Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00797/2013

THE IMMIGRATION ACTS

Heard at Field House
on 26th July 2013

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE SPENCER

Between

MANATALLA OMER HUSSEIN OMER MOHAMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms K McCarthy, counsel, instructed by Seraphus
For the respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sudan, born on 20th January 1989. Her appeal against the decision of the respondent, made on 11th January 2013, to remove her from the United Kingdom to Sudan, following the refusal of her asylum and human rights claims was dismissed on asylum grounds, on humanitarian protection grounds and on human rights grounds, after a hearing before First-tier Tribunal Judge Hamilton, in a determination promulgated on 11th day of April 2013.

2. Permission to appeal was refused in the First-tier Tribunal by Designated First-tier Tribunal Judge McClure, but on 3rd May 2013 Upper Tribunal Judge Jordan granted permission for the following reasons:

> "1. Approach to the expert evidence. The judge accepted at [22] the expertise of Mr Verney and Dr Arnold. He considered the report of Mr Verney at [23] to [41], by far the longest part of his analysis of the claim. He then considered the report of Dr Arnold at [42] to [48] concluding that the shortcomings in the medical evidence undermined Mr Verney's findings. The treatment of the appellant's own evidence is, however, confined to a relatively short passage: [50] to [56] in which he dismisses the appellant's claim as incredible.
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> 2. I am unable to determine whether the Judge's detailed comments on the expert evidence are justified until I have had a proper opportunity to consider the report itself much more fully. Similarly, without reading Dr Arnold's report, it is difficult to assess whether the medical evidence was a proper tool by which to undermine Mr Verney's evidence. Given that the judge's ultimate conclusion was to reach a conclusion that was so different from that of Mr Verney (and whilst it cannot be doubted that a Judge is permitted to differ from the conclusion of an expert) it remains arguable whether the Judge's reasoning is adequate for that purpose. That requires a more detailed analysis of the material than I am able to give."

3. Thus the appeal came before me. It became apparent in the course of argument that Upper Tribunal Judge Jordan was mistaken in expressing the view that the shortcomings in the medical evidence undermined Mr Verney's findings. What the First-tier Tribunal judge said in paragraph 41 was that Mr Verney did not have the report of Dr Arnold. That too disclosed some striking inconsistencies in the appellant's account. In paragraph 49 of his determination he said the concerns he had about the medical evidence meant that like Mr Verney's report it could not possibly be regarded as conclusive and had to be considered in the context of the evidence as a whole.

4. The first ground of appeal asserted that the First-tier Tribunal judge failed to give due weight to the expert evidence of Mr Verney that the appellant's mother was in all probability a member of the Berti tribe. This showed that the appellant herself was part Berti. Ms McCarthy submitted that the First-tier Tribunal judge was disparaging of Mr Verney by referring to the report of Mr Verney in paragraph 6 of his determination, in inverted commas, as "a report prepared on 19th February 2013 by Peter Verney, a "Country Expert on Sudan"." In my view the way in which Mr Verney was described was not intended to be disparaging. In paragraph 22 of his determination the First-tier Tribunal judge explicitly stated that the respondent's representative did not challenge the expertise of Mr Verney or Dr Arnold.

5. Ms McCarthy criticised the First-tier Tribunal judge for having failed to refer to the substantial experience that Mr Verney had. He had had over 30 years experience of Sudan and had given evidence in several Sudan country guidance cases and had contributed to the asylum research consultancy commentary on the latest COI report on Sudan. The difficulty with this submission, however, repeated by Ms McCarthy

in her oral submissions, is that, as already mentioned, the First-tier Tribunal judge explicitly stated that the respondent's representative did not challenge the expertise of Mr Verney or Dr Arnold.

6. The First-tier Tribunal judge was also criticised for suggesting in paragraph 26 of his determination that the expert had strayed from his role to advise on plausibility by making assessments based on the appellant's credibility. The ground asserted that Mr Verney's report only spoke of the plausibility of the appellant's account and not her overall credibility. What the First-tier Tribunal judge said in paragraph 26 of his determination, however, was that he agreed that the issue of plausibility and credibility needed to be assessed by looking at the evidence as a whole. Yet it seemed Mr Verney based his final opinion on what he considered to be the overall plausibility of her account. The First-tier Tribunal judge said plausibility encompassed concepts of probability, likeliness, credibility and being reasonable. In the context of the appeal hearing, credibility was a key issue. Assessing credibility was not Mr Verney's field of expertise and he could not blindly adopt his views on that issue. He had read his report carefully and he did have a number of concerns about how he seemed to have reached his conclusions about the appellant's credibility.

