola very fairly conceded that the Judge has erred by failing to give adequate reasons for his conclusion on this aspect of the claim.
12. Based on that concession and my own conclusion about the adequacy of reasons, I accepted at the end of the hearing that the grounds do disclose a material error of

law. I indicated however that I would not set aside that part of the Decision dealing with the individualised claim of risk on return as there is no challenge to the findings there made. As noted above, those findings appear at [16] to [32] and [34] of the Decision. I preserve the findings there made.

13. There was some discussion relating to re-making of the Decision. In particular, I considered with the parties whether there was a need for country guidance on this issue and I indicated that I would consider this further. As it transpires, there is no necessity for me to do so in this case as there is a pending country guidance case (**AAR (Sudanese Non-Arab Darfuris - relocation) Sudan: PA/08701/2017**) which it is intended will provide further guidance on this issue. That is presently listed for hearing in August 2018, subject to case management directions taking effect on time.
14. I have made directions for re-making of the Decision in this appeal below. I have not expressly stayed the appeal pending the outcome of the further country guidance appeal in case that appeal does not subsequently proceed. The timetable given below should however allow sufficient time for the hearing in that case to proceed and for a decision to be taken in that regard. If not, then it is open to the parties to seek an adjournment of any further hearing in this appeal on that basis.

### DECISION

**The First-tier Tribunal Decision involves the making of a material error on a point of law. I therefore set aside the First-tier Tribunal Decision of Judge E M M Smith promulgated on 23 February 2018. I preserve the findings made at [16] to [32] and [34] of the Decision. I make the following directions for the re-making of the decision.**

### DIRECTIONS

1. **By 10 August 2018, both parties shall file with the Tribunal and serve on the other party any further evidence on which reliance is to be placed at the resumed hearing.**
2. **By 24 August 2018, both parties shall file with the Tribunal and serve on the other party a skeleton argument referring to relevant case authorities and the evidence on which reliance is placed.**
3. **The resumed hearing will be listed on the first available date after 31 August 2018. Time estimate is half a day. An interpreter is not required and will not be booked unless the Appellant's representatives inform the Tribunal at least fourteen days before the resumed hearing that the Appellant will be called to give oral evidence.**
4. **Liberty to both parties to apply for further directions.**



Signed  
Upper Tribunal Judge Smith

Dated: 25 June 2018