



**Upper Tribunal
(Immigration and Asylum Chamber)**

IM and AI (Risks – membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016]
UKUT 00188 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
28 and 29 July 2015
4 November 2015**

Decision Promulgated

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Before

**UPPER TRIBUNAL JUDGE JORDAN
UPPER TRIBUNAL JUDGE BLUM**

Between

**(1) IM
(2) AI
(ANONYMITY ORDER MADE)**

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the first appellant: Ms M. Vidal and Mr J. Thai-Duy Dinh, Counsel, Duncan Lewis
For the second appellant: Mr S. Vokes and Ms E. Rutherford, Counsel instructed by
Fountain Solicitors
For the respondent: Mr C. Thomann, Counsel instructed by Government Legal
Department

- 1. In order for a person to be at risk on return to Sudan there must be evidence known to the Sudanese authorities which implicates the claimant in activity which they are likely to perceive as a potential threat to the regime to the extent that, on return to Khartoum there is a risk to the claimant that he will be targeted by the authorities. The task of the decision*

maker is to identify such a person and this requires as comprehensive an assessment as possible about the individual concerned.

- 2. The evidence draws a clear distinction between those who are arrested, detained for a short period, questioned, probably intimidated, possibly rough handled without having suffered (or being at risk of suffering) serious harm and those who face the much graver risk of serious harm. The distinction does not depend upon the individual being classified, for example, as a teacher or a journalist (relevant as these matters are) but is the result of a finely balanced fact-finding exercise encompassing all the information that can be gleaned about him. The decision maker is required to place the individual in the airport on return or back home in his community and assess how the authorities are likely to re-act on the strength of the information known to them about him.*
- 3. Distinctions must be drawn with those whose political activity is not particularly great or who do not have great influence. Whilst it does not take much for the NISS to open a file, the very fact that so many are identified as potential targets inevitably requires NISS to distinguish between those whom they view as a real threat and those whom they do not.*
- 4. It will not be enough to make out a risk that the authorities' interest will be limited to the extremely common phenomenon of arrest and detention which though intimidating (and designed to be intimidating) does not cross the threshold into persecution.*
- 5. The purpose of the targeting is likely to be obtaining information about the claimant's own activities or the activities of his friends and associates.*
- 6. The evidence establishes the targeting is not random but the result of suspicion based upon information in the authorities' possession, although it may be limited.*
- 7. Caution should be exercised when the claim is based on a single incident. Statistically, a single incident must reduce the likelihood of the Sudanese authorities becoming aware of it or treating the claimant as of significant interest.*
- 8. Where the claim is based on events in Sudan in which the claimant has come to the attention of the authorities, the nature of the claimant's involvement, the likelihood of this being perceived as in opposition to the government, his treatment in detention, the length of detention and any relevant surrounding circumstances and the likelihood of the event or the detention being made the subject of a record are all likely to be material factors.*
- 9. Where the claim is based on events outside Sudan, the evidence of the claimant having come to the attention of Sudanese intelligence is bound to be more difficult to establish. However it is clear that the Sudanese authorities place reliance upon information-gathering about the activities of members of the diaspora which includes covert surveillance. The nature and extent of the claimant's activities, when and where, will inform the decision maker when he comes to decide whether it is likely those activities will attract the attention of the authorities, bearing in mind the likelihood that the authorities will have to distinguish amongst a potentially large group of individuals between those who merit being targeted and those that do not.*

10. *The decision maker must seek to build up as comprehensive a picture as possible of the claimant taking into account all relevant material including that which may not have been established even to the lower standard of proof.*
11. *Once a composite assessment of the evidence has been made, it will be for the decision maker to determine whether there is a real risk that the claimant will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention but meets the threshold of a real risk of serious harm.*
12. *Where a claimant has not been believed in all or part of his evidence, the decision maker will have to assess how this impacts on the requirement to establish that a Convention claim has been made out. He will not have the comprehensive, composite picture he would otherwise have had. There are likely to be shortfalls in the evidence that the decision maker is unable to speculate upon. The final analysis will remain the same: has the claimant established there is a real risk that he, the claimant, will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention and release but meets the threshold of serious harm.*

Glossary

ACJPS	African Centre for Justice and Peace Studies
CPA	Comprehensive Peace Agreement
CIG	Country Information and Guidance
COI	Country of Origin Information
ESPA	Eastern Sudan Peace Agreement (2006)
ICC	International Criminal Court
JEM	Justice and Equality Movement
NCP	National Congress Party
NISS	Sudan's national Intelligence and Security Services, sometimes referred to as
NSIS	National Security and Information Service
OGN	Operational Guidance Note
OHCHCR	Office of the United States High Commissioner for Human Rights
ORDF	Organisation for Defence of Rights and Freedoms
PST	Norwegian Police Security Service
SAF	Sudan Alliance Forces
SCP	Sudanese Communist Party
SLM	Sudan Liberation Movement
SOAT	Sudan Organisation Against Torture
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SPLM-N	Sudan People's Liberation movement – North, the major element of the
SLM	Sudan Liberation Movement
SRF	Sudanese Revolutionary Front, attended by JEM, SPLM and SCP members
UEDP	United Ethiopian Democratic Party
UNMIS	United Nations Mission in Sudan which wound up its operations on 9 July 2011 the same day South Sudan declared independence
UNMISS	United Nations Mission in South Sudan, the successor to UNMIS

DECISION AND REASONS

Introduction and Immigration History

1. Both appellants are citizens of Sudan whose appeals are being re-determined for the purposes of providing Country Guidance as to the risks faced by those returning to Sudan. The appeal was heard on 28 and 29 July 2015 at which point the hearing was adjourned because Mr Thomann for the Secretary of State was aware that the Country of Origin Information (COI) Service of the Home Office was finalising additional Country Information, now known as Country Information and Guidance (CIG). This material, as the name suggests, is a mixture of COI material and Guidance. The Guidance does not form part of the COI and has been described as policy guidance. The documents are thematic. Two such products were published. One was entitled *Sudan: Treatment on return*; the other - *Sudan: Treatment of persons involved in 'sur place' activity in the UK* published in August 2015. In addition, the adjournment permitted the Secretary of State to produce a translation of a Swedish report of October 2010 which recorded the findings of a fact-finding mission made as long ago as October 2009. In the meantime, the appellants' expert produced additional material relating to the hacking of electronic communications by the Sudanese authorities. The hearing resumed on 4 November 2015.

Procedural background to the appeals

2. IM was born on 20 June 1984. In 2006 he arrived in the United Kingdom and claimed asylum the same day. His application was refused on 30 November 2006 and an appeal against the decision was dismissed on 12 February 2007. Following reconsideration his appeal was re-heard on 15 August 2007 by Immigration Judge Hall. Judge Hall dismissed this appeal on 6 September 2007.
3. Thereafter IM made several representations which were eventually treated as a fresh asylum claim. This new claim was nevertheless refused on 31 March 2011. An appeal against this new decision was dismissed by First-tier Tribunal Judge Finch on 23 May 2011. Permission to appeal this decision to the Upper Tribunal was granted and, on 13 December 2011, Upper Tribunal Judge Gleeson identified a material error of law in the decision of the First-tier Tribunal. She directed that the appeal be heard afresh and that it might be an appropriate vehicle for country guidance.
4. Directions were consequently issued by the Upper Tribunal on 9 October 2012 identifying the relevant country guidance issues. IM's appeal was joined with that of the second appellant and further directions were issued in May 2014 relating to the respondent's position in respect of activists of the Justice and Equality Movement (JEM).

5. AI was born on 18 June 1985. He claimed to have left Sudan in June 2008 and arrived in the UK illegally on 4 November 2010. His asylum claim was refused on 29 November 2010. An appeal against this decision was dismissed by Immigration Judge Waygood on 17 January 2011.
6. AI made a fresh asylum claim on 15 March 2011. This was refused by the respondent on 15 January 2013. An appeal against this decision was dismissed by Designated First-tier Tribunal Judge McCarthy on 28 February 2013. On 30 August 2013 Upper Tribunal Judge King and Deputy Upper Tribunal Judge Bowen identified a material error of law in the First-tier Tribunal's determination. The appeal was subsequently joined with that of IM.

Details of each appellant's claim

IM

7. Judge Hall accepted that IM had been both a member of the Beja tribe and an active member of the Beja Congress while a student at the Red Sea University College of Applied Sciences in Port Sudan. Judge Hall also accepted that IM had for a specified role in the Beja Congress, and that IM had been detained by the Sudanese security services on 4 June 2006 after his arrest at a planning meeting for a demonstration being called for by the Congress. The First-tier Tribunal accepted that IM had been beaten during this period of detention. IM was transferred from his detention to hospital on 1 July 2006 and was eventually released on 8 July 2006 after signing an undertaking not to engage in any future political activity. IM nevertheless attended a further political meeting on 3 August 2006 which was raided by the security forces. IM fled Sudan on 7 August 2006.
8. Judge Hall noted, based on the documentary country evidence before him, that the Eastern Front, an organisation comprised of, amongst others, the Beja Congress, signed a peace accord with the Sudanese government at the end of October 2006. Judge Hall was not therefore satisfied that IM would be at risk of persecution on the basis of his involvement with the Beja Congress if removed to Sudan.
9. In the appeal hearing before Judge Finch the factual findings made by Judge Hall were retained. The basis of IM's appeal before Judge Finch stemmed from his claimed fear of the Sudanese authorities as a result of his active involvement with JEM and his previous arrest and detention.
10. Judge Finch noted paragraph 3.6.6 of the respondent's Operational Guidance Note (OGN) current at the time of the hearing. This indicated that "*... since the ceasefire agreement in June 2006, individuals associated with the Beja Congress are not at risk of ill treatment amounting to persecution at the hands of the state authorities.*" In the absence of any other evidence to show that the Congress was now associated with those opposed to the Sudanese government the Judge was satisfied IM would

face no risk of persecution on the basis of his past association and activities on behalf of the Beja Congress.

11. IM claimed he became a member of JEM in the United Kingdom on 15 January 2010. He maintained that he attended JEM meetings and seminars in the United Kingdom. IM claimed to have attended a meeting in Manchester in July 2010 concerning the International Criminal Court (ICC) and produced photographs in support. He explained in evidence before us that he had not organised the meeting but it had been attended by representatives from the ICC and that, although the meeting had been addressed by those representatives, he had spoken from the floor. IM additionally produced photographs purportedly showing him at a demonstration in front of the Sudanese Embassy calling for peace in Darfur. He claimed in the hearing before Judge Finch to have attended a demonstration on 10 April 2010 and invited members of the Sudanese community to it and that he had participated in the slogans and banner writing. He also attended a demonstration outside the Commonwealth Office in May 2010. Judge Finch referred to the OGN dated 2 November 2009 which stated that all JEM members or affiliates, at any level of involvement, were at real risk of ill-treatment by the Sudanese authorities or Janjaweed militia in Darfur and by the Sudanese authorities elsewhere in Sudan.
12. Judge Finch was not satisfied IM had given a truthful account of his activities in the UK. In reaching this conclusion she took account of an inconsistency in respect of which day of the week IM claimed to have joined JEM, his inability to correctly name the General Secretary of the legislative council of the JEM in Sudan, the absence of a JEM membership card, and the apparent absence of checks carried out by JEM when IM claimed to have become a member. The Judge additionally relied on a difference in signatures between two letters purportedly written by Abdulrahman Sharafedin, the UK General Secretary of JEM. One of those letters, written on 20 January 2010, indicated IM was a member of the Halga tribe, whereas his evidence had always been that he was a member of the Beja tribe. The other letter, dated 16 June 2010, stated that IM defected from the Beja Congress to JEM after the former signed a reconciliation agreement with the Sudanese government. This however occurred in 2006 and IM was still basing his fear of return to Sudan on his connection with the Congress up until late 2007. The Judge drew an adverse inference from IM's non-attendance at any demonstrations since May 2010 and a further inconsistency in his evidence relating to the date of the ICC meeting in 2010. Having considered this evidence holistically Judge Finch was not satisfied IM was a member of JEM.
13. Having regard to photographs provided by IM the Judge accepted that he attended one demonstration against the Sudanese authorities. The Judge however relied on *SS (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 310 to support her finding that IM had nevertheless failed to establish that this limited activity would cause the Sudanese authorities to become aware of his identity.

14. The Judge noted that IM had, at that stage, lived in the UK for more than 5 years and had completed a number of short courses. There were however no letters or representations from any friends before her. The Judge further noted that IM's father and siblings still lived in Port Sudan and found that he could safely return there and live with his family. The Judge found IM's private life to be limited and, applying the approach identified in *R v. Secretary of State for the Home Department, ex parte Razgar* [2004] UKHL 27, she concluded that his removal would not constitute a disproportionate interference with IM's right to enjoy a private life in the United Kingdom.
15. On appeal Upper Tribunal Judge Gleeson found that the First-tier Tribunal's reliance on *SS (Iran)* in respect of IM's attendance at one demonstration was factually inconsistent with the statement in the OGN of November 2009 that 'all JEM members or affiliates, at any level of involvement, are at real risk of ill-treatment by the Sudanese authorities or Janjaweed in Darfur and by the Sudanese authorities elsewhere in Sudan'. It was agreed by both representatives that the dissonance between the First-tier Tribunal's acceptance of the statement in the OGN and her decision on risk from limited JEM activities amounted to an error of law and that the decision would have to be remade. Further evidence would be required of IM's claimed JEM activities in the UK and any resultant risk on return.
16. Upper Tribunal Judge Gleeson received a witness statement from Mr Abdulrahman Sharafedin which sought to deal with a number of points including the two disputed letters purportedly written by him. Mr Sharafedin renounced the earlier letter as a forgery. Mr Sharafedin's statement was silent as to the veracity of the second letter, but the statement dealt at some length with IM's claimed membership of JEM. Upper Tribunal Judge Gleeson additionally noted that, since the determination under appeal was made, there had been a major change in Sudan, which had separated into two countries, the Republic of Sudan and the Republic of South Sudan. It was noted that IM hailed from the northern region of the Republic of Sudan.

AI

17. In his first appeal before the First-tier Tribunal AI claimed to be a member of the Berti tribe from the Darfur region of Sudan. He claimed to have lived until the age of 8 in Nyala, in South Darfur, before moving with his family to Omdurman in Khartoum. He maintained that he and his family faced discrimination as a result of their Berti ethnicity. AI said that he was arrested by the security forces on 10 May 2008 after giving a lift to two men and was severely ill-treated. It is not disputed that on 10 May 2008 JEM mounted an attack against the government at Omdurman. AI alleged that he was taken to hospital as a result of this ill-treatment and then released on daily reporting conditions. He subsequently fled Sudan.
18. Neither the respondent nor Judge Waygood found AI to be a credible witness. The Judge's adverse credibility findings were based, *inter alia*, on AI's lack of

detailed response when asked to provide a history of the Berti tribe and how it had changed over the years, inconsistencies in respect of the location of a place called Mellit, his inability to confirm the geographic details of Nyala and related inconsistencies and omissions, and the rejection of a letter purporting to have been issued by the Union of the People of Darfur in the UK and Northern Ireland. The Judge found additional inconsistencies between AI's account and the background evidence relating to the JEM attack on 10 May 2008, and identified further internal inconsistencies in AI's account of the ill-treatment in respect of which he claimed to have been subjected.

19. The Judge rejected AI's claim to be a member of the Berti tribe and his claim that he had been targeted and ill-treated as a result of his perceived association with JEM. The only aspect of AI's account accepted by the Judge was that he was a black African and spoke Arabic. The Judge accepted that AI may be stopped at the airport upon his return as a failed asylum-seeker but found there was no evidence that he would, as a result, receive treatment sufficient to breach Article 3 ECHR.
20. In respect to his fresh asylum claim made on 15 March 2011 AI relied on new evidence relating to his claimed membership of the Berti tribe and, further, claimed to have been active in JEM since arriving in the UK. Designated First-tier Tribunal Judge McCarthy considered the new evidence relied on by AI, which included a letter from the Darfur Union UK & Northern Ireland and a report by Peter Verney, dated 18 October 2012, who was satisfied, having asked AI a series of questions that he belonged to the Berti tribe.
21. The First-tier Tribunal rejected AI's claim to be a member of the Berti tribe in a decision promulgated on 28 February 2013. Given AI's inability to answer similar questions during his lengthy asylum interview on 19 November 2010 the Judge was satisfied AI had learnt relevant facts about the Berti tribe and Nyala in the intervening period, that he had misled Mr Verney, and that Mr Verney's report could not therefore be regarded as reliable.
22. AI had provided two letters purportedly from JEM confirming his active membership, both signed by Mr Abdulrahman Sharafedin. A person identifying himself as Mr Sharafedin attended the hearing and produced his passport. He additionally signed his witness statement at the hearing. There were however discrepancies in the signatures between the various documents and, having taken instructions, AI's representative did not call the person identifying himself as Mr Sharafedin to give evidence. In these circumstances the Judge felt he was unable to attach any weight to the JEM letters and found that AI was seeking to mislead the Tribunal by presenting a witness who was not who he said he was. The Judge noted that AI appeared in only some of the photographs produced allegedly showing him at demonstrations and it was not clear where the events took place. Nor was the Judge satisfied there was independent evidence to show that the Sudanese authorities had any means of recording or identifying those who participated in demonstrations in the United Kingdom. The Judge rejected AI's claim to be a member of the Berti tribe and his claimed involvement with JEM.

The Judge finally noted that AI would be returned to Sudan as a failed asylum-seeker and that neither the background country information nor the country guidance decisions indicated that he would face a real risk of persecution or serious harm simply on that basis.

23. The Upper Tribunal found no errors of law in the First-tier Tribunal's assessment of the evidence save in respect of the risk on return as a failed asylum-seeker. Paragraph 32.05 of the September 2012 Sudanese Country of Origin Information Report (COI report) cited a Waging Peace report dated 4 August 2011. This report, itself citing sources from 2006 and 2010, maintained that:

Returning Sudanese asylum seekers from the UK to Sudan in and of itself constitutes a significant threat to their safety at the hands of the NISS [Sudan's National Intelligence and Security Services], and in the worst instances can result in death.