7. The first ground of appeal went on to criticise the First-tier Tribunal judge for failing to weigh in the balance in the assessment of the evidence his finding that the questioning of the appellant on her ethnicity during her asylum interview was of poor quality. It was said that the First-tier Tribunal judge did not weigh in the balance the expert evidence stating strongly that questions on customary law and tribal customs in rural areas were wholly inappropriate and bound to be incomprehensible for someone of the appellant's urban and international background.

8. It is apparent, however, that what the First-tier Tribunal judge actually said shows that he did regard the questioning of the appellant on these matters as inappropriate. In paragraph 23 of his determination he said Mr Verney rejected the respondent's assertion that the appellant's lack of knowledge about Berti traditions and law fatally undermined her claim to be a member of that tribe. He said Mr Verney concluded that it was unreasonable to expect the appellant to know anything about the tribes in Darfur or Berti customary law, given that she was brought up abroad and had only been to Darfur twice. Mr Verney pointed out that she would have had little or no experience of such matters and would have no reason to know such things. In paragraph 24 of his determination the First-tier Tribunal judge said that in his submissions Mr Benn, the appellant's representative at the hearing before the First-tier Tribunal judge, argued that imprecise questioning on the issue of ethnicity during the asylum interview meant that the criticisms about the appellant's replies had no real foundation. The First-tier Tribunal judge said he did not analyse every issue he raised, but he found that there was some force in this argument. The questioning on this issue was sloppy and no adequate effort was made to clarify or follow up the appellant's responses. In my view this shows that the First-tier Tribunal judge accepted the submissions made on the appellant's behalf.

9. In paragraph 25 of his determination the First-tier Tribunal judge said that when considering the issue of the appellant's ethnicity, Mr Verney made the point that *"there is no simple reliable way of establishing Berti ethnic identity to non-Sudanese outsiders, and this case has to be addressed in the round, in terms of overall plausibility."* The First-tier Tribunal judge said that Mr Verney acknowledged that there was a disproportionate number of people claiming to be from the Berti tribe (for) the purposes of claiming asylum in the United Kingdom but said he was concerned to filter out applications that appeared dishonest or fraudulent, particularly because of the danger that such applications may be made by government agents hoping to infiltrate Sudanese communities abroad. The First-tier Tribunal judge said that in paragraph 259 of his report Mr Verney concluded that *"I was left in no doubt whatsoever that Ms Mohamed was part-Dafuri and in all reasonable probability Berti, ethnic origin. This was the most likely conclusion from taking her account in the round and assessing her overall plausibility."*

10. In paragraph 26 of his determination the First-tier Tribunal judge said that Mr Verney appeared to agree that the appellant did not know much about the Berti but did not consider this to be particularly relevant to the issue of her ethnicity. He said he agreed with that conclusion and accepted that the poor quality of the questioning about this issue reinforced that conclusion. He said he also agreed that the issue of plausibility and credibility needed to be assessed by looking at the evidence as a whole. He went on to mention that it seemed Mr Verney's final opinion depended on what he considered to be the overall plausibility of her account mentioned above. In my view it is apparent from what the First-tier Tribunal judge said that he did not hold against the appellant any of the criticisms advanced on behalf of the respondent relating to her lack of knowledge of Berti customs demonstrated by what she said in the course of her asylum interview. The only proper way of weighing the poor quality of the questioning was to exclude the appellant's answers on the assessment of her Berti ethnicity which is precisely what the First-tier Tribunal judge did.

11. The first ground of appeal also suggested that the detailed evidence of the expert as to what was reasonable for a questioner to expect the appellant to know about her Berti heritage was not considered at all in the determination. It was considered, however, because, as I have indicated, the First-tier Tribunal judge left out of account the criticism of the appellant based on her lack of knowledge of Berti heritage.

12. It was then said that the First-tier Tribunal judge had failed to give due weight to the expert's emphatic conclusion that the appellant was in all probability of Berti ethnicity. It is apparent that Mr Verney dealt with the question of the appellant's Berti background in paragraphs 79 to 85 of his determination. Paragraphs 79 to 81 related to the appellant. I agree with Mr Saunders who submitted that paragraphs 82 to 85 related to general matters. Mr Verney said that the appellant named the Berti "malik" or king correctly as Yasir Hussein Ahmedai Adam Tamim as the current Berti king. He said that as well as correctly naming Mellit as the centre of the Berti traditional homeland, she was quite right to say that the Berti were now found right across Sudan. He then went on to say the Berti had spread across Sudan in recent

generations. The British had brought people from Darfur to work on the construction of the railways across Sudan in the mid-20th century and to work in agricultural and Dafuri people had been settling in the capital ever since, that the appellant's account of racial prejudice in Sudan and its effects on her life at different times was consistent with his own observations, and that in the 1980s he worked in the Sudan Ministry of Culture Information and knew a range of Sudanese people from minorities who were working in the media. The situation for these people worsened considerably after the 1989 coup brought the current government to power.