The full extract suggested that returning Sudanese asylum-seekers to Sudan constituted a significant threat to their safety at the hands of the NISS. The Upper Tribunal was not satisfied this document had been considered by the First-tier Tribunal. An added complication was said to be the split of Sudan into two countries. Having identified an error of law in the aforementioned terms the Upper Tribunal directed a rehearing on the limited aspect of the safety of return for failed asylum-seekers.

24. Hence in the case of IM, the Tribunal is concerned to consider general principles in relation to the risks faced by those who have engaged (or are perceived to have been engaged) in activity in opposition to the current Sudanese regime, whilst in the case of AI, the Tribunal is concerned to consider general principles in relation to those returned who are failed asylum seekers.
25. In the course of these proceedings, the respondent conceded in a response dated 16 May 2014:

[T]he Secretary of State would like to confirm her position that activists of the Justice and Equality Movement (JEM) in Sudan would likely be at risk of ill-treatment and persecution on return. However, this is with the caveat that each case should be considered on its individual merits. Claimants who have a credible claim of being a member of JEM and can show they have come to the adverse attention of the Sudanese authorities, or are reasonably likely to do so, are likely to qualify for asylum. The Secretary of State does however ask that the Tribunal gives specific attention to defining what a JEM 'activist' should reasonably be interpreted as being.

IM's oral evidence before us

26. AI did not elect to give any oral evidence. IM adopted his statements of 10 May 2011, 24 May 2012, 26 August 2014 and 23 June 2015. There was no examination-in-chief.
27. In cross-examination IM confirmed that he arrived in the UK in 2006 but did not become a member of JEM until 15 January 2010, a gap of around three and a half

years. When asked why he did not join sooner IM explained that he had been against the Beja Conference's peace agreement with the Sudanese government but it was only following a long conversation with a JEM member that he became convinced of JEM's aims and decided to join them. IM claimed he had engaged in activism with the Beja Congress in the UK prior to joining JEM. IM rejected the suggestion that the absence of any reference in his statements to such activism was because he was not telling the truth. When his statements were taken IM had not been asked about his activities on behalf of the Beja Conference in the UK.

28. IM disagreed with the suggestion that he only became active with JEM because he was about to submit a fresh asylum application. IM maintained that he was an active member of JEM in Plymouth and asked JEM members to attend demonstrations and meetings in London and to attend JEM meetings in Cardiff. He did not accept the suggestion that he last attended a public meeting in 2010. He maintained, with reference to his most recent statement, that he organised meetings and asked JEM members to join meetings. IM accepted that his most recent statement made no reference to meetings in Plymouth or Cardiff but he insisted that the last JEM event he attended was on 10 May 2015 in Cardiff, and prior to that, he attended events in Cardiff in January 2015 and December 2014. His most recent statement made no reference to the meetings in Cardiff because his solicitors only asked him about his attendance at demonstrations in London, and the reference to his having attended 'no further events' was only in respect of London. Although he had no documents relating to his attendance at events in Cardiff his witness, Mr Sharafedin, could attest to his attendance at these meetings. The meetings in Cardiff, at which approximately 50 people attended, took place in a large, rented three-bedroom residential flat. IM attended the meetings with fellow JEM members from Plymouth together with members from London, Newport, Swansea, Birmingham and Manchester. He knew the first names of some of the attendees from other places. The meeting on 10 May 2015 was an anniversary of the events of 10 May 2008, see [17], above. The meeting in December 2014 was a tribute to the JEM leader who had been killed by the Sudanese government. IM did not know why Mr Sharafedin, in his statement, did not mention the meetings in Cardiff.

29. IM maintained that he last attended a demonstration in London in September 2014. He referred in support to a number of photographs in his bundle. He was sure the photographs were taken in 2014. They were taken in order to document the events and were submitted to the JEM website. IM accepted that his statements neglected to make any mention of the JEM website. He had not been asked to provide photos of screen shots or printouts from the website. He disagreed that his oral evidence relating to the website was untrue. Mr Thomann conceded that IM had become a member of JEM. IM accepted that he still had his father and siblings in Port Sudan. IM did not know if his father was still employed. He was 62 years old and worked as a labourer from time to time. IM's brothers were not employed. Theirs was a poor family and, as non-Arab Sudanese, sometimes they could not get jobs. IM did not believe he would be able to secure work in Port Sudan if he were to return. He confirmed he had no family in the UK. There was no re-examination.

Past and current Country Guidance

30. In *HGMO (Relocation to Khartoum)* Sudan CG [2006] UKAIT 00062, the Tribunal (Hodge J, President, and Senior Immigration Judges Storey and P. Lane) focussed its attention upon the risk faced by non-Arab Darfuris returning to Khartoum. Having examined the background material it summarised its findings:

(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.

(7) There will, nevertheless, be limited categories of Darfuri returnees who will be at real risk on return to Khartoum. Each case will need to be considered on its own individual merits, taking account of all relevant circumstances, considered individually and cumulatively.

31. The Tribunal identified at that time, 2006, particular risk categories which included:

(i) persons of non-Arab Darfuri origin from one of the villages or areas of Darfur which are "hotspots" or "rebel strongholds" from which rebel leaders are known to originate;

(ii) persons (including certain students) whose conduct marks them out as oppositionists or anti-government activists;

(iii) tribal leaders;

(iv) persons who whilst in the United Kingdom have engaged in activities which the Sudanese government is likely to know about and regard as significantly harmful to its interests...

32. In its consideration of the country evidence the Tribunal noted the 2001 Danish Fact-finding Report and, at paragraph 131, set out a section of that report headed 'Conditions of Entry and Exit':

3.1 Entry to Sudan

Abdulbagi Albushra Abdulhay, Major General, Director of Passport and Immigration, General Administration, Khartoum, denied that Sudanese citizens who had stayed abroad for some time would be arrested or questioned by the authorities on their return home. He said that no Sudanese would be questioned about his circumstances while abroad, however long he had been away, and whether he had been in Western Europe, the USA or other countries, with the exception of Israel. If a person had been in Israel he would be questioned.

He also explained that Sudanese who worked abroad were obliged to pay tax on their foreign income either at a Sudanese Embassy or to the tax authorities in Sudan. Abdulhay said that no Sudanese had been arrested or even questioned on their return from abroad unless they had some unresolved business with the Sudanese tax authorities or were suspected of previous criminal activities in Sudan.

Abdulhay explained that the airport police at Khartoum airport had a register of all wanted persons. The airport police showed these lists when the delegation visited the airport. The lists contain information about approximately 1700 Sudanese citizens who are wanted by the authorities. The lists are drawn up manually and there is no wanted

persons database. Abdulhay also said that any foreigner could enter Sudan freely. Even former militant members of the opposition who had fought against the Government could enter without having problems with the authorities. He added that there was an amnesty for such people in Sudan.

Anyone entering the country who appears on the list and is identified by the authorities will immediately be arrested and handed over to the Detective Police/Central Intelligence Department (CID) at the airport, which after further investigations may hand him over to the security service. A source at the airport police said that this happened three or four times a month. However, the head of the CID, Colonel Emad Kalafalla M. Khier, said that five or six people were handed over every day. This figure included those travelling on false passports.

Waltmans-Molier said that the Netherlands Embassy did not follow up any deportations of rejected asylum applicants from the Netherlands. There was no form of monitoring and the Embassy therefore did not know what subsequently happened to those who had been returned...

...She knew that it was the practice for Sudanese citizens who had been away from the country for a couple of years or more and who were now returning home to be questioned by the Sudanese police on their arrival. Often this would be because of a failure to pay tax. The Netherlands Embassy was not aware of any examples of people suffering any harm while being questioned.

A well-informed local source in Cairo said that Sudanese citizens in possession of a valid national passport could enter Sudan without any difficulty. However, if they only had a temporary travel document they would be questioned about their circumstances on arrival in Sudan. This applied only to those returning voluntarily to Sudan. The source had no information about conditions on entry for Sudanese citizens who were being forcibly repatriated to Sudan.

Johannes Lehne said that Germany had never had problems with the deportation of rejected asylum applicants to Khartoum, either on entry or following entry. In the previous year a total of 15 people had been sent back to Sudan from Germany. Only in some individual cases had the deportation been followed up".

33. The Tribunal went on to consider the 10th ACCORD Country of Origin Seminar Report, Budapest, December 2005 which set out the opinions of Dr Hans Schodder and Dr Hamayoun Alizadeh. Dr Alizadeh was the Regional Representative of the Office of the United States High Commissioner for Human Rights (OHCHR) for South East Asia and former head of OHCHR in Khartoum, and Dr Schodder was the Senior Protection Officer of the UNHCR representative in Khartoum. The Tribunal quoted from Dr Schodder's comments found in their report, under the heading '3.10. Exit, Political Activities in Exile and Return':

"Sudanese citizens need [an] exit visa to leave the country, and these are denied to persons the government doesn't want to travel abroad, for example to attend critical meetings or conferences. While considering an application for an exit visa, the authorities keep the passport of the applicant. It's not a fact that political opponents don't get exit visa at all; it just might [take] a couple of months or even years, and through all those years the passport stays with the authorities".

In relation to political activities in exile, Dr Alizadeh stated:

“Of course, the Sudanese government observes activities of Sudanese nationals in Europe. Each consulate or embassy has at least two security officers who deal with intelligence information. Each event that is related to Sudan is attended by people from the embassy who observe and report – not to the minister of foreign affairs, but directly to their headquarters in Khartoum. The security apparatus, consisting of both internal security and intelligence service, monitors the activities of Sudanese citizens abroad.”

In relation to the return of failed asylum seekers Dr Alizedeh stated:

“Failed asylum seekers won’t face severe problems upon return, as long as they are not recognized as a threat to the state. However, if they are seen as a threat – there is no guarantee. In the beginning of the 90s there were cases of people who just disappeared. A lot of persons who left the country after the coup returned from exile. Of course they feared that they would be arrested at the airport, but nothing happened. However, this does not mean that the situation will continue like this.”

Dr Schodder added:

“In the past persons who left the country after the coup and stayed away for more than one year, would be questioned upon return automatically. This is no routine policy anymore; also the practice of arrests straight at the airport is not common anymore at the moment. Returnees might get visits from security officers later and be questioned or warned not to start any “funky [“funny”] business” in Sudan. I have no information that these people are particularly being targeted. Instead, some people who have been abroad for many years, maybe for political reasons, have come back to Khartoum. They are subject to close surveillance and they know that they cannot engage in political activities. They also know that they can be arrested, questioned, and detained at any time. They feel a little bit more secure if they obtained a foreign passport before their return. But if they are still Sudanese citizens, they have no protection at all. There have been some positive developments, but the security is monitoring the situation very closely and it is quite unpredictable”.

34. The Tribunal in analysing the material reached these conclusions:

172. We start with the most general risk category which has been proposed to us in the course of submissions. It is that we should find that involuntary returnees to Sudan generally would be at risk. This was not of course the scope of the review of the situation in Sudan contemplated by the House of Lords in *Januzi* when remitting the three Sudan cases to the AIT. The arguments canvassed in that case were confined to the issue of risk to persons of non-Arab/black African Darfuri origin facing return to Khartoum. The original grounds of appeal in the four cases before us did not argue for such a general risk category. Nor, as we have seen, is such a broad risk category advanced by any of the established country reports or even by the latest UNHCR Position Paper. Nor is it one subscribed to by Mr Verney in his written and oral evidence to us...

173. We are not persuaded that there is such a general risk category for several interrelated reasons. If the general argument here advanced was right, of course, then even Sudanese nationals returning on up-to-date Sudanese passports who were members of the Sudanese government would be at risk. That itself defies common

sense. It also contradicts the very considerable evidence from a number of sources and supported by both Mr Verney and Ms Maguire, that the current regime is extremely security-minded and highly sophisticated in its approach to the control of political opposition of every kind. But even considering that in practice this category would be confined to those who would be returning on other travel documents, we cannot see that the argument is made out. First of all, we can see no good reason why, for example, an involuntary returnee who was an Arab from northern Sudan or who was a member of the Sudanese government would be viewed adversely. It may be that certain individuals from one or both of these sub-categories may have specific characteristics which would put them at risk: e.g. if they were a member of the government who had turned "whistleblower" (and so had effectively become outspokenly anti-government), but here we are considering the category on its own.

174. Secondly, such a risk category assumes a general practice or pattern of adverse treatment of involuntary returnees on return, satisfactory evidence for which is lacking. It has been submitted that a practice or pattern of ill-treating involuntary returnees is not one which would necessarily be known about, especially given the secretive and repressive nature of the NSIS in its security and intelligence work. However, it is clear from the background evidence that, internal censorship notwithstanding, organisations within Sudan, both parliamentary and NGO-based, have shown ability to document and bring to light evidence of [National Security and Information Service] NSIS activities and abuses. The Sudan Organisation Against Torture (SOAT) reports on the Soba Aradi incidents of May 2005 are one such example. Whether SOAT is wholly based outside Sudan or not, it is clearly able to obtain and document a great deal of relevant information from inside Sudan. It is also clear that even outside international bodies, such as Amnesty International, have been able to obtain and make public evidence of human rights abuses: see for example its detailing of some 330 detentions of political opponents covering mid-2004- mid-2005 (at pp.160-170 of the bundle relating to appellant M). Even where investigations have not been able to give complete information, e.g. in relation to the regime's use of 'ghost houses', nevertheless the underlying practice has been identified and documented to some degree.
175. It may be that there is no international or national body or agency monitoring returns to Khartoum Airport, but by virtue of the protracted civil war in the South, the issue of risk on return to failed asylum seekers has long been seen as one which the international community has had to examine: see for example the 2001 Danish Fact-finding report. From the evidence of the Aegis Trust and Mr Verney and Ms Maguire, we also know that it is a topic which national and external NGOs in Khartoum have been asked to think about for some time now.
176. In such circumstances we would expect those contending that the situation has changed such that there is now a general risk on return, to evidence how and why.
177. We agree with Miss Giovannetti that if there was a practice, official or unofficial, of adverse treatment of involuntary returnees, it would have become known and would have been adequately documented. On Mr Verney's and Ms Maguire's own approach, such a pattern would have started some time in 2003, when the current regime decided to oppress the non-Arab Darfuri population, so there have been three years in which such a pattern would have become discernible.

178. Despite the scrutiny of national and international bodies, we note in this regard that there have only been two specific case examples cited in the evidence before us of returnees facing mistreatment. We shall deal with them below when considering non-Arab Darfuri returnees, but the general point we make here is this: if there was an established practice or pattern, we would have expected to see much more extensive evidence in the form of a significant number of adequately documented case examples.
35. It is apparent that the situation deteriorated between 2006-2009 (or more information came to light which required the Tribunal to modify its views) because in *AA (Non-arab Darfurians – relocation) Sudan CG [2009] UKAIT 00056* (Senior Immigration Judges Allen and P. Lane), the Tribunal painted a bleaker picture, summarising its conclusions 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.*
36. The reference to headnote (6) was a reference to a claimant seeking protection on the basis of his medical needs, a category that is not material for our purposes.
37. In *AY (Political parties – SCP – risk) Sudan CG [2008] UKAIT 00050* (AIT) (Senior Immigration Judges Latter and Southern and Mr C. Thursby) the Tribunal considered the risk faced by members of the Sudanese Communist Party (SCP) but spoke more broadly of political opposition in a wider sense. In summary, the panel decided:
1. *Opposition parties are allowed to function within relatively narrow parameters in Sudan.*
 2. *The Sudanese authorities do not seek or even attempt to take action which could amount to persecution against all political opponents but in the main they seek to control by the use of fear and intimidation. Depending on the particular circumstances of an individual, they may resort to stronger measures, particularly against those actively engaged in building up grass roots democracy, working in support of human rights and involved in open criticism of the regime's core ideology and philosophy.*
 3. *In general it will be difficult for ordinary members and supporters of the SCP or any other political party to establish a claim for asylum. They will need to show that they have been engaged in specific activities likely to bring them to the attention of the adverse authorities such as active and effective local democratic activity or support for particular human rights activities. Whether any individual political activist is at risk will necessarily depend upon his individual circumstances set within the context of the situation as at the date of decision. This will include an assessment of the nature of the activities carried out and how they will be seen by the authorities.*
 4. *The legal status of an opposition party has no significant bearing in itself on whether an individual is likely to be at risk of persecution. Political activities also take place under the guise of cultural associations.*
38. Most recently, in *MM (Darfuris) Sudan CG [2015] UKUT 00010* (IAC) heard on 7 October 2014 (King J and Upper Tribunal Judge Storey), the Upper Tribunal

summarised its views, once again in the context of non-Arab Darfuris, in the italicised words:

In the country guidance case of AA (Non-Arab Darfuris-relocation) Sudan CG [2009] UKAIT 00056, where it is stated that if a claimant from Sudan is a non-Arab Darfuri he must succeed in an international protection claim, "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.

39. The above constitutes our starting point for our assessment of those who may face a risk of persecution on return to the Republic of Sudan.

The country evidence

US State Department Country Report: Human Rights Practices for 2014, Sudan

40. In the Executive Summary of the US State Department Country Report on Sudan on Human Rights Practices for 2014, Sudan is described as:

'...a republic with power concentrated in the hands of authoritarian President Omar Hassan al-Bashir and his inner circle. The National Congress Party (NCP) maintained control of the government, continuing 25 years of nearly absolute political authority. The country last held national elections in 2010, the first multi-party elections since President Bashir took power. The elections, which several opposition parties boycotted, did not meet international standards.'

41. Although the President, according to the Human Rights Practices report, announced a National Dialogue in January 2014 to discuss democratic reforms with opposition parties and members of civil society, some key opposition parties refused to participate in the dialogue until the government demonstrated its good faith with reforms to improve the environment for civil liberties and a cessation of hostilities. Although the President announced in April 2014 that the government would release political prisoners and protect press freedoms, the government arrested key political figures and restricted the operation of newspapers and journalists throughout 2014. Many who protested or publicly commented on the actions of national security forces were arrested or beaten, and many individuals who aligned themselves with opposition movements were also detained without charge.
42. Government forces, government-aligned groups, rebels, and armed groups committed human rights abuses and violations throughout the year, according to the US report. The most serious human rights abuses and violations included indiscriminate and deliberate bombing of civilian areas and armed attacks on civilians, attacks on humanitarian targets including humanitarian facilities, and extrajudicial and other unlawful killings.
43. Other major abuses included torture, beatings, rape and other cruel or inhuman treatment or punishment; arbitrary arrest and detention by security forces; harsh and life-threatening prisons conditions; incommunicado detention; prolonged

pre-trial detention; obstruction of humanitarian assistance; restrictions on freedom of speech, press, assembly, association, religion, and movement; harassment of internally displaced persons (IDPs); corruption; intimidation and closure of human rights and nongovernmental organizations (NGOs); and recruitment of child soldiers.

44. In the section headed '*Arbitrary or Unlawful Deprivation of Life*' the Human Rights Practices report spoke of how the Security forces used excessive force against demonstrators. On 11 March 2014, security forces used force and live ammunition to disperse students at the University of Khartoum protesting escalating violence in Darfur. One student died of injuries he sustained during the confrontation with security forces and pro-regime students.
45. According to NGOs, civil society activists in Khartoum, and former detainees, government security forces beat and tortured persons in detention, including members of the political opposition, civil society activists, and journalists. Subsequently, the government released many of these persons without charge. It did not investigate cases of torture or excessive use of force by security agents.
46. Former detainees reported physical and psychological torture by police, the National Security and Information Service (NSIS), and military intelligence personnel of the Sudan Alliance Forces (SAF), an opposition group. Some of those arrested were subjected to torture and other forms of mistreatment, including prolonged isolation, exposure to extreme temperature variations, electric shock, and use of stress positions.
47. Human rights advocates reported that between April and May, three detainees died in the custody of military intelligence units in Nyala, South Darfur, and Fazugli, Blue Nile state. A fourth detainee from Nyala died in the hospital shortly after being transported from the military intelligence detention centre. Journalists were beaten, threatened, and intimidated. Prison conditions throughout the country remained harsh, overcrowded, and life threatening.
48. Although the interim national constitution and law provide for freedom of assembly, the government severely restricted this right. The criminal code considers gatherings of more than five persons without a permit to be illegal. Organizers must notify the government 36 hours prior to assemblies and rallies. Authorities disrupted or prevented Sudanese Communist Party (SCP) meetings in private homes and offices.
49. Whilst these extracts from the Human Rights Practices report are necessarily very selective, they offer an insight into the type of regime that operates in Sudan and it is against such an albeit poorly-sketched back-drop, that the assessment of risk falls to be made.
50. The regime's sensitivity over human rights abuses has been significantly increased since March 2009, when the International Criminal Court in the Hague issued an arrest warrant against President al-Bashir on charges of war crimes and

crimes against humanity in Darfur. A charge of genocide was added in 2010, according to the Freedom House Sudan Report 2012. As recently as June 2015, the prosecutor of the International Criminal Court has condemned disproportionate use of force against civilians and the deliberate hampering of efforts to afford humanitarian relief. This is consistent with reports from Amnesty International, Human Rights Watch and the African Centre for Justice and Peace Studies, issued in 2015, which spoke of the continued conflict in South Kordofan and Blue Nile states and noted the Sudanese governments use of aerial bombardments and proxy militias, and the continued attacks on civilians by both the Sudanese Armed Forces and the Sudanese Peoples' Liberation Movement - North (SPLM-N).

The COI Service report, 11 September 2012

51. The last comprehensive COI Service report is that of 11 September 2012. Extracting from its opening sections, we are able to summarise Sudan's recent history. For decades, Sudan has suffered from political, military and social upheavals. Particular unrest has been experienced by communities in the south. The country has experienced two civil wars (1955 - 1972 and 1983 - 2005) and uprisings in the Nuba Mountains, in Blue Nile State, by the Beja people in the east and by rebels in Darfur.
52. On 19 November 2004, the Government of Sudan and the SPLA (Sudan People's Liberation Army) and its political arm, the SPLM (Sudan People's Liberation Movement) signed a declaration committing themselves to conclude a final comprehensive peace agreement. The two parties formally signed the Comprehensive Peace Agreement (CPA) on 9 January 2005 ending the civil war with the south and allowing for a referendum on southern independence after a six-year transitional period. The referendum took place in 2011. An overwhelming majority voted for secession.
53. Although the Comprehensive Peace Agreement signed between Sudan and South Sudan in 2005 formally brought to an end the conflict between the north and south, the disputed status of Abyei and a vaguely worded right to 'popular consultations' in Blue Nile and South Kordofan without a guaranteed outcome [3.20] continued to be a source of tension in Sudan post 2005. The conflict continues in Southern Kordofan and Blue Nile states. The COIS report noted [3.13] the main conflicts as follows:
 - (a) An ongoing humanitarian crisis in Darfur in the west where at least 300,000 have died and about 2.2 million been displaced by fighting since 2003.
 - (b) Clashes in oil-rich states bordering South Sudan, called the Three Areas (Abyei, South Kordofan and Blue Nile).
 - (c) Tensions with South Sudan following the 21-year civil war between the north and the south that ended in 2005. South Sudan seceded from the north in July 2011.

- (d) Slow recovery from conflict in east Sudan where insurgents threatened to challenge the government for a share of the country's power and natural resources.
54. However, the country has also been wracked by demonstrations and popular protests which have periodically occurred over the last few years.
55. Paragraph 16.20 of the COI report noted the popular protests of January 2011 which, it is said, were endorsed by the opposition and attended by roughly 2,000 individuals in Khartoum despite the NISS announcing that any demonstration would be considered illegal. UNMIS documented more than 100 arrests made by the NISS. Most of the detainees were released the same day. More than 30, however, remained in detention until the end of February without being charged. Many of them reported having been mistreated while in custody.
56. The Human Rights Watch, World Report 2012, Sudan, covering events from 2011, dated January 2012 similarly observed:
- In January 2011 in response to demonstrations inspired by the popular uprisings in Egypt and Tunisia, security forces arrested more than 100 protesters in Khartoum and Omdurman alone.
57. There were other protests in June-July 2012. According to paragraph 16.22, a report on Al Jazeera, dated 28 June 2012, noted
- ... after over a year of sporadic protests, Sudanese say the newest round of demonstrations has evolved into a popular uprising. The protests began in reaction to new austerity measures introduced by the government, but now many are calling for al Bashir and his government to step aside.
58. A report from Agence France-Presse, dated 1 July 2012, citing figures provided by the Organisation for Defence of Rights and Freedoms (ODRF) reported that about 1,000 people had been arrested and hundreds more hurt during anti-regime protests in Sudan on 29 June 2012.
59. A press release from Human Rights Watch, dated 26 June 2012 noted [16.22] that:
- ... President Omar al-Bashir [had] downplayed the significance of the protests, calling them foreign-backed, and threatened to respond to protesters with real jihadists instead of as a responsible government. The day before, Sudan's police chief vowed to quell the protests forcefully and immediately according to law.
60. These events formed part of what is colloquially described as the Arab Spring. These events, centred upon various countries in the southern Mediterranean rim, caused different reactions on the part of the authorities depending upon the country concerned. In mid-July 2012, President al-Bashir, as reported in paragraph 6.26 of the COI report explained his reaction in inflammatory language:

'They talk of an Arab Spring - let me tell them that in Sudan we have a hot summer, a burning hot summer that burns its enemies.'

61. UN Report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005) (S/2011/111), dated 20 September 2010, published 8 March 2011 explained:

The Panel received reports of arbitrary arrest and detention as well as of ill-treatment and torture of persons while in the custody of security agents acting on behalf of the Government of the Sudan. The continuing reports of arbitrary arrest and detention of Darfurian community leaders, members of civil society and human rights activists indicate that the practice remains widespread in Darfur. Arbitrary arrest and detention is of particular concern, since it is often a precursor for further human rights violations.

62. The panel identified infringements by the Government of these rights in relation to internally displaced persons, community leaders and members of civil society perceived to be supportive of armed rebel groups, or in relation to community leaders who are against efforts to bring internally displaced persons into the peace process. Other cases documented by the Panel involved efforts by the Government to target individuals it suspected of having cooperated with the International Criminal Court.

63. The Report of the independent expert on the situation of human rights in the Sudan, Mohamed Chande Othman (A/HRC/10/40), dated 22 August 2011, and the UN's High Commissioner for Human Rights, '10th Report on the situation of human rights in Sudan', dated 28 November 2008, spoke in similar terms. The latter report stated:

Darfurians in the Khartoum area are at heightened risk of being subjected to arbitrary arrests, in particular if they are suspected of maintaining links with Darfurian rebel groups or political movements. 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 by having been in contact with individuals and organizations abroad. Over the past three years, United Nations human rights officers have conducted numerous interviews with Darfurians who have been arbitrarily arrested and detained. Many reported that they were ill-treated and tortured.

64. This is consistent with the Tribunal's earlier assessment of risk found in AA (*Non-arab Darfurians - relocation*) Sudan CG [2009] UKAIT 00056.

65. There is evidence that students and youth activists have been targeted for their role in the civil unrest and criticism of the regime. A paper from the African Centre for Justice and Peace Studies, '*Silencing the New Front: the Emergence of Widespread Torture against the Youth Movement*', dated April 2011, explained with regard to Sudan's youth movement and recent popular uprisings:

Sudan's demonstrations are different from Egypt and Tunisia's in that they are already occurring at an extremely sensitive political time as they face the loss of the South and the end of the interim period, constitutional revision, and the ongoing conflict in Darfur. Austerity measures imposed in early January [2011] to combat the economic

impacts of Southern secession has led to huge spikes in the prices of food, petrol, and other commodities. However, the youth movement has drawn inspiration from the popular uprisings. A coalition of members of the youth movement from groups such as Girifna, Youth for Change, Change Now, and Sharara (the 'spark' in Arabic) quickly organised as a mass movement (also known as the Neighbourhood Mobilisation Committee) and planned demonstrations in Khartoum, El Obeid, Wad Medani, and Kosti for 30 January [2011] to protest NCP rule.

66. The same source, referring to the demonstrations which took place in early 2011, noted the arrest and widespread use of torture against youth activists, which in turn acted to disincentive popular protests at that time. It noted:

... [T]he [January] movement has failed to gain broad, popular support due to lack of cohesion and fears of the NISS, the brutal and widespread torture of detainees following the 30 January demonstrations and subsequent days of rage indicate that the NCP now views the opposition and independent civil society as the next front. While torture remained all too common during the interim period, its scope and targets were somewhat subdued to periods of crackdown and following major political events such as the Justice and Equality Movement (JEM) attack on Omdurman and the International Criminal Court's indictment of President Omar al-Bashir. Torture was most prevalent amongst mid-level members of civil society, journalists and members of disenfranchised ethnic groups. Now, the main target of the NISS is the youth movement. It appears that the majority of detainees from the youth movement organised demonstrations were subjected to torture.

The Embassy letters

67. The respondent has sought information from the British government's Embassy in Khartoum. This has resulted in two letters being sent. Since these are not in the public domain, as far as we are aware, we will reproduce their contents in full so far as is material. A letter from the Deputy Head of Mission at the British Embassy in Khartoum, dated 8 April 2013 stated:

'We have contacted the office of the United Nations High Commission for Refugees here in Khartoum. They are the lead agency for dealing with refugee issues in Sudan and have large protection teams operating throughout the country in Sudan. They had no knowledge of returned asylum seekers being mistreated by the Sudanese security agencies. We have also contacted the German and Netherlands Embassies. None was aware of any cases of returnees being mistreated on return to Sudan, although they do not actively monitor every case of Sudanese being returned from their countries. We have also raised our concerns about allegations of returnees being mistreated verbally with EU partners at EU Human Rights meetings. Again EU partners had no knowledge of mistreatment of returnees but were also concerned at the reports.

However there is evidence from domestic and international human rights groups to show that those who openly oppose the Government from abroad will likely be arrested on return. Recently a number of opposition leaders who signed a political manifesto (New Dawn Charter) in Uganda calling for reform and the overthrow of the government of Sudan were detained for a number of weeks. These were widely reported in the Sudanese press and acknowledged as fact by the Sudanese Government. One of the arrestees was a dual Sudanese/British National and this Embassy has had direct contact with the Government of Sudan about the case. We

have also received credible reports from political parties and human rights groups in Sudan that those who are openly critical of the government are usually subject to surveillance and intimidation by security services. Reports from human right groups suggest that Darfuris and Nubans are also more likely to be at risk from this type of persecution.

We should also acknowledge that in 2012, Norway expelled a Sudanese diplomat whom they believed was involved in spying on Sudanese refugees there.'

68. A letter from the Deputy Head of Mission and Consul General at the British Embassy in Khartoum addressed to the Country Policy and Information Team at the Home Office in relation to the treatment of returnees in Sudan dated 19 February 2015 was designed to update the situation since its letter of April 2013. It stated that in preparing the letter the embassy had consulted with the Sudanese Immigration Authorities, UNHCR and IOM and a number of other embassies in Khartoum. The letter continued:

'It is the understanding of the British Embassy in Khartoum that any individual identified as failed asylum seeker it is standard practice to have their documents removed and detained for investigation by the immigration authorities for a period of up to 24 hours upon arrival at Khartoum International Airport. Should the investigation reveal any previous criminal activity or other nefarious reason for their original departure, the returnee is blacklisted from leaving Sudan again. If the crime is outstanding, they will be arrested. If a crime is not outstanding or the investigation does not reveal anything the returnee would be released by immigration.

While we have received no definitive answer on how a failed asylum seeker would be identified, things that would draw the attention of the authorities would include, but not be limited to: the use of an emergency travel document; having no valid exit visa in passport; or, being escorted into the country.

It is our understanding that any intervention by the National Intelligence and Security Service (NISS) would necessarily await the outcome of the immigration procedures. It is our firm belief that a failed asylum seeker, including an individual that had been subject to investigation by the immigration authorities on return, would not be at risk of further investigation by NISS on that basis alone. We do know however that returnees can be subjected to further questioning by security should they be determined to be a potential person of interest. While it is difficult to offer a definitive statement on who would fall into such category, activities likely to be of interest would include: being of previous interest to the authorities (in which case they may appear on a travel watch list); having a record of contact with Sudanese opposition groups outside of Sudan; or, having attracted the attention of the authorities during time overseas including through engagement with opposition groups within the diaspora.

...

It is our understanding that UNHCR has no role in monitoring the situation of Sudanese returned to Khartoum International Airport, but that representatives of IOM would normally meet any individual being returned under the global programme of assisted voluntary returns. As reported in our letter of April 2013 it remains the case that none of our international partners were aware of any cases of returnees being mistreated on return to Sudan. Counterparts at other embassies in Khartoum have told us that the numbers returned from their countries is very limited, if it happens at all, and that even when individuals are returned, they do not actively monitor every case.

Although the British Embassy in Khartoum has no independent evidence of overseas surveillance of asylum seekers by the Sudanese government, in October 2012 a Sudanese diplomat was expelled from Norway following allegations of spying on Sudanese refugees there. Article 25 of the [Sudanese] 2014 Asylum Act states that the Commissioner for Refugees has an "obligation to monitor the situation of Sudanese refugees abroad and to expressly encourage them to return to Sudan", although we have not received a clear answer as to what this means in practice. The Office of the Commissioner for Refugees comes under the Ministry of Interior, but it is the understanding of the British Embassy that they also maintain close relations with NISS.

Without prejudice to the comments above about allegations of mistreatment attributed to NISS, it is important to note that such detentions are an extremely common occurrence and it should not be assumed that everyone detained would be subject to the same sort of treatment. The treatment received would be determined by a number of factors including, but not limited to: the nature of the accusations; public and international profile; age; family connections; and ethnic background."

Waging Peace reports

69. Waging Peace is a non-governmental organisation that campaigns against genocide and systematic human rights abuses and seeks the full implementation of international human rights treaties. Its current priority is Sudan. It was founded by Rebecca Tinsley, its current Chair, who is a journalist and writer who has written numerous publications for leading United Kingdom newspapers and periodicals. She was formerly with the BBC and currently sits on Human Rights Watch London committee.

70. In a report entitled '*The Danger of Returning Home: The perils facing Sudanese immigrants when they go back to Sudan*' (September 2012), the organisation described itself as 'working closely with the UK's Sudanese community to help to give them a voice to speak out about their experience of human rights abuses' and helping 'to ensure the Sudanese diaspora in the UK has access to the services to which they are entitled':

'We have a particular focus on the most vulnerable amongst them, those who are seeking asylum in the UK. As the only UK non-governmental organisation with a focus on Sudanese asylum seekers we are uniquely placed to collect the testimonies in this report. The testimonies, included in full in annexes at the end of the report, have been gathered over a period of a-year-and-a-half. They document the experiences of six men: three men from Darfur, one man from South Kordofan, one from Eastern Sudan, and one British national. Whilst some of the men interviewed by Waging Peace spoke willingly of their ordeal, others were more hesitant, fearing future repercussions, and they have therefore remained anonymous for the purposes of this report.'

71. The September 2012 report summarised its view in relation to the experiences of a number of identified Sudanese citizens who had returned to Sudan having been in Europe in these terms:

Under interrogation returnees were explicitly questioned by the Sudanese authorities about their activities and experiences in Europe, and it appears they were targeted because of the time they spent overseas. The testimonies make it clear that the Sudanese government went out of its way to keep track of what Sudanese were doing while they were in Europe, and continued to monitor them upon their return. The Sudanese authorities perceived their citizens' time spent in Europe and their subsequent return to Sudan as sufficiently threatening to justify their monitoring, detention and sometimes their torture.

72. The report is organised into four sections. The first, *'Asylum Seekers'*, deals with the experience of asylum seekers who have returned, or who have been forcibly returned, to Sudan following unsuccessful claims for asylum. It describes their experiences of being picked up by the Sudanese authorities the moment they arrive back on Sudanese soil, at Khartoum International Airport. In the second section, *'Voluntary Returnees'*, the authors included the testimony of those who have gone back to Sudan of their own accord following a period living in Europe. These individuals, the report says, subsequently found themselves monitored, detained and suspected by the Sudanese authorities. The third, *'Interrogation'*, provides details from those interviewed of their questioning at the hands of the Sudanese government. It reveals their interrogators' particular interest in the presence and activities of Sudanese within Europe. Finally, in the *'Treatment of Detainees'*, the authors described the different experiences that the interviewees faced in detention. The report states that it *'paints a clear picture of inhumane and degrading treatment at the hands of the prison guards and the Sudanese national intelligence and security services'*. In addition, the report includes the testimony of a British national, MB. The authors assert that it sheds light on the *'horrific'* conditions faced by detainees in detention in Sudan. His testimony demonstrates that at times when the authority of the Sudanese government is threatened, suspicion and persecution extends to foreign nationals.
73. Of the men interviewed by Waging Peace, three had sought asylum within Europe before returning to Sudan. In two instances their return was forcible following a failed claim for asylum; in one instance the return was voluntary.
74. The accounts of the men interviewed were summarised in the respondent's closing submissions. No objection was made to the summaries provided, which we adopt as a reasonable starting-point.
- (a) Mr M states he claimed asylum after completing a course of study in the UK. He claims to be from Darfur, and to have been a member of the Darfurian Alliance Party and the Sudan Liberation Movement. He recounts being held back at the airport, and kept in detention in a "Ghost House". He recounts mistreatment in Khartoum and Darfur. The Sudan Liberation Movement paid for his documents and tickets to travel back to the UK. His second asylum claim was said to be outstanding;
- (b) Mr B states he is a member of the (non-Arab) Fur Tribe from Darfur. He returned voluntarily to Khartoum from Italy, having been fingerprinted there upon arrival, and having visited the UK. He claims to have been detained,

threatened with violence and interrogated after attending demonstrations at Downing Street and outside the Sudanese Embassy, and told he would be “shamed for leaving Sudan”. He returned to the United Kingdom in October 2011 and claimed asylum.

- (c) Mr A claims to have been refused asylum in Germany in 2009, and to have returned to Sudan in July 2009 on a flight from Frankfurt via Doha. It is unclear whether he had, by this stage, engaged in political activity. He states that he was detained, hit and subjected to verbal abuse. Having travelled to London, and returned, he claims to have been asked about meetings he attended with the UK branch of the Justice and Equality Movement. He recounts being detained and physically abused.

75. The other interviewees are from voluntary entrants to Sudan claiming to have been questioned about political activities in the UK. They comprise:

- (d) Mr Y, a student whose studies were funded by the Gum Arabic Company, a company part-owned by the Sudanese government. He was visited by plain clothed police at work, and asked about attending demonstrations to protest about the situation in Sudan. Those questioning him accused him of attending the meeting at the House of Lords. He had attended the meeting but denied it. His accusers spoke of the press release following the meeting as a crime against the state. He was detained on 2 occasions for 3 and 7 days respectively. He was released after the intervention of the ex-Minister for Health. His sponsorship was eventually terminated.
- (e) Mr X claims to be a Darfurian from the (non-Arab) Zaghawa tribe, who claimed asylum successfully and was granted indefinite leave to remain in March 2010. He obtained a British passport in June 2011. He claims to have been followed and asked for identification by National Intelligence and Security Service staff during his visit, and was questioned for four hours.
- (f) Mr MB is a British passport holder who arrived in Sudan, having resided in Holborn and then in Egypt, 24 hours after the Egyptian revolution began and stayed in the house of the nephew of Sadiq Al Mahdi, the former Prime Minister of Sudan. The family is described as a prominent opponent of the government in Sudan. He describes being detained at a number of prisons, and encounters with Darfurian leaders of the JEM there. The focus of his interrogation were suggestions that he was a spy, sending text messages to rally protests in Sudan like those in Tahrir Square in Egypt supra, (Q1).

76. The second report entitled ‘*The Long Arm of the Sudanese Regime: How the Sudanese National Intelligence and Security Service monitors and threatens Sudanese nationals who leave Sudan*’ (September 2014) is prepared jointly by Article 1 and Waging Peace. Article 1 is the sister organisation of Waging Peace and is a UK-based charity which gives support to asylum seekers and refugees from Sudan, working closely with the Sudanese Diaspora community in the UK.

77. This second report describes how in May 2011 the Khartoum regime introduced a new civil register requiring all citizens to obtain and carry identity cards in order to qualify for various services such as driving licenses, university entrance and registration of land ownership. Citizens need to confirm various aspects of their identity such as their place of birth, tribe and provide proof of identification like a birth certificate, passport, residency certificate, letter of employment etc. to receive a National Number with which they can then use to apply for a National Identity Card. In practice, vulnerable and marginalised groups do not have access to these documents and/or cannot get to registration centres. They therefore have difficulty obtaining the National Identity Card, leaving themselves vulnerable to persecution and unable to access services.
78. Sudanese visa procedures impose restrictive rules and surveillance on national and international travellers who wish to enter or exit the country. All travellers must produce a valid entry visa upon arrival. In addition, Sudan is one of the few countries where you need an exit visa in order to leave. Travellers can obtain an exit visa from the Ministry of Interior's main office in Khartoum or the transit office at Khartoum International airport. Travellers may be prevented from leaving the country and questioned about their future movements and activities.
79. The report includes the testimonies from 11 more individuals, of whom three were failed asylum seekers:
- (g) Mr T describes himself as a Darfurian claiming to be from the Berti tribe. He states that he was arrested, but did not claim asylum, in France. He describes no difficulties at Khartoum airport, where he was met by "UN people". He claims to have been abandoned in his home area (now in South Sudan) and there found, and beaten by "a mix of police, military men and NISS security forces suspecting him of being a Darfuri rebel." He claims to have been detained and tortured, and to have escaped to the United Kingdom by ship.
 - (h) Mr U is a Sudanese asylum seeker returned under the Fast Track scheme. He claims to have been beaten and interrogated by NISS following his handing over by escorts at the airport. Security Officers insisted he was a member of Girifna, the political opposition movement founded in 2009. Having been released, he was subsequently held for a month after fresh information was received that he was a member of Girifna, see paragraph 65.
 - (i) Mr Y states that he was removed with escorts following the failure of his asylum claim to Khartoum. There, he was ushered into an office and questioned by the head of NISS. His passport was confiscated. He states that his taxi driver knew that he had come from the UK, and Y suspected him of being a NISS agent. *Waging Peace* assisted him in obtaining his passport, and his girlfriend came from the UK for marriage. He obtained a Visa and returned to the UK.
80. Interviews were conducted with a further 8 respondents:

- (j) AM, a Dutch national originally from Darfur, and a member of the (non-Arab) Massalit tribe in Darfur. She travelled to Khartoum, and from there to Darfur. She describes being taken to a security office in El Geneina, West Darfur. She answered questions about her activities as a human rights activist for the Darfur Union. She was then able to return to the United Kingdom.
- (k) Dr SK describes himself as the founder of a human rights organisation in Khartoum called Sudan for Human Rights, and from 1999 became involved in politics for the Sudanese Communist Party. He states that he spoke at political rallies and attended meetings, and was head of the UK branch from 2005-2009, and elected head of the Central Committee for the Communist Party in 2009. He claims to have made many trips to Sudan, without problems, until September 2013 when he was detained at an additional security control as a wanted person. He was detained for 18 days in near isolation, and questioned about his political activities.
- (l) Ms A describes herself as a journalist from Nyala, South Darfur who is currently claiming asylum in the UK. She claims that she was detained and beaten after a visit to London in May 2013 when she attended a training course on media and English language skills, as well as an event to honour the anniversary of the creation of the Sudanese Revolutionary Front attended by JEM, Sudan People Liberation Movement and Communist Party members. She was shown photographs of the SRF event, and of her meeting a friend who was part of the JEM at a cafe on Edgware Road. (This incident may also be the basis for an article in the Telegraph newspaper dated 20 October 2014 which referred to a Sudanese woman who was detained at the airport in Sudan and shown photographs of her meeting with a Darfurian activist in a coffee shop in London. She was taken to a detention centre, interrogated and set a number of physical tasks. She was 5 months pregnant. She was released, driven to the airport and returned to the United Kingdom.)
- (m) Ms B, too, states that she had worked as a journalist in Khartoum, Sudan, but was originally from the Nuba Mountains. She describes being taken aside at the airport and asked about her Sudanese passport. Her research in the Nuba Mountains was disrupted by two men questioning her right to ask questions in a market area, and trying to drag her away. She found an email with a virus on her computer when she returned to Khartoum.
- (n) Mr V describes himself as a senior member of the Sudanese opposition in the UK. He complains that NISS officers come to the UK and make false asylum claims or use student visas. These individuals are not checked adequately by the Home Office.
- (o) Mr W is from North Darfur, and describes himself as of Berti and mixed race parentage. He states he was detained, and tortured for three days after visiting the UK, and attending a meeting of Darfurian civil society in Glasgow. He states that he fled Sudan on a fake passport and claimed asylum at Heathrow airport.

- (p) Mr X describes himself as a designer, human rights activist and torture victim, and states that he came to the UK in 2006 to study. He applied for and was granted refugee status subsequently. His job is, he claims, to advocate on behalf of Darfurians and oppressed people from the Nuba Mountains, Blue Nile regions and others. He claims that he received threats following his posting of online messages hostile to the Sudan Government.
- (q) Mr Z is an activist for the Democratic Unionist Party who claimed asylum in 2002 and lives in Manchester and is active in the Sudanese community. He claims to have visited Sudan numerous times since gaining British citizenship in 2009. He claims to have been followed by National Security Officers on various journey, and to have been asked for money on departure from the airport.

Landinfo report, 11 November 2013

81. The Norwegian Immigration Service draws upon Country Information which includes Landinfo reports. The report *Sudan: Scope of political activity critical to the regime* (11 November 2013) was based on a combination of written material and information from meetings with local sources gathered on visits to Khartoum/Ummdurman in April/May 2008 and September/October 2012. The summary of its findings is in these terms:

The scope of political activity critical of the regime is restricted in Sudan, especially for parties and groups working for a more pluralistic society. Conditions for oppositional activists have deteriorated since South Sudan gained its independence in July 2011. Sudanese security forces have used brutal means to stop waves of popular demonstrations in June-July and September-October 2012, and in September-October 2013. The main instrument of political oppression is the National Intelligence and Security Service (NISS), which uses a range of forceful means to restrict political activity and freedom of speech. Political activity inside Sudan is not the sole focus of the Sudanese regime, which also tries to limit such activity among Sudanese abroad through monitoring exile communities. Although there is no concrete evidence to support that forced returnees to Sudan face problems with security forces, Landinfo can see no reason why Sudanese authorities should differentiate between political activities outside and inside Sudan, provided their aim is to change the political situation in Sudan in ways threatening President Umar al-Bashir's regime.

82. All Landinfo's sources agreed that the scope of action for political activism critical of the regime in Sudan has decreased significantly since South Sudan was declared an independent state on 9 July 2011. Sources were anonymised as conditions for activists have become worse since then. [1] (The number in square brackets refers to the paragraph number in the Landinfo report.)
83. Given the inequalities in society and the regime's policies in general (not least in the armed conflicts with groups in many parts of the country, it is not surprising that political interest is great. Similarly, as in other societies, certain groups are particularly politically active, for example, the upper social levels and students.

84. The report pointed out, however, that many poor students dare not involve themselves politically because the potential risks, both economically and personally, are too great. One consequence of this, and of the general centralisation in Sudan, is that the active oppositional environment in the country is largely centred around the capital, and many activists come from the upper social levels. [1.1]
85. Reports on breaches of human rights against activists in Sudan often mention their involvement in one of a number of organisations with which they are involved, making it difficult to know which is the target. [1.1]
86. The regime has once more begun to describe Sudan as a state with a homogeneous Arabic and Muslim identity and downplays the ethnic and religious diversity of the people. [2]
87. The regime cracks down harder on political activity which is seen as threatening. [2] The Landinfo report went on to describe the various instances of political unrest since 2012.

Landinfo report: Demonstrations during and after Summer 2012

88. Summer 2012 saw a wave of demonstrations in a number of towns and cities in Sudan, including Khartoum/Ummdurman and Port Sudan. The African Centre for Justice and Peace Studies (ACJPS) reported that the first of these demonstrations took place on 16 June 2012 at the University of Khartoum. The demonstrations in Sudan had a greater focus on economic themes, such as price increases. [3] Many activists had organised new groups as alternatives to the more established channels for youth opposition. Two of the most important groups are Girifna (*trans*: "We have had enough") and Sharara (*trans*: "spark"). [3.1]
89. In Nyala, live ammunition was fired at demonstrators on 31 July 2012. 12 people were killed, of whom 10 were minors. Over 300 were arrested and detained in connection with various demonstrations, but activists believe that the figure was actually over 1,500. Many of the sources that Landinfo met in Khartoum in 2012 said that demonstrators from South Kordofan and Blue Nile regions were detained separately from the other activists and were treated more brutally. [3.1.2]

Landinfo report: Autumn 2012

90. The University of Port Sudan was the location for a demonstration on 30 September 2012 in the course of which three people were reportedly injured. [3.1.3]

Landinfo report: September 2013

91. Demonstrations lasting for 10 days broke out in Sudan on 23 September 2013, after the Sudanese authorities declared that subsidies on fuel, domestic gas and other goods would be reduced or removed.

92. The ACJPS reported over 170 killed (of which 15 were minors) and over 800 placed in detention, most of them by NISS. [3.1.4]
93. The Landinfo report refers to tactics employed by the Security Services to cow those intent on voicing opposition to the authorities, stating that summoning activists for questioning by NISS is a control tactic used extensively in Sudan. Almost all of the activists that Landinfo met during visits to Sudan in 2008 and 2012 said that they had been summoned and interrogated by NISS on a number of occasions.
94. Many of them said that the purpose was not necessarily to extract information from them, especially not those who had been under observation for a longer period, but to remind them that they were being watched. [4.1]

Landinfo report: Surveillance

95. The report also spoke of surveillance both at home and abroad. It said that NISS uses significant resources in conducting surveillance. However, many activists that Landinfo met in Khartoum in October 2012 said that the questions they had been asked during their questioning and detention in summer 2012 implied that NISS knew less about the opposition than their use of resources might suggest. Some activists suggested that intelligence officers often asked questions that revealed they had very little detailed knowledge of the individual opposition members' activities. One stressed, however, that there were still many opposition members that NISS did have information on.
96. The report suggested this illustrated that there is a variation in how effective surveillance actually is, although it was extremely difficult to say anything concrete about individual cases. [4.8.2]
97. It was difficult to gather concrete information on who is being monitored, but it is Landinfo's definite impression that it does not take much for an individual to be noticed by the NISS. Any form of association with a political party or organisation that is not close to the regime is '*undoubtedly enough*', as any form of activity in connection with these is potentially problematic from the regime's point of view. At the same time, there are probably many people that do not experience any problems other than being monitored to some extent, because their activity does not have any great significance for the organisations with which they are associated.
98. Landinfo said it was also important to point out that even though the NISS has good resources, these are not unlimited and their use must therefore be prioritised. There would appear to be a particular focus on activists that are likely to be able to affect public opinion and opinion within their own spheres, and who delineate and distribute information critical of conditions for which the regime is responsible; for example, the results of war in areas of armed conflict, other human rights breaches, corruption and misrule. [4.8.3]

Landinfo report: The Press and journalists

99. The report also indentified steps taken against the Press: journalists are prevented from working; are subject to the same summoning and questioning

by NISS which has been noted before, a technique used to control journalists; there is evidence of arrests of journalists, violence against journalists and restrictions on foreign journalists. [5.0 - 5.9]

100. This material is supported by a report of 2 April 2015 from Amnesty International, '*Sudan: Entrenched Repression – Freedom of Expression and Association under Unprecedented Attack*', which spoke of the period leading up to the elections which took place between 13 and 16 April 2015. In the approach to the elections, a NISS led crackdown on independent media and civil society reached unprecedented levels. The NISS confiscated publications from at least 16 newspapers on 42 occasions. Around 21 journalists were interrogated by police, and three leading civil society organisations were shut down.
101. The April 2015 elections also saw, perhaps unsurprisingly, an increase in the government's efforts to quell opposition. A Human Rights Watch report of 29 April 2015 entitled '*Sudan: Surge in Detention, Beatings, Around Elections*', noted that security forces in Sudan arrested dozens of opposition party members, students, and political activists, in the lead- up to, during and after the national elections.

Landinfo report: Sudanese communities abroad

102. The Landinfo report identifies significant Sudanese exile communities in many places around the world. The largest are in the Arabic countries and are mostly migrant workers, although many people have had other reasons to migrate. Outside the Arab world, as a former colonial power, the United Kingdom has a Sudanese immigrant community of considerable size. [6.1] Most Sudanese are very involved in politics. In Sudanese exile communities, Sudanese with higher education form a significantly higher proportion of the community than they do in the indigenous population in Sudan. Thus, political activity in Sudanese exile communities is correspondingly high. [6.2]
103. The writers of the Landinfo report did not think that it made any difference whether an individual's political involvement begins abroad or in the home country. What counts is the level of involvement, the activity and its effect. The lack of coordination of political activity for Sudanese critical of the regime in most places abroad, did not mean that the regime does not view it as a threat, as it still has consequences for political developments in Sudan. [6.3] The writers also emphasised that those who reject armed resistance against the regime may be suspected of supporting armed actions. This can be the case with groups that are close to armed groups from an ideological point of view and especially those that belong to ethnic groups that sympathise with armed rebel groups in the conflict areas of Sudan (Darfur, South Kordofan and Blue Nile). [6.3.1]

Landinfo report: Surveillance of communities in exile

104. The Landinfo report referred to a domestic example – the refugee spy case - discovered by the Norwegian Police Security Service (PST) in October 2012 which showed the Sudanese authorities' attempt to monitor political activity in exile communities. While it is not possible to know exactly who the authorities' were targeting, Landinfo was aware that the threshold for being monitored in Sudan is extremely low. On this basis, it assumed that it is equally low abroad.

105. At the same time: the writers conceded that, even though the authorities attempt to monitor communities in exile, this is a much more challenging task than is possible in Sudan. Surveillance in Sudan can be carried out without difficulty and in more forms compared to what is possible abroad. In other countries, telephone tapping would be more difficult (as this often requires the complicity and support of the telephone companies), and other covert surveillance abroad would be more difficult than in Sudan. [6.4]
106. Landinfo concluded that those who carry out political activity critical to the regime when abroad can attract the attention of the authorities when they return to Sudan - if the authorities have noticed this activity. This applies as much to activities aimed at influencing public opinion and political development in Sudan, as activities aimed at gathering international recognition for the conditions in the country. The consequences of this type of activity will probably be the same as corresponding activity in Sudan. Landinfo emphasised that their interpretation of the examples described indicates that the regime's aim is more to stop regime-critical activity and frighten people from pursuing such activity in the future, rather than punishing them for activities that have already taken place.
107. Landinfo also notes that political activity does not automatically have consequences for Sudanese when they return to the country - either voluntarily or enforced.
108. Even though it does not take much for NISS to create a file on a person for their political activity, Landinfo also believed that those whose political activity is not particularly great or who do not have great influence in the country in which they live or within their own community, will not be followed very closely. NISS is busy enough with following those they view as a real threat to the regime (precisely because the tolerance for monitoring is low and many are being monitored), and the writers believed that it takes more than membership of a political party, passive participation in a meeting occasionally and/or passive participation in public demonstrations for someone to be viewed as a threat.
109. According to the report, exposure in local, national or international media may have some significance, but again, this will depend on a number of factors. As Landinfo sees it, taking part in a demonstration and possibly being featured in a photograph in a newspaper will probably be of little importance, whereas playing a leading role as a spokesperson or organiser would be more problematic, because it shows that the person has charisma, influence and can mobilise people. Being noticed in a medium with broad exposure will contribute more to this, but it is difficult to say just how much.
110. The Sudanese security service must be well aware that the Sudanese are very politically engaged and have robust opinions on the political development in their homeland. [6.5]
111. The concrete examples Landinfo knew of regarding the consequences of political activity abroad upon return to Sudan concern those who return voluntarily. Landinfo does not have access to material on situations where an

individual is deported back to Sudan from another country either due to rejection of an application for political asylum or for any other reason. [6.5.1]

Waging Peace comments on Landinfo report

112. The organisation Waging Peace has provided comments on the Landinfo report and disputes the point made in paragraph 104, above, that opposition abroad tends to be from those of a higher education, citing that this is not representative of Darfuri asylum seekers many of whom are relatively low down in the economic scale. Given the concession that there is a high degree of politicisation among the diaspora, Waging Peace suggests that Darfuri asylum seekers whilst apolitical in Sudan may therefore develop a *sur place* claim in the different environment of the diaspora.

113. The comment-writer, referring to the Waging Peace material set out above, repeats its stance that Sudanese from all parts of society – men and women; rich and poor – who have spent time outside Sudan may be at risk on return.

Returns

114. There is evidence of substantial numbers of Sudanese citizens returning from selected neighbouring countries in Africa on the strength of agreements between them and UNHCR. These fluctuated between 30,000 in 2009 to 126,000 in 2007.. However, these figures contrast with the very much smaller numbers of returns from Europe and beyond Africa. The COIS continues in paragraph 32.13, quoting a passage from the IOM report '*Migration in Sudan: A Country Profile 2011*':

UNHCR mainly deals with refugees in Sudan and Sudanese refugees abroad assisting the involved national institutions (especially COR [Ministry of Interior, Commission of Refugees]) in establishing and implementing international agreements and introducing practical arrangements for return and reinsertion of refugees in their areas of origin. Given the instability and conflict across Sudan and beyond its borders, UNHCR deals with different challenges but focussing mostly on the protection and assistance of refugees, as well as returns.

115. As the appellants pointed out, there is no reference to monitoring. The numbers from Europe and beyond Africa were and remain small. In the case of forced returns, the number was very small: a mere 9 in 2011 although rising to 24 in 2014. Even the *total* number of returns (which included assisted voluntary returns and other voluntary departures) was only 15 for 2011. In the 8 year period between 2004 and 2011 a total of 322 were recorded as having returned or been returned.

The expert evidence

Mareike Schomerus

116. Ms Schomerus provided a report on behalf of IM but did not give oral evidence. The report is undated but Ms Schomerus' *curriculum vitae* extends to February

2013. The report, however, deals with events up to and including 2012. Since 2011 she had been the Chief Executive Officer at the Justice and Security Research Programme at the LSE. From October 2011 to March 2012 she was the leader of a research team on community-driven development in South Sudan. She has published a number of articles, provided analysis and advice, and undertaken research projects relating to Sudan.

117. She described the Beja as, generally speaking, African Muslims united by their language and culture, although the Beja people were made up of several sub-groups. The Beja were politically represented primarily through the Beja Congress. Although the Beja Congress engaged in a low-intensity conflict against the Khartoum government between 1997 and 2006, Ms Schomerus stated that it was “... fair to say that the Beja Congress never fully succeeded in becoming a guerrilla movement and had only limited military success...” and that the “... Beja Congress as a fighting force only existed through SPLA support.”
118. Ms Schomerus stated that the signing of the Eastern Sudan Peace Agreement (ESPA) in October 2006 brought no noticeable improvement, either politically or economically, to the situation in Eastern Sudan, although outright armed rebellion ceased and anti-government groups, including splinter groups of the Beja Congress, are now operating differently. Ms Schomerus was of the view that if an individual in eastern Sudan or members of the Beja Congress were to pursue political activities that were clearly in opposition to the Khartoum government, they might face the same level of harassment and intimidation as experienced before the ESPA was signed.
119. This echoes other parts of the background material that the ESPA has achieved few if any tangible results. An International Crisis Group report ‘*Sudan: Preserving Peace in the East*’ of 26 November 2013 indicated that the ESPA was slow and only partially implemented, and that it delivered no substantive peace dividend to most eastern Sudanese; tension remained high in the east.
120. Ms Schomerus stated that there had been reports that members of the Beja Congress had experienced harassment, although no support was provided for this assertion and no details of the nature of the ‘harassment’ provided. She claimed that Eastern Sudan continued to be one of the most marginalised in the Republic of Sudan and the Beja remained impoverished, struggled with health issues, had limited access to land and almost no opportunity of employment. With reference to media reports from 2011 and 2012 she stated that the situation in eastern Sudan remained volatile. Ms Schomerus indicated that some factions of the Beja Congress had reportedly joined the Sudan Revolutionary Front, whose declared aim is to overthrow the government and includes rebels from West Darfur in South Kordofan and Blue Nile, all areas of violent unrest or outright war.
121. Ms Schomerus indicated that small-scale harassment of the Beja seemed to be common and indicated that, when visiting Eastern Sudan in January 2011, she received reports of abuse by government security agents. No details were

however provided as to the level or nature of the abuse. Her evidence does not go so far as to establish the treatment met or would meet the threshold of serious harm. She referred to a violent response by the police to student protests at the Red Sea University. She concluded that IM, as a Beja, a member of the Beja Congress and having a history of political activity at the Red Sea University, may face harassment by the Sudanese security forces if returned to Port Sudan or to the Republic of Sudan in general.

122. Ms Schomerus stated that JEM remains a strong opponent of the NCP government and President Bashir. JEM did not sign the Darfur Peace Agreement and reiterated its commitment to toppling the President and his government. Ms Schomerus stated that being a member or affiliate of JEM could carry consequences and referred to UN reports from the end of 2009 stating that more than 100 people had been sentenced to death and executed as supporters of JEM during its Omdurman attack in 2008. According to Ms Schomerus JEM remains an active fighting force. She found it plausible that a person known to the Sudanese government as a member of JEM, who supports the overthrowing of the NCP government and delivering President to the International Criminal Court, may face difficulties and harassment in Sudan. She claims, without offering any supporting reference, that Sudanese embassy staff in London keep a close eye on political activities in the Sudanese community in the United Kingdom.

Peter Verney

123. Mr Verney is a well-known Country Expert who has assisted the Tribunal in a number of cases including *HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062*; *Secretary of State for the Home Department v. AH (Sudan) & Ors [2007] UKHL 49*; *AY [Political parties - SCP - risk] Sudan CG [2008] UKAIT 00050* and *MG (Christians, including Coptic Christians) Sudan CG [2006] UKAIT 00047*.

124. Mr Verney has written four reports, two for each of the appellants. Those in relation to IM are directed towards country conditions and therefore apply to both appellants. In contrast the two reports directed towards AI are focussed upon his particular circumstances. We therefore intend to consider Mr Verney's evidence in relation to him separately as part of the consideration of his individual claim.

Mr Verney's report, 25 May 2012, in relation to IM

125. IM is from the Halenga, a branch of the Beja people. Mr Verney described the Beja Congress Party as representing one of Sudan's politically marginalised and impoverished ethnic groups. He stated the party has been outlawed by the current regime. Dealing with the Justice and Equality Movement (JEM), he described it as a broad coalition of opposition forces in Sudan against the Islamist extremist regime of the National Congress Party (NCP). He did not regard the appellant's involvement with JEM as unusual since numerous individuals, hitherto members of the Beja Congress had also joined JEM. JEM was ostensibly a

Darfur/Western Sudanese organisation but had developed a nationwide political agenda and membership was not confined to Dafur. There is a history of the Sudanese authorities arresting members of JEM. For example, in the aftermath of the May 2008 coup d'état, hundreds were arrested in Khartoum. Similarly, the mass civilian protest in Port Sudan on 28 January 2005 resulted in Sudanese government forces using live ammunition to quell the protests as a result of which 22 people were shot dead including women and children and more than 400 were injured. A spokesman for the Beja Congress Dr Abu Amna (whom Mr Verney has met) claimed that the force used to quell the protests was directly sanctioned by the Ministry of Interior. Dr Amna claimed 17 Beja leaders were held in detention for several months, part of a widespread process of mass arrests. The Beja Congress Party split into three groups after the signing of the 2006 Eastern Sudan Peace Agreement (ESPA): a minority who signed up to the agreement; the majority who do not accept it; and those who are undecided.

126. It is a theme of Mr Verney's evidence that the Sudanese government arrests "low-level" or "grass roots" members in contrast to the opposition leaders who are either abroad or operating at a level where they are relatively untouchable. He, therefore, does not accept the classification of "high-level" or "low-level" activists as a means of assessing the level of risk.
127. The ESPA was intended to end a long-standing 'low-intensity' conflict and was part of a more widespread process to end the various conflicts in Sudan: the Comprehensive Peace Agreement (CPA), Darfur Peace Agreement and the ESPA did not, however, bring lasting results.
128. JEM joined 'the Kauda Alliance' which includes the Northern wing of the Sudan People's Liberation movement (STLM-N) the major element of the Sudan Liberation Movement (SLM).
129. It was Mr Verney's evidence that the Sudanese embassy is known to monitor and conduct close surveillance of Sudanese opposition activities in the UK. For example, there is in circulation the video clip, sourced from Al Jazeera TV of protesters in London on 10 December 2006. A man can be seen inside the Sudanese embassy in London using a hand-held camera to film the protesters.
130. Mr Verney described how the authorities use disproportionate criminal offences to dissuade demonstrators. By way of an example, Article 51 ("waging war against the state") under the 1991 Sudanese criminal code is a capital offence used by police and the NISS to prolong detention for up to 4 ½ months without judicial intervention and which prevents those detained from receiving bail. It is not suggested that, ultimately, those detained face the death sentence.
131. Powers available to the National Intelligence and Security Service are enshrined in statute and provide powers to detain for substantial periods without access to judicial oversight. At the same time National Security forces are given immunity from prosecution. The death penalty is permitted for a number of offences.

132. Mr Verney says there are 2 ½ million Beja people mainly living alongside the Red Sea in southern Egypt, north eastern Sudan and northern Eritrea. Although Arabising influences resulted in the Beja accepting Islam, they maintain a distinct culture. According to Mr Verney, they are marginalised because they are non-Arab. There is evidence from international sources that in the eastern area of Sudan those living there suffer higher rates of malnutrition, lack of access to basic services and experience higher rates of unemployment and illiteracy than in other parts of Sudan. The success of the 2006 Eastern Sudan Peace Agreement would lie in bringing tangible socio-economic development to the region.
133. At the time of writing his first report, the government was facing the impact of the Arab Spring which had threatened the continued existence of regimes along the southern Mediterranean rim.
134. There is no internal relocation option given the nature of Sudanese society and the reach of the Sudanese authorities.

Mr Verney's report, 8 July 2014, in relation to IM

135. According to Mr Verney, the elements of the case which suggests that this appellant is at risk include his past activities in the Sudan as a member of the Beja Congress Party; the risk that he would offer opinions which would be treated as opposition to the Sudanese government; as a member of the Sudanese Justice and Equality Movement whose activities in the United Kingdom would be known to the Sudanese authorities through monitoring UK activities of the Sudanese opposition. Mr Verney regarded the expulsion of aid agencies such as the Red Cross and Save the Children and the halting of mine-clearing activities in the eastern Sudan by the Sudan government as harmful to the Beja people in that area. He classified the current regime as "Arab-supremacist which regards the non-Arab Beja as inferior".
136. He considered the Beja as undergoing comparable forms of marginalisation (although not comparable levels of conflict) as the non-Arab peoples of Darfur and South Kordofan.
137. He spoke of the Sudanese Embassy's monitoring and conduct of surveillance as being an intrinsic part of the work carried out in the United Kingdom by the Sudanese security apparatus.
138. Mr Verney went further by stating there is also a risk to IM as a JEM member even if he is not yet known to be one by reason of his activities whilst in Sudan, described in paragraph 7, above. There is extensive surveillance undertaken in the Sudan by the authorities. Thus, speaking out about the failing ESPA or any shortcomings in the political system would be treated as opposition activity sufficient to bring him to the attention of the authorities.
139. After a period of some years, Mr Verney has developed his assessment of the ESPA which he described as "weak to the point of worthlessness" and which has

served only to divide the Beja Congress Party. He describes how, on the very day the ESPA was signed, there were arrests of Beja Congress members.

140. He repeated his contention that there is no reduction in risk by being a relatively "low-level" member within the political hierarchy. In particular, it could not be said that an adequate level of safety was likely to be achieved by a party member who was categorised as "low level" or "grass roots".
141. Mr Verney stated that following the independence of South Sudan and the spread of the conflict to South Kordofan in 2011, the general political situation has deteriorated. The government has blamed JEM and the Sudan Revolutionary Forces Alliance for the street demonstrations in September 2013 that were suppressed by the government resulting in a death toll of over 200 civilians. He refers to an article in *Africa Confidential* by Gillian Lusk, Associate Editor of Africa Confidential and a specialist in Sudan, published on 27 June 2014. Ms Lusk considered the current regime was besieged on all fronts with the economy in a dire state, nearly half the population below the poverty line and the opposition steadily gaining political and military ground. The article went on to describe how Khartoum had stepped up the bombing of Darfur and the Two Areas (Blue Nile and South Kordofan) with the result that some 300,000 people have been driven from their homes. On 17 June 2015 the International Criminal Court Prosecutor condemned the 'indiscriminate and disproportionate attacks against civilians' and the 'deliberate obstruction of humanitarian aid'.
142. In a personal communication of 1 July 2014 [page 28 of Mr Verney's report] she said:
- "As a journalist, I have attended dozens of Sudanese demonstrations and other public events and I have not the slightest doubt that the Khartoum government monitors them closely. Most Sudanese are very poor and it is always possible for the regime to find a few who will spy on their compatriots. Sudanese whom I know and trust are convinced that they are monitored by the government and often name suspected spies."
143. Whilst this passage is clearly directed towards demonstrations taking place in Sudan, it establishes by implication a mind-set that echoes the evidence about surveillance in the United Kingdom, albeit in the very different setting of a foreign country.
144. Mr Verney points out that the United Kingdom is not unaware of the regime's record. On p. 36 of the report, reference is made to a statement by Mark Simmonds, a Junior Minister, who said in answer to questions from Gareth Thomas MP that the Foreign Office was aware of the reports of torture detailed by the campaign group Waging Peace: "*We have frequently made clear, publicly and in private discussions with the Sudanese authorities, our concerns over the ill-treatment of detainees in Sudan.*"

Mr Verney's oral evidence

145. The bulk of Mr Verney's examination in chief was taken up with seeking to characterise the level of activity in political or opposition activity that would place an individual at risk and to expand on his evidence as to the scope of surveillance operated by the Sudanese authorities at home and abroad.
146. The tenor of Mr Verney's evidence was that it was artificial to draw distinctions with reference to the term 'low level' in the sense of basing a decision to refuse asylum because such low level activity would not attract adverse attention. He described this as a misperception in that an organisation like JEM depended on its grass roots supporters (the so-called low or street level activists). Mr Verney believed these same low level activists were more vulnerable to the actions of the Sudanese state than senior or high level members of the party. His reason was that higher levels of the party had a measure of protection by virtue of social and political status. The Sudanese government recognised these were people whose political influence could lead to backlash or upset if detained or maltreated. By contrast a low level participant did not have this social protection and was, therefore, more likely to be vulnerable to abuse.
147. The level of surveillance was, inevitably, provided by way of examples. He had already given evidence of a recorded instance in December 2006 of demonstrators being filmed by a person inside the Sudanese embassy building in London using a hand-held camera. He cited the example of one on its nationals abroad when in the United Kingdom. Gillian Lusk, Associate Editor of *Africa Confidential*, had been shown a dossier with information of whom she had visited, to whom she had spoken to and what her movements had been. He conceded she was referring to an incident that had occurred before this regime came to power, indeed, as long ago as about 1988. He spoke of the regime's reliance on its security apparatus which he described as '*the most powerful body in the country*' which maintains files on those of interest to them and which has extensive intelligence resources including human intelligence. These days they have fairly sophisticated computer systems and keep files on individuals for several decades.
148. In view of the threatening statements made by the Sudanese government against anyone who might give evidence to the ICC, Mr Verney considered it highly likely that the government would make it its business to obtain details, for example, of those organising the invitation to the ICC to come and talk in the UK. He accepted that neither appellant was one of the organisers but went on to consider whether the '*ordinary Joe*' who went to protests would ever come to the attention of the government. It was his view that he would. In reaching this conclusion he relied upon the material from the Waging Peace report and several reports of people returning to Sudan who were confronted at Khartoum airport with photographs or videos of their attendance at meetings or protests. He said that over the last couple of years, as the regime's own predicament deteriorated, it had been especially concerned to identify those who might have opposition links and, at the very least, to spread intimidation so that the links were not extended.

149. Mr Vokes attempted to draw Mr Verney on identifying a black African Arabic speaker as an individual who, for that reason alone, would be the object of suspicion in the eyes of the regime. However, whilst this might create a preliminary impression, Mr Verney described it as an *'unhelpful cliché'* because it introduced the idea that there may be colour prejudice, whereas there is an overlap in skin tones amongst the population. The peripheries of Sudan are the areas where the indigenous population is not Arab and does not aspire to or claim any Arab identity. These are the less powerful groups who are contrasted with the Arab Sudanese (who have been in the country for many centuries) and who have been the dominant economic and political force. According to Mr Verney, there is a lot of social cachet in identifying oneself as Arab rather than African; hence people of the Nile valley, even if they have African grandmothers, are entirely vested in Arab identity. People who do not fall into this category (often the longest standing inhabitants) are for the sake of convenience called non-Arabs. The use of the term 'black' is not helpful, he said, because it is more to do with lineage, inheritance and where your family comes from.
150. Mr Verney spoke of the original plan of the regime was for an Islamist military dictatorship, aimed at spreading Islam throughout Africa, using the Muslim population of Africa, such as those in Darfur. That did not succeed and the advocates of a pan-African policy left the regime. Those remaining in the government pursued a more traditional Arab supremacist Islamism. It seems they could not overcome their distaste for those whom they considered the *'lower forms of life'*. However, Mr Verney conceded this was a generalisation in the sense that there are people from non-Arab background who are supporters of the regime, albeit a small minority, perhaps in some cases a few powerful families. His evidence was that clear-cut lines were not possible. To be a 'black African' was not a litmus test; nor was being a non-Arab.
151. Mr Verney was asked about the 'patterns of detention'. Mr Vokes suggested it came down to a random display of intimidation. Mr Verney took a more nuanced approach identifying the differences in treatment as a series of grades. At one end of the spectrum were those cases where the authorities may have substantial evidence. He accepted that there were a large number of detentions by security forces which were intended to maintain an atmosphere of intimidation. It does not have to be based on anything strong. However, if someone were released that did not necessarily mean that the authorities had no further interest in him. This plays into the principle of the 'Arab supremacy' so that, in the case of the Beja and some Darfuri non-Arabs whom the authorities believe are 'getting above their station', they are regarded as second class citizens who must be kept in place.
152. Once again, however, Mr Verney drew back from drawing clear-cut lines. When asked whether someone from an Arab ethnic background who was against the regime would face the same arbitrary detention, he accepted that there are Arab Sudanese who are involved in the opposition. It is probable that the Arab Sudanese do not like the dictatorship, any more than the non-Arab groups.

However he concluded it was more likely that a non-Arab would be accused of such activity based on a lower level of evidence.

153. In answer to a question about racial stereotyping and geographical origin, Mr Verney said one had to be wary of making blanket statements and one had to adopt a more nuanced approach. Nevertheless, the place of origin and ethnic origin would have a significant bearing on the way a person is treated on return. If someone is from a Darfuri or Beja background, there was a greater likelihood of persistent interrogation.
154. Mr Verney spoke of no NGO operating without some NISS involvement. At least one Sudanese member of staff must be provided by government and he thought it was clear that the Sudanese authorities place at least one security force member in their offices to monitor what was going on. He described the atmosphere as one of extreme mistrust because they were often seen as giving aid to the enemy.
155. In any event, the numbers were limited as were the conditions of operation.
156. However, he no longer had an up-to-date list because after the 2009 suspension and expulsion of foreign NGOs, only a few had made arrangements to return. It was difficult to get hard details because the NGOs themselves were nervous of losing their freedom to operate in country.

Responses to Secretary of State's Questions, 30 June 2015

157. In answer to a question which sought information about persecution against the Beja since the 2006 Eastern Sudan Peace Agreement (ESPA), Mr Verney described how Beja demonstrators in Port Sudan who had spoken out against privatisation of an elementary school in April 2015 were heavily fined and threatened with imprisonment after their protest was broken up. Indeed, he commented that Beja Congress leaders in Port Sudan are regularly "*persecuted*" on the occasion of the anniversary of the January 2005 massacre and, in at least three towns, Beja Congress leaders are regularly subjected to detention, imprisonment and intimidation.
158. Mr Verney was also asked whether a failed or refused asylum seeker would be identified on return. His response was that it was not surprising that identification is possible when information to that effect is received in advance or, in the case of a person who is accompanied, from the manner of return. In the case of documentary evidence, where a returnee attends the Sudanese embassy for interview in order to be issued with documentation required to secure his re-admission to Sudan, the process of 're-documentation' may lead to embassy officials becoming aware of an unsuccessful claim in the United Kingdom. Similarly, where a passport or travel document is endorsed with only limited leave to enter or remain in the United Kingdom, unauthorised presence in the United Kingdom may cause the authorities to be suspicious.

159. Mr Verney also explained that the authorities usually ask questions about the individual's family background, his ethnic identity, his home area and his reasons for travelling, the persons he met and the events he attended. He also explained that non--Arab tribes, even those who work in government posts, are subjected to racial discrimination in a complex way. He confirmed material found elsewhere that individuals may be detained on the basis of little more than suspicion.
160. Mr Verney was also asked about the likelihood of participants in the United Kingdom demonstrations facing identification on return. He described the likelihood of identification on return as '*significant*' but did so on the basis that the Sudanese regime is known to carry out surveillance. Understandably, he said that it was impossible to predict the likelihood of someone attending a JEM meeting being identified but the regime takes steps to infiltrate such meetings and that there are cases of Sudanese returning to Sudan who have been accused of involvement with JEM or other opposition elements on the basis of their attendance at gatherings in the United Kingdom. The risk is not confined to actual involvement but the perception on the part of the Sudanese authorities that an individual has been so involved.
161. In answer to a question, Mr Verney referred to the Corporate Report of the Foreign and Commonwealth Office published on 10 April 2014 which stated that the conflict between government and the Sudan People's Liberation Movement-North (SPLM-N) was continuing in Southern Kordofan and Blue Nile states with aerial bombardment and ground fighting leading to civilian casualties and displacement. February 2014 saw the highest number of civilian casualties since the start of the conflict in Southern Kordofan since 2011.

The August 2015 CIG reports

162. Since these appeals were adjourned in July 2015, the Home Office has produced two additional CIG reports in August 2015. These are a mixture of Country Information on the one hand and Guidance to Home Office decision makers on the other. The Home Office guidance is policy or akin to policy. We do not look to it as a source of country information. It is only that part of the document specifically called Country Information that we rely on as a summary of the background information from which it is sourced.
163. The CIG report '*Sudan: Treatment of persons involved in 'sur place' activity in the United Kingdom*' makes extensive reference to the two reports from Waging Peace: '*The Danger of Returning Home: the perils facing Sudanese immigrants when they go back to Sudan*' (September 2012) and '*The Long Arm of the Sudanese Regime: how the Sudanese National Intelligence and Security Service monitors and threatens Sudanese nationals who leave Sudan*' (September 2014) both of which have been extensively referred to above. In addition, the letters from the British Embassy dated 8 April 2013 and 19 February 2015 which we have quoted in the body of this text have been annexed to the report as Annexes A and B.

164. The same CIG report refers to removal statistics from the United Kingdom. Over the period 2004 to 2015 a total of 141 failed asylum seekers were recorded as being forcibly removed from the United Kingdom to Sudan. Some 235 asylum seekers were recorded as returning voluntarily. However, recent figures show a sharp decline. It is recorded that there were only 2 enforced returns and 15 voluntary returns in 2013 with 6 enforced and 18 voluntary returns in 2014. In the first quarter of 2015 there were no enforced returns and only 2 voluntary returns.

165. The second piece of additional Country Information from the Home Office is entitled *Country Information and Guidance Sudan: Treatment of persons involved in 'sur place' activity in the UK* (August 2015). Once again, the two letters from the British Embassy of 8 April 2013 and 19 February 2015 appear as Annexes. Although this does not form part of the country information, we note as representing the respondent's policy at paragraph 2.2.8 of the Guidance:

However, given the increasingly repressive nature of the regime, the threshold of activity and profile for conducting surveillance on a person, and for them to become of interest to NISS, is likely to be lower than that set out in *HGMO*. Furthermore, given the low number of enforced and voluntary returns from the UK, if a person has been politically active this may become known by the authorities on return either through surveillance undertaken in the UK or from questioning on arrival in Khartoum.

166. The report refers to sources which speak of the difficulty in assessing the size of the Sudanese exile communities across the world and, perhaps unsurprisingly, the relative social cohesion of its membership. Reference is made to a July 2006 IOM mapping exercise showing various Sudanese community organisations in the United Kingdom including political and non-political organisations, Trade Unions, refugee and social organisations some organised on ethnic or gender-based criteria. A large number of such organisations were listed in an open letter from Waging Peace dated 22 December 2014. Copious references are made to the two Waging Peace reports '*The Danger of Returning Home, etc*' and '*The Long Arm of the Sudanese Regime, etc*'.

167. There is a separate passage on the Justice and Equality Movement (JEM) and its presence in the United Kingdom where it is run from an office in London with a number of senior members working and living in the United Kingdom and Ireland. JEM has a London-based media spokesperson. The identity of many of its senior members is given, including Prof Abdullahi el-Tom, the Chief Whip of JEM who is also Professor and Head of Anthropology at Maynooth University, Dublin.

168. The CIG on 'sur place' activities makes reference at 8.1.4 to an Amnesty International report on NISS dated March 2015 in which it noted:

'As the Sudanese National Intelligence and Security Service (NISS) intensifies its crackdown on the freedoms of expression, assembly and association in Sudan, it provides an ominous warning about human rights in the context of upcoming general elections in April [2015]. ... Since January 2015, at least 16 newspapers have had their publications confiscated on 42 different occasions by NISS. Four leading civil society

organisations have been shut down with at least five others under threat of imminent closure. Several journalists report interrogation and harassment by the police and NISS agents. There is no legal basis or rationale for these actions by NISS other than to quell dissent and criticism of the National Congress Party as the general elections approach.

'Though the NISS has for the last decade perpetrated human rights violations with impunity, its current human rights violations have reached unprecedented levels. The NISS has used excessive and sometimes lethal force in breaking up demonstrations, protests and rallies as well as office raids and confiscations of newspapers, perpetrated arbitrary arrests and deliberately targeted ethnic and religious minorities.

'Between 2012 and 2014, the NISS arrested human rights defenders, students, activists, political opponents and journalists en masse. Most of those arrested were subsequently released without trial, but a few have been kept incommunicado, outside the protection of the law and vulnerable to torture and other forms of ill-treatment. Human rights violations committed by NISS agents are seldom investigated by the Sudanese authorities.

169. Importantly, this same CIG report contains a passage referring to surveillance which draws upon the now familiar material from Waging Peace. The report at paragraph 9.1.6 refers to the case of Ms A. (cited above at [80(l)]) who, following her detention at Khartoum airport, was shown photographs of her meeting with a friend belonging to the Justice and Equality Movement at a coffee shop in London. She was also shown a photograph of herself attending a Sudan Revolutionary Front event in London, which her friend in JEM had also attended.

170. Reference is also made to the Landinfo report and the evidence there of surveillance activities in Norway.

171. In addition, the CIG 'sur place' report at 9.3 deals with reports on the use of electronic surveillance and cyber monitoring by the Sudanese authorities. Mr Verney, in submitting additional material after the hearing was adjourned in July 2015, produced material to the effect that Hacking Team, an Italian set of hackers that hires out its services to governments and other organisations, had itself apparently been hacked. As a result, documents extracted indicated that the Sudanese authorities had used its services as part of its surveillance activities. Although Hacking Team has categorically denied that it has been providing cyber weapons to Sudan and was stonewalling a UN investigation into their business, both Russia and Sudan were among the countries appearing in a leaked spreadsheet describing them as '*not officially supported*'. It is difficult to know precisely what this means but in an article dated 6 July 2015 Gianluca Mezzofiore stated:

Moreover, a subsequent invoice for Euro 480,000 dated July 2012 seems to prove that the Italian company was involved in selling surveillance software to Sudan.

Migrationsverket Report

172. One of the reasons for adjourning the hearing in July 2015 was to obtain a translation of the Swedish Migrationsverket report on the fact-finding mission. The report is dated 20 October 2010 but refers to the fact-finding mission which took place between 1- 8 October 2009. The report is limited in its scope as far as

this appeal is concerned and provides only a sketch of those who may be particularly vulnerable to government intervention. When considering organisations with a specific political opinion, the writers say that there may sometimes be links between these groups and certain ethnic groups but it is

"rather those persons activities and/or connections that determine the risk of exposure than the actual ethnic affiliation."

It then lists political activists who are critical of the government, human rights defenders, those who openly support the International Criminal Court ruling against President al Bashir and those with links - or suspected links - to armed groups and family members of individuals with links to armed groups as being subject to an increased risk. As the other material to which we have referred makes clear, there is little that is new in this identification and it cannot be said to be either subtle or nuanced.

The analysis

173. Dealing with the situation in Sudan in the most general terms, power is concentrated in the hands of an authoritarian regime headed by President al-Bashir whose National Congress Party has maintained control of the country for the last 25 years. The period has been turbulent, involving civil war and uprisings in the Nuba Mountains, Southern Kordofan, the Blue Nile State, unrest on the part of the Beja people in the east and by rebel forces in Darfur. Whilst South Sudan seceded in July 2011, tension remains. It is not, therefore, surprising that the country has faced periodic demonstrations in the form of popular protest. The government has reacted in two divergent ways. On the one hand, it has sought peace agreements with various opposition groups, most notably the Comprehensive Peace Agreement with the Sudan People's Liberation Army in 2005 and the National Dialogue announced in January 2014, but with muted commitment to implementation. On the other, and sometimes at the same time, it has cracked down on protests with violence and intimidation. Inevitably, as the regime feels it is losing its grip, it has reacted by the only means left to it, the use of force.
174. The country is, politically, largely isolated, having few local or international allies.
175. The regime has plainly seen with alarm the popular uprisings in Egypt, Tunisia and Libya. The events which are generally known as the Arab Spring must have greatly concerned the President as we noted by his chilling remark, set out in paragraph 60 above, when speaking of the Arab Spring, "*...we have a hot summer, a burning hot summer that burns its enemies.*" While such incendiary comments are loaded with rhetoric designed to intimidate, they are a guide to the attitude of the authorities against any threat to the regime.
176. This sensitivity towards the pressures that surround the regime from all sides has been exacerbated by the activities of the International Criminal Court since it issued an arrest warrant in March 2009 against the President on charges of war

crimes and crimes against humanity in Darfur which was enlarged to include a charge of genocide in 2010. It has been repeated as recently as June 2015 by the prosecutor of the International Criminal Court condemning disproportionate use of force against civilians and the deliberate hampering of efforts to afford relief to the victims.

177. Once an individual has been assessed by a decision maker as having established himself as being a threat to the regime - real or imagined - and sufficient to merit his detention and the serious interest of NISS, there is unanimity amongst the providers of country information that the individual is at risk of human rights abuses. The question for a decision maker is how to identify such a person. In assessing the risk to an individual, it is essential that as comprehensive an assessment as possible is made about the individual concerned.
178. In the past the assessment has tended to rely upon particular risk categories. Reviewing the material we have summarised, the Tribunal in *HGMO* identified those at risk as being persons of non-Arab Darfuri origin from areas where rebel leaders are known to originate along with persons at home or abroad whose conduct marked them out as oppositionists or tribal leaders. The group was extended in *AA* and *MM* to cover all non-Arab ethnic Dafuris. The evidence also pointed to those at risk being members and supporters of opposition parties whose activities are likely to bring them to the attention of the authorities or those actively and openly involved in human rights work or known critics of the regime (*AY*). This would include members of the Beja Congress and the Justice and Equality Movement (*JEM*), amongst others. It is easy to find other examples of those potentially at risk: opposition activists, teachers, academics, students, journalists and those who have spoken out against the government and whose activities have resulted in adverse treatment. Other material suggests that internally displaced persons and community leaders are at risk.
179. The 17 examples provided in the *Waging Peace* reports (set out at (a) to (q) in paragraphs 74-80, above) contain information on which we can properly rely. Indeed, insofar as it now forms part of the Home Office COI, it has become readily accessible to all decision makers. The two reports refer to conversations with persons from Darfur, from non-Arab tribes such as the Fur, the Zaghawa, the Berti and the Massalit; suspected or imputed members of Girifna, those involved with *JEM*, those involved in human rights work, those who attended demonstrations in the United Kingdom and the meeting at the House of Lords, a person associated with a member of a well-known family of prominent opposition supporters, those from the conflict areas and political opponents in various roles. In each of the examples, there was a reason provided by the speaker for the interest taken by the Sudanese authorities. There is no reason to infer these were random targets.
180. There may, of course, be factual issues yet to be determined in relation those whose asylum claims or appeals have yet to be decided. It is unnecessary to determine those issues because it is the nature of the claims, not their reliability, that is the focus of our assessment. For the purposes of the following (which does

not claim to be a comprehensive summary of the claims), we shall treat their claims as true. They are identified from the summaries of their cases at (a) to (q) in paragraphs 74-80, above.

181. Several were Darfurians; (a), (b), (e), (g), (j), (l) and (o).
182. Some were involved in demonstrations in the United Kingdom; (b) and (d). One, (d), was involved in the meeting at the House of Lords.
183. Some were involved in JEM or were accused of involvement in opposition groups including Girifna; (a), (c), (h), (l), (n), (o), (p) and (q).
184. Some were human rights activists; (j), (p) and one, Dr Kaballo at [k], had a prominent record of involvement.
185. Two were journalists; one from Darfur (l), another from the Nuba District who had carried our research in the Nuba Mountains, (m).
186. One was involved with a prominent opponent of the government; (f).
187. A significant number were subjected to treatment falling well short of serious harm; (b), (e), (f), (i), (j), (k – at least on all but one occasion), (l), (m), (n), (p) and (q). In the cases of those who were able to produce a British or European passport, this was probably a significant contributory factor in their safety; (e), (f) and (q). A somewhat smaller number were ill-treated; (a), (c), (d), (g), (h) and (o).
188. All, of course were able to leave Sudan or they could not have been interviewed on arrival or on return to the United Kingdom.
189. None of their claims fall outside the broad categories of those potentially at risk as we have identified from the evidence before us.
190. Mr Verney referred to the risk faced by those who have given evidence to the International Criminal Court or those involved in inviting the International Criminal Court to speak in the United Kingdom. The list continues to grow.
191. In contrast the Sudanese authorities (in the form of the Director of Passport and Immigration Control) only singled out those returned from Israel, those who were abroad and would not settle their tax liabilities with the tax authorities in Sudan and those on the register of wanted persons and those travelling with false passports. These categories are not found elsewhere and, perhaps understandably, neither the background nor the expert evidence referred to them. There is, therefore, no objective evidence that those who have failed to sort out their tax liability are subjected to persecution although, of course, the authorities are likely to pursue them for any outstanding debts. Similarly there is no evidence that those returning from Israel, although likely to be questioned, are for that reason alone subjected to persecution.

192. It is however too simplistic to approach the risk assessment simply by reference to an individual's work or political stance. It requires a more detailed evaluation. This stems, of course, from the fact that not all teachers or academics or students or journalists are at risk of prosecution anymore than is every individual who opposes the regime or has participated in a demonstration or has spoken out against it. Looking at the background material in the round, many of those arrested and detained were released on the same day without experiencing harm sufficient to engage the Refugee Convention. Where the purpose of the arrest was to intimidate, the effect of intimidation is not normally, in itself, sufficient to meet the threshold for international protection. The evidence makes clear that intimidation is used as a means to deter those who might take their opposition further. We are supported in this conclusion by the evidence of just how widespread this practice is and we would not conclude that all those similarly treated are Convention refugees.
193. The situation is further confused by the fact that even quite prominent members of some organisations, although clearly intimidated, were not subjected to ill-treatment sufficient to amount to persecution; see, for example, Afaf Mohammed, a Dutch national, [82(j)], who answered questions about her human rights activities as a human rights activist for the Darfur Union and was then allowed to return to the United Kingdom or Dr Kaballo, [82 (k)], founder of an organisation called Sudan for Human Rights and head of the Central Committee of the Sudanese Communist Party who often visited Sudan and, although detained for 18 days, was then released.
194. Mr Verney's evidence also picks up this equivocality. He suggests, perhaps counter-intuitively, that more prominent persons are *less* at risk because their connections and, indeed, their very celebrity act as a protection. We think that, in saying so, Mr Verney falls into the same trap that he wishes the Tribunal to avoid when asserting that it is artificial to draw distinctions by reference to whether an individual is a low-level activist. There may be some prominent people – perhaps a prominent member of an opposition group in Sudan – who are not at risk but that is a far cry from saying prominent persons are not at risk or face a significantly reduced risk.
195. Whilst Mr Vokes suggested to Mr Verney that patterns of detention came down to a random display of intimidation, Mr Verney took a more nuanced approach. He identified the differences in treatment as a series of grades: at one end of the scale, those cases where the authorities have substantial evidence with the inevitable corollary of those cases where they do *not*. At another stage in his evidence he sensibly drew back from drawing clear-cut lines and gave as an example someone from an Arab ethnic background who was against the regime as facing the same risk of arbitrary detention as a non-Arab. He avoided Mr Vokes' suggestion of racial stereotyping or clear-cut distinctions based on geographical origin, seeking to avoid making blanket statements, whilst at the same time being aware of the significance of the place of origin and an individual's ethnic background.

196. This is to some extent echoed by the Waging Peace's response to the Landinfo report, [114 and 115, above]. They challenged the point made that opposition abroad tended to be from those of a higher education. Its response was to claim that no such distinctions were possible and that Sudanese men and women from all parts of society who had spent time outside Sudan may be at risk.
197. The contra-indications about widespread risk contained in the evidence must also be evaluated. As we have set out above, the 17 examples contained in the two Waging Peace reports paint a mixed picture. The individuals were not apparently random targets but were selected because something that they had done or said created suspicion on the part of the Sudanese authorities. There was no general or universal pattern of violence. In other words, distinctions were made between those who had been detained for questioning. The single thread that might be derived from the examples, taken as a whole, was an intention to seek information about those who posed a threat to the regime as a result of activities at home or abroad.
198. There is evidence of substantial numbers of Sudanese citizens returning from selected neighbouring countries in Africa on the strength of agreements between them and UNHCR. Nothing can be derived from this save that it does not suggest a generalised risk. However, these figures contrast with the very much smaller numbers of returns from Europe and beyond Africa.
199. The Embassy letters based upon information from UNHCR in Khartoum, the German and Netherlands Embassies and other EU governments are a useful source of material. We would not regard their assessment as biased in favour of the respondent but as a professional examination of the material it has extracted from its informants. Any assessment must involve the exercise of caution because most, if not all, of the organisations approached do not have a monitoring capability. That said, monitoring is not the only method of collecting information and the level of interest in seeking out information about the risk faced by returnees is such that we would expect adverse consequence to filter through into the public domain.
200. The Embassy letters do not support a claim that returnees are at risk of mistreatment for that reason alone. However, the Embassy recites the evidence from its sources that those who openly oppose the government from abroad are likely to be arrested on return. In the second letter, dated 19 February 2015, the Deputy Head of Mission while repeating that a returnee is not at risk, identified the type of person who is likely to be of interest. These were classified as including those of previous interest to the authorities (in which case they may appear on a travel watch list); having a record of contact with Sudanese opposition groups outside of Sudan; or, having attracted the attention of the authorities during time overseas including through engagement with opposition groups within the diaspora. The Deputy Head concludes by saying that detention is a common occurrence but that it should not be assumed that the treatment meted out is uniform. It is likely to be determined according to a non-exhaustive

list of factors such as the nature of the accusations; the individual's public and international profile; age; family connections and ethnic background.

201. The problem for the decision maker is to determine who is likely to be arrested, detained for a short period, questioned, probably intimidated, possibly rough handled and then released in circumstances which fall short of having suffered (or being at risk of suffering) serious harm and those who face the much graver risk of serious harm. The answer to that question does not depend upon the individual being classified as a teacher or a journalist (although these factors are, of course, significant) but requires a finely balanced fact-finding exercise encompassing all the information that can be gleaned about him in which the decision maker is required to place the individual in the airport on return or back home in his community and ask himself the question: how are the authorities likely to re-act to the person I have before me, knowing the things I know about him? Are the authorities likely to know some or all of these matters? Does my assessment of the reaction place him at a real risk of harm?
202. The importance of a detailed assessment of the individual arising from material before the decision maker, which will vary in quality and reliability, cannot be over-emphasised. It is why there is a need for a case-by-case evaluation of every claim. In assessing the material the entire range of evidence falls to be considered, including material which must, of necessity, be somewhat speculative. This approach is not necessarily any different from saying that a person has a *profile* that renders him at risk, provided the decision maker does not treat the concept of a profile as a short-cut to a detailed analysis, far less a tick-box exercise.
203. The problem that the evidence presents is that whilst the categories of those potentially at risk are legion, it is apparent that not all those falling into a particular category are at risk. It is not enough, therefore, to be a journalist or a student because not all members of these groups are at risk. So, too, with ethnic or tribal classification. Not all non-Arabs are at risk; nor all black Africans are at risk notwithstanding the unchallenged evidence that they are members of the various tribes associated with this group. Not all those from the troubled regions of Darfur, Southern Kordofan or the Blue Nile are at risk. Nor are all those who have been arrested and detained. However, all of these matters are factors that are relevant and some, of course, are much more likely to be significant, such as prior detention and ill-treatment as a result of involvement in activities perceived as being in opposition to the government. Yet, all of this material must be taken into account.
204. Mr Verney has given clear evidence that caution should be exercised about classification of high-level and low-level activists. This is, to some degree, the same point that we are making here. He is inviting decision makers to avoid making assessments of risk on the basis of a *profile* of a low-level supporter of JEM. It is over-simplistic to use the description of a claimant's activities as '*low-level*' as the means of dismissing a claim without more. What we do not take his evidence to mean is that every such supporter of JEM is at risk and the nature and scope of his activities is bound to be a proper subject of enquiry. Such a person

may be at risk but to decide whether he is (or has established to the lower standard that he is or that there is a real risk of his being treated as such) requires an overall assessment of the case. This strikes us as moving away from a checklist of those at risk (with the exception of non-Arab Dafuris) to a much greater emphasis on a rounded assessment of all the material including the effect of positive or adverse credibility findings.

205. It would undoubtedly make for easier decision making if we could identify various categories of persons at risk, say, teachers or journalists and present the list to decision makers with the invitation that if a finding of fact is made that he is a teacher or a journalist, the task is done. There is something of this within the approach adopted by the Secretary of State and recorded in paragraph 25 of the determination in seeking to define *'what a JEM 'activist' should reasonably be interpreted as being'*. Doubtless, the response might be along the lines that a 'low-level supporter' would not be at risk whilst a 'high-level local party official' would be. The invitation to decision makers would accordingly be that if a finding of fact is made that a person is a low-level supporter or a high-level supporter the job is done. However, the evidence does not, we find, support such a low-level/high-level categorisation of those at risk. Second, it requires the decision maker to force every claimant into one box or the other in order to determine his appeal, without offering guidance as to what should happen if an individual cannot properly be placed into such a tidy classification.

206. This is not a counsel of despair because we believe, given the country evidence we have set out, it is possible for the decision maker who has made a careful and reasoned assessment of the evidence about a claimant to conclude whether a real risk has been established. This is the very antithesis of a decision based on a finding of fact and little or no more than an individual is, say, a teacher as if this were dispositive of the claim. In a sense there is no better way of expressing this point than in our assessment of these two appeals, one of which will succeed and one of which will fail.

The significance of an adverse finding of fact

207. Some cases will result in a sustainable adverse credibility finding. Where there has been an adverse credibility finding, the Tribunal will have been deprived of the opportunity of making a fully detailed assessment of the facts surrounding the appellant. In some cases this may mean there are no findings that can be made about the appellant's case at all. Into this evidential black hole, it may be difficult to make any findings at all that the appellant will be at risk. Further, when an appellant has been found not to have been telling the truth, it might be inferred that, had he told the truth, his claim would have been weakened by the telling of it. This may render it impossible for the decision maker to make a sustainable finding of fact that the appellant is at risk. The claim will not have failed because the appellant has not told the truth; rather, it has failed because the evidential lacuna does not permit the decision maker to reach a conclusion on risk and no inferences can be drawn as to the appellant's true circumstances.

208. In similar vein but where there is not the starkness of an adverse credibility finding, if the decision maker is not satisfied as to some or all of the factual components of the claim, there will be a lacuna in the evidence such that a detailed assessment of the individual's circumstances is not possible. This reinforces our view as to the requirement that there is no substitute for a detailed analysis of the evidence.

Sur place activities

209. There is room for disagreement on the risk faced by those attending demonstrations. It is, of course, a matter of fact and not of law. Thus in *HB (Ethiopia)* [2004] UKIAT 00235, the Tribunal said in the context of Ethiopia:

We have already set out Dr Campbell's assessment of the risk faced by those involved with the UEDP in London in paragraph 15, above. On the basis of his assessment, we are prepared to accept that the Ethiopian Embassy in London monitors the political activities of Ethiopian citizens resident in England. However, we are unable to accept that this means that the Embassy's officials are capable of monitoring the activity of every Ethiopian citizen. Simple constraints of resources must inevitably mean that the Embassy will concentrate upon the more important or the most active opposition figures. It cannot be inferred that the appellant, described by the organisation itself as "discharging his responsibilities by way of attending meetings and paying his membership contribution" is an obvious target for surveillance. There are also, of course, significant difficulties in an Embassy official identifying an individual, even if his photograph is taken. Short of having a database with which the photograph can be compared, surveillance by the Embassy is unlikely to lead to identification without further information being supplied. Bearing in mind the appellant's relatively minor role in the UEDP in London, the Tribunal is not satisfied that the fresh material establishes that the appellant's activities in London will place him at risk on return. We consider that it is speculative to say that he is monitored in the way suggested by Dr Campbell:

"As an active member of the London branch of the UEDP... his activities... will have been monitored by a Political Councillor at the Ethiopian Embassy in London."

210. Contrast this with what Sedley LJ said in *YB (Eritrea) v Secretary of State for the Home Department* [2008] EWCA Civ 360

As has been seen (§7 above), the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility - and perhaps more - that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a

probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.

211. In the present case we have the following evidence. It is clear that the Sudanese authorities conduct surveillance on its nationals. Normally a single reported incident of an embassy official using a camera to video demonstrators in 2006, [129, above] would hardly be persuasive that the practice is widespread but it is a reasonable inference that a regime that feels threatened from those abroad as well as those at home will wish to gather such information as is reasonably available as to the level of opposition expressed by those in an expatriate community and, where possible, the identity of the groups and the individuals within them. The evidence amply supports that view, see paragraph [95] to [98] and [104] to [105] above.
212. It seems likely that there will be informers but the success within which such informers are embedded in a local group is never likely to be established affirmatively. Members of a small group of Sudanese nationals, all of whom know each other with a degree of intimacy, holding private meetings in their homes, are unlikely to have any suspicions that one amongst them is an informer. If that applies to one local group, the members of other local groups probably share a similar degree of confidence. There is evidence from some correspondents that, from the questions asked when interviewed by NISS the authorities did not have the level of detailed knowledge that would have been expected of them. Whilst these considerations must be borne in mind, it is impossible to be dogmatic about the reach of informants and the scope of surveillance that we know is practised.
213. It seems unlikely that photographs of those attending a demonstration outside an embassy where the photographer is one of the group are likely to have been photographed by an informer. There are formidable difficulties in ascertaining the identity of a person in a photograph unless the person is known to the person who identifies him. Absent facial recognition techniques about which we have no evidence, there is no evidence that a person could be identified from banks of photographs taken at demonstrations across the world when he is returned to Khartoum.
214. Notwithstanding these limitations, we accept the fact that the Sudanese authorities seek information about opposition activists in the United Kingdom and there is direct evidence that some returnees have been confronted with photographs taken by covert operations in the United Kingdom conducted on behalf of the security services. It is not, therefore, a fanciful claim that individuals can be identified by embassy or other staff. Speaking generally, given the cost and effort of conducting surveillance, it is reasonable to assume that these activities would not be conducted if they were incapable of producing some results and that the information obtained is sufficient to merit the continuation of

these efforts. The obvious cost and effort render it probable (like any other intelligence-gathering organisation) that these resources are targeted at those that pose the most obvious risk. In a crowd of dozens of people, surveillance is unlikely to be carried through in an attempt to identify the rank-and-file participants and is more likely to be focussed on leaders, organisers, those often or regularly seen at such events and those present at events which are likely to attract the particular sensitivity of the Sudanese officials here, perhaps outside the embassy or perhaps at a significant anniversary or commemoration.

215. In the context of this case, obvious difficulties arise in relation to establishing what information finds its way back to the authorities in Sudan about the activities of individuals whilst in the United Kingdom. It is a forlorn hope that an individual will establish – save in the rarest of cases – that an informer has identified him at a particular event on a particular day or that an embassy official has photographed a protest in circumstances that he is then able to identify the participants. We doubt whether the risk can be elevated to a finding that there is a real risk of his doing so. Nevertheless the evidence should not be discarded for that reason alone but falls into the jig-saw of evidence building up the composite picture of the individual. It is at the end of this entire process that the decision maker then reaches his single conclusion on the issue of a real risk.

Involuntary returnees and failed asylum seekers

216. In *HGMO (Relocation to Khartoum)* the Tribunal was concerned in 2006 with non-Arab Darfuris returning to Khartoum but its conclusions on that matter were sharpened up in 2009 in the decision in *AA (Non-arab Darfurians – relocation)* where the Tribunal found that all non-Arab Darfuris were at risk of persecution in Darfur and could not reasonably be expected to relocate elsewhere in Sudan. This was extended in 2015 in *MM (Darfuris)* where the expression ‘Darfuri’ was to be treated as an ethnic term relating to origins and was not limited to a geographical location.

217. IM makes no claim to be a Dafuri. In contrast, AI claimed to be a member of the Berti tribe from the Darfur region of Sudan but this claim was decisively rejected. It is therefore not surprising that neither appellant has advanced his case on the basis of the risk faced by Dafuris. In these circumstances, there is no legitimate basis upon which we can depart from the Tribunal’s assessment summarised in the preceding paragraph as to the risks faced by Dafuris. Our conclusions, therefore, leave this discreet area of the earlier Country Guidance intact and our own conclusions speak of more general risks. The only relevance of the specific risks faced by Dafuris is in building up the general picture of the government’s attitude towards those it perceives to be a threat to its stability.

218. As long ago as 2005, Dr Alizadeh of UNHCR commented, as noted in [33] above, that failed asylum seekers would not face severe problems upon return, as long as they are not recognized as a threat to the state. That was the conclusion of the Tribunal in *HGMO (Relocation to Khartoum)*.

219. There is no evidence that there is a recognisable group of black Africans (even those who speak Arabic) who are at risk of persecution for that reason alone. Notwithstanding the prompting from Mr Vokes of his witness, Mr Verney declined to use a person's skin colour as a litmus test. Whilst acknowledging that those from the periphery of Sudan were less advantaged and less powerful, the overlap of skin colours rendered the assessment of risk by reference to such colouration as '*unhelpful*'. He maintained the most useful distinction between ethnic groups (which has been apparent for many years) was distinguishing between 'Arabs' and 'non-Arabs'. That does not, of course, mean that not all non-Arabs are at risk, any more than it establishes no Arabs are at risk.
220. In *HGMO (Relocation to Khartoum)*, the Tribunal concluded that neither involuntary returnees nor failed asylum seekers nor persons of military age (including draft evaders and deserters) were as such at real risk on return to Khartoum.
221. We have not been directed to material that sheds light on any specific risk faced by draft evaders or deserters. We would not infer that such individuals would be seen by the authorities as a threat to the regime or would be perceived as having political leanings supporting opposition to the State.
222. As noted in [32] above, it was not argued before the Tribunal that involuntary returnees would be at risk for that reason alone and Mr Verney did not suggest this then or before us. Had this been a general practice, the information would have filtered out.
223. The Embassy letters speak of the United Kingdom government's contact with UNHCR and with EU partners at EU Human Rights meetings, none of whom had any knowledge of mistreatment of returnees.
224. As a body of witnesses, we do not find that the accounts of those interviewed in the Waging Peace report support a general contention that all involuntary returnees or failed asylum seekers are at risk for that reason alone. In particular, whilst spending a prolonged period in the United Kingdom may well attract the attention of the Sudanese authorities, the evidence does not support the contention that this factor leads to a real risk of persecution.
225. It is our firm conclusion that a failed asylum seeker, including an individual that had been subject to investigation by the immigration authorities on return, would not be at risk of further investigation by NISS on that basis alone.
226. The response made by Waging Peace to the Landinfo report repeats its stance that Sudanese from all parts of society – men and women; rich and poor – who have spent time outside Sudan may be at risk on return. We accept the analysis of Waging Peace that risk is not confined to those who are well-educated or relatively wealthy but we are not satisfied that this supports a claim that all those who return as failed asylum seekers are at risk. We accept that our assessment is hampered by a lack of monitoring from UNHCR or from countries that return

failed asylum seekers to Sudan. However, we are satisfied that the approach adopted by the Tribunal in *HGMO (Relocation to Khartoum)* to the effect that even without monitoring, news leaks out if there had been widespread ill-treatment of involuntary returnees. Indeed, the persons interviewed by Waging Peace afford good examples of how individuals are able to describe their experiences and how those experiences find their way into the public domain.

The Guidance

227. The guidance intended to inform the assessment of any particular claim must be drawn from this decision read as a whole and is not distilled into this section alone. There must be evidence known or likely to be known to the Sudanese authorities which implicates the claimant in activity which they are likely to perceive as a potential threat to the regime to the extent that, on return to Khartoum, there is a risk to the claimant that he will be targeted by the authorities. The task of the decision maker is to identify such a person and this requires as comprehensive an assessment as possible about the individual concerned.
228. The evidence draws a clear distinction between those who are arrested, detained for a short period, questioned, probably intimidated, possibly rough handled without having suffered (or being at risk of suffering) serious harm and those who face the much graver risk of serious harm. The distinction does not depend upon the individual being classified, for example, as a teacher or a journalist (relevant as these matters are) but is the result of a finely balanced fact-finding exercise encompassing all the information that can be gleaned about him. The decision maker is required to place the individual in the airport on return or back home in his community and assess how the authorities are likely to react on the strength of the information known to them about him.
229. Distinctions must be drawn between those whose political activity or perceived political activity is not significant or who do not have much influence. Whilst it does not take much for the NISS to open a file, the very fact that so many are identified as potential targets inevitably requires NISS to distinguish between those whom they view as a real threat and those whom they do not.
230. It will not be enough to make out a risk that the authorities' interest will be limited to the extremely common phenomenon of arrest and detention which though intimidating (and designed to be intimidating) does not cross the threshold into persecution.
231. The purpose of the targeting is likely to be obtaining information about the claimant's own activities or the activities of his friends and associates.
232. The evidence establishes the targeting is not random but the result of suspicion based upon information in the authorities' possession, although it may be limited.

233. Caution should be exercised when the claim is based on a single incident. Statistically, a single incident must reduce the likelihood of the Sudanese authorities becoming aware of it or treating the claimant as of significant interest.
234. Where the claim is based on events in Sudan in which the claimant has come to the attention of the authorities, the nature of the claimant's involvement, the likelihood of this being perceived as in opposition to the government, his treatment in detention, the length of detention and any relevant surrounding circumstances and the likelihood of the event or the detention being made the subject of a record are all likely to be material factors.
235. Where the claim is based on events outside Sudan, the evidence of the claimant having come to the attention of Sudanese intelligence is bound to be more difficult to establish. However it is clear that the Sudanese authorities place reliance upon information-gathering about the activities of members of the diaspora which includes covert surveillance. The nature and extent of the claimant's activities, when and where, will inform the decision maker when he comes to decide whether it is likely those activities will attract the attention of the authorities, bearing in mind the likelihood that the authorities will have to distinguish amongst a potentially large group of individuals between those who merit being targeted and those that do not.
236. The decision maker must seek to build up as comprehensive a picture as possible of the claimant taking into account all relevant material including that which may not have been established even to the lower standard of proof.
237. Once a composite assessment of the evidence has been made, it will be for the decision maker to determine whether there is a real risk that the claimant will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention but meets the threshold of a real risk of serious harm.
238. Where a claimant has not been believed in all or part of his evidence, the decision maker will have to assess how this impacts on the requirement to establish that a Convention claim has been made out. He will not have the comprehensive, composite picture he would otherwise have had. There are likely to be shortfalls in the evidence that the decision maker is unable to speculate upon. The final analysis will remain the same: has the claimant established there is a real risk that he, the claimant, will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention and release but meets the threshold of serious harm.
239. This is a fact-finding exercise. The above is no more than guidance as to the way in which a decision maker might approach the assessment of risk. It is general in nature and is not designed to fit all situations that might arise.

The re-making of the decision in the case of IM

240. IM is both a member of the Beja tribe and has been an active member of the Beja Congress while a student at the Red Sea University College of Applied Sciences in Port Sudan. He held a position within the Congress and had been detained by the Sudanese security services on 4 June 2006 after his arrest at a planning meeting for a demonstration being called for by the Congress. He had been beaten during this period of detention. IM was transferred from his detention to hospital on 1 July 2006 and was eventually released on 8 July 2006 after signing an undertaking to not engage in any future political activity. IM nevertheless attended a further political meeting on 3 August 2006 which was raided by the security forces. IM fled Sudan on 7 August 2006. We are left to speculate whether his involvement with the meeting on 3 August 2006 became known to the authorities or whether the authorities construed this as a breach of his undertaking not to become involved in further political activity. However, given the evidence that it does not take much for the authorities to start a file on an individual and a document in which an undertaking is given as to the future is of no use unless it is recoverable in a file in the name of the person who has made it, we can properly infer that his activities were the subject of a file in the hands of the Sudanese authorities.

241. Mr Thomann conceded that IM had become a member of JEM. IM claimed he had become a member of JEM on 15 January 2010. He maintained that he attended JEM meetings and seminars in the UK. IM claimed to have attended a meeting in Manchester in July 2010 concerning the International Criminal Court (ICC) and produced photographs in support. He had not organised the meeting. It had been attended by representatives from the ICC and, although the meeting had been addressed by those representatives, he had spoken from the floor. IM additionally produced photographs purportedly showing him at a demonstration in front of the Sudanese Embassy calling for peace in Darfur. He claimed in the hearing before Judge Finch to have attended a demonstration on 10 April 2010 and invited members of the Sudanese community to it and that he had participated in the slogans and banner writing. He also attended a demonstration outside the Commonwealth Office in May 2010.

242. In cross-examination IM confirmed that he arrived in the UK in 2006 but did not become a member of JEM until 15 January 2010, a gap of around three and a half years. When asked why he did not join sooner IM explained that he had been against the Beja Conference's peace agreement with the Sudanese government but it was only following a long conversation with a JEM member that he became convinced of JEM's aims and decided to join them. IM claimed he had engaged in activism with the Beja Congress in the UK but he accepted this had not been mentioned in his statements. Whatever his involvement with the Beja Congress in the United Kingdom, it plainly does not feature as a significant element in his claim as undoubtedly it would have been had he perceived this to be even a partial source of risk. It did not require a solicitor to tell him to mention it if it was in the forefront of his own mind as a concern to him were he to return. The activity is not particularised in such a way as to make out an intelligible claim that this has increased the risk to him. He may indeed have had some contact

with the Beja Congress but not in a manner that is an appreciable element in his claim.

243. IM disagreed with the suggestion that he only became active with JEM because he was about to submit a fresh asylum application and we do not infer from the nature and scope of his activity (much of which took place in Plymouth) was designed to be directed towards the United Kingdom authorities as a means of bolstering his claim. Those activities resulted in his asking JEM members to attend demonstrations and meetings in London and to attend JEM meetings in Cardiff. We accept that he organised meetings and asked JEM members to join meetings, amongst them a meeting on 10 May 2015 in Cardiff the anniversary of the events of 10 May 2008, and prior to that, events in Cardiff in January 2015 and December 2014 (a tribute to a JEM leader who had been killed by the Sudanese government). The meeting in Cardiff, he claimed, was attended by approximately 50 people. It took place in a large, rented three-bedroom residential flat. He attended the meetings with fellow JEM members from Plymouth together with members from London, Newport, Swansea, Birmingham and Manchester. He knew the first names of some of the attendees from other places. It is, of course, difficult to assess the significance of a private meeting in a residential flat. Somehow we rather doubt that as many as 50 might have been crammed in together but neither do we suppose there was a head-count. It seems an unlikely venue to attract the attention of an informant but we were not told what information was subsequently disseminated about it on social media. A relatively intimate group of individuals many of who were known to the appellant seems an unlikely setting for an informant. The appellant himself did not suggest he had any doubts about the loyalty of those present. It affords a fair example of the difficulty of assessing whether any risk might attach to such an event. Were the issue to be decided on the basis of a real risk that the appellant was identified as one attending, (let alone on balance of probabilities) we would certainly make no such finding of fact. However, it forms part of our overall assessment.

244. IM maintained that he last attended a demonstration in London in September 2014 and that the photographs were submitted to the JEM website. In one sense this operates to his favour: the individual intent on ensuring he was photographed so those photographs are ready for the Tribunal Judge, excites a degree of scepticism. We do not think this can be said about this appellant. The fact that he did not bother to provide photos of screen shots or printouts from the website rather supports his claim that this was not a manufactured piece of his claim or otherwise, doubtless, these items would have been provided in graphic detail.

245. Looking at the totality of the evidence, we accept that this appellant has given a credible account. He was found credible in the evidence he gave before another Tribunal and those findings are preserved. We have no reason to reverse that assessment in the evidence he provided to us or the manner in which it was given. We accept that IM has always been involved in politics and has become more politicised since his arrival in the United Kingdom. He has been present here for 9 years, a factor which is likely to be a material consideration when he is

questioned. Certain parts of his claim, his ethnicity, his political involvement whilst at university and in Sudan are likely to be recorded or easily ascertained. We avoid saying whether this activity is 'low-level' or 'high-level': it is what it is. The composite picture is of a man who has found to have been credible, who has been active to the degree we have identified in Sudan and in the United Kingdom, whose activities are the genuine expression of his political beliefs and there are good reasons to suppose that his antipathy to the regime is genuine. We find it almost impossible to reach a finding as to whether his activities in the United Kingdom will have come to the attention of Sudanese officials in the United Kingdom, as a result of surveillance either by informants or the identification of photographs which were probably taken at some of the events he attended. However, we maintain the view that we cannot be expected to make such a finding and our task has to be approached on the basis of a more general assessment. We know that Sudanese officials are intent on gathering material. We also find that, were the Sudanese authorities to have the facts about this appellant as we have found them to be, then the information is sufficient to result in his being a target for NISS and to place him at risk of serious harm.

246. There is no evidence that this appellant is at risk from anything appearing in electronic form other than such material as is posted on social media and is in the public domain. The evidence of hacking is clear evidence of the information-gathering aspirations of the Sudanese authorities but nothing about it increases the risk to this appellant. It is at this stage that we must make our overall assessment. We conclude that there is a reasonable likelihood that on arrival at Khartoum, the authorities will investigate the appellant and this will result in an information trail identifying sufficient about him to engage the interest of NISS and that if a significant part of what we know about him is revealed, this will place him at risk such as to render him a Convention refugee.

Article 8

247. Having found IM to be a person entitled to international protection there is no need for a further consideration of his claim based on private and family life. We are nevertheless satisfied that his removal from the United Kingdom would breach his Article 8 private life rights on the basis that, as a recognised refugee, it would be disproportionate to remove him. Had IM not been recognised as a refugee then his claim under Article 8 would not have succeeded. There was no evidence that he was in a relationship with a partner or that he had any children. Although he has resided in the United Kingdom for 9 years he has not produced any evidence establishing the existence of compelling circumstances sufficient to support a claim for a grant of Leave To Remain outside the immigration rules.

The re-making of the decision in the case of AI

248. We have already noted the limited basis upon which the Tribunal is required as a matter of law to approach the case of AI. The Judge rejected AI's claim to be a member of the Berti tribe and his claimed involvement with JEM. The Upper Tribunal found no errors of law in the First-tier Tribunal's assessment of the

evidence. Having identified an error of law the Upper Tribunal directed a rehearing on the limited aspect of the safety of return for failed asylum-seekers. Thus, in the case of AI, the Tribunal is concerned to consider general principles in relation to those returned who are failed asylum seekers.

249. That is not the approach adopted by Mr Verney in his two reports before us. We reject this approach for reasons which we give in the Appendix to this decision which shall not form part of the Country Guidance and will not be published as part of it. It serves no purpose to have it as part of the body of the decision.

250. For the reasons we have already touched upon, AI's case falls to be determined on the basis of a claimant who has not been believed and who has failed to give a full and frank account of the circumstances which resulted in his leaving Sudan. He has failed, therefore, to provide the Tribunal with the material upon which the Tribunal is able to be satisfied that he is at real risk of harm from anything arising from his account. This only leaves open a bare claim that he will return to Sudan as an involuntary returnee or a failed asylum seeker. As such the evidence does not permit a finding of fact that AI is at real risk of serious harm for that reason alone.

DECISION

1. In each case the Judge made an error on a point of law and the original decision of the appeal is set aside.
2. In the case of IM, we re-make the decision in the following terms: the appeal is allowed on asylum grounds and on Article 3 grounds.
3. In the case of AI, we re-make the decision in the following terms: the appeal is dismissed on all the grounds advanced.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
14 April 2016

APPENDIX
SCHEDULE OF COUNTRY EVIDENCE
Documents before the Upper Tribunal

<u>Description</u>	<u>Weblink</u>
'Sudan's national monologue'	http://www.sudantribune.com/spip.php?article56827
'Sudan Democracy First Group Statement on The International Day for Democracy'	http://www.sudantribune.com/spip.php?article56567
Country Information and Guidance 'Sudan: Treatment of persons involved in 'sur place' activity in the UK'	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458008/Sudan_v1_0.pdf
Country Information and Guidance 'Sudan: treatment on return'	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458010/CIG_Sudan_treatment_on_return.pdf
'Sudan summons EU official over "false information" on humanitarian situation'	http://www.sudantribune.com/spip.php?article55854
'Huge Adobe Flash Security vulnerability revealed after hacking group's documents leaked'	http://www.independent.co.uk/life-style/gadgets-and-tech/news/huge-adobe-flash-security-vulnerability-revealed-after-hacking-group-s-documents-leaked-10374804.html
'Hacking Team hack: cybersecurity firm 'sold spying tools to oppressive regimes to let them spy on	http://www.independent.co.uk/life-style/gadgets-and-tech/news/hacking-team-hack-cybersecurity-firm-sold-spying-tools-to-oppressive-regimes-to-let-them-spy-on-10369835.html

	activists and journalists', hack claims'	
	'Hacking team hacked: Spy tools sold to oppressive regimes Sudan, Bahrain and Kazakhstan'	http://www.ibtimes.co.uk/hacking-team-hacked-spy-tools-sold-oppressive-regimes-sudan-bahrain
	'Hacking Team sold spy software to blacklisted Sudan and stonewalled UN investigation'	http://www.ibtimes.co.uk/hacking-team-sold-spy-software-blacklisted-sudan-stonewalled-un-in
	'Hacking team sold spying tools to repressive regimes, hack reveals'	http://www.telegraph.co.uk/technology/internet-security/11720800/Hacking-Team-hack-reveal-repressive-regimes.html
	'256 charges files against Sudanese journalists and newspapers in 2014: prosecutor'	http://www.sudantribune.com/spip.php?article55555
	ECHO factsheet 'Republic of the Sudan'	http://www.starintheeast.net/data/za-sudan-en.pdf
mental on um	'Request for information from the UK on how the authorities of Sudan process and treat persons who have claimed asylum and whether they monitor diaspora communities overseas – Compilation of answers'	<i>unavailable</i>
	'2014 Country Reports on Human Rights Practices: Sudan'	http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper
	'Sudan's 2015	http://www.sudantribune.com/spip.php?article54696

	Elections: A huge step in democratic consolidation'	
	'Sudan summons UK, US and Norway envoys over criticism of election'	http://www.sudantribune.com/spip.php?article54688
	'African Union Election Observation Mission to the April 2015 General Elections in the Republic of Sudan'	http://pa.au.int/en/content/aueom-satisfied-voting-went-peacefully-sudan-calls-sudanese-political-inclusive-national-dialogue
	'Sudan: Entrenched Repression'	http://www.amnestyusa.org/sites/default/files/sudan_entrenched_repression_-_brief.pdf
	Report 2014/15: The State of the World's Human Rights	http://reliefweb.int/report/world/global-response-atrocities-states-and-armed-groups-shameful-
ish	'Treatment of returnees in Sudan'	<i>unavailable</i>
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