13. It is apparent from reading the determination that the reason why the First-tier Tribunal judge refused to accept the appellant's claim to be a member of the Berti tribe was because he found her account generally not to be credible. Given the acknowledgement by Mr Verney that there was a disproportionate number of people claiming to be from the Berti tribe for the purposes of claiming asylum in the United Kingdom, the correct answer about the Berti king, the correct naming of Mellit as the centre of the Berti traditional homeland and the appellant's knowledge that the Berti had spread across Sudan in recent generations, were all something that one would expect someone who was falsely claiming to be Berti to be aware of. The fact that Mr Verney regarded the appellant's claim to be Berti was plausible did not oblige the First-tier Tribunal judge to accept that her claim to be Berti was credible.

14. One of the factors relied upon in the first ground of appeal was that Mr Verney's comment that the appellant would not have exchanged a good job and a prosperous lifestyle in Sudan for the uncertain prospects as an asylum seeker on meagre state handouts in the United Kingdom unless she were in fear of persecution was within the scope of his expertise. Ms McCarthy had to agree, however, that although Mr Verney might have been an expert in relation to salary levels in Sudan, his belief that the appellant would not have claimed asylum unless in fear of persecution was not a comment which depended upon any particular expertise. I agree with Mr Saunders' submission that the assertion that the appellant would not have claimed asylum unless she were being persecuted is a point of advocacy and does not depend upon any particular expert knowledge of conditions in Sudan. In paragraph 27 of his determination the First-tier Tribunal judge said that Mr Verney's comment presupposed that her account of her employment and lifestyle were reliable. Although she claimed to have been sent abroad on courses by her employer, in her asylum interview she said *"the work I was doing as a office manager was secretary and the secretary work in Sudan was not making big income."* He said no independent evidence was provided about the appellant's education, employment or to show that the travel she undertook in the United Kingdom and Dubai prior to claiming asylum was work related. Accordingly her claims about her lifestyle needed to be assessed in the light of the evidence as a whole. In my view that was a perfectly proper approach to adopt.

15. The second ground of appeal asserted that the First-tier Tribunal judge failed to give due weight to Mr Verney's expert evidence supporting the appellant's account of having worked for the Justice and Equality Movement. The ground relied upon Mr

Verney's expression of opinion, in paragraph 622 of his report, that *"as stated activities for JEM under the banner of a charity are wholly consistent with the known modus operandi of this organisation"* and his expression of opinion, in paragraph 266 of his report, that *"she gives details well beyond those that are available on the internet or in the public domain"*. In paragraph 29 of his determination the First-tier Tribunal judge said that Mr Verney confirmed that the JEM had a civilian wing, which dealt inter alia with humanitarian assistance to people in Darfur. He did not set out the source of this information. The First-tier Tribunal judge said that he therefore had no way of knowing whether that was something he was aware from his own firsthand knowledge or research or from a less reliable source. He said the existence of such an organisation would be consistent with the appellant's account but it could also be consistent with a concocted account. In paragraph 31 of his determination the First-tier Tribunal judge said in relation to the details that the appellant had given Mr Verney had not made clear which parts of the appellant's account he was referring to. He was also unclear whether Mr Verney was referring to the public domain in the United Kingdom or the public domain in Sudan.

16. I agree with the criticism of the First-tier Tribunal judge in this regard. In my view an expert on Sudan law could be expected to know whether or not the JEM had a civilian wing which dealt with humanitarian assistance to people in Darfur. This error was not material to the outcome of the appeal, however, for reasons which will become apparent.

17. As Upper Tribunal Judge Jordan pointed out, the First-tier Tribunal judge considered the report of Mr Verney in by far the longest part of his analysis of the appellant's claim. In my view it cannot be said that the First-tier Tribunal judge failed to have regard to the contents of the report of Mr Verney. The crucial question is whether in the light of Mr Verney's report it can be said that the First-tier Tribunal judge was perverse in rejecting the appellant's credibility.

18. In paragraph 28 of his determination the First-tier Tribunal judge said that Mr Verney believed that it was unreasonable to expect the appellant to know the date upon which the former leader of the JEM was killed and although he did not specifically address the other criticisms made of the appellant's knowledge of the JEM, he appeared to discount her apparent lack of knowledge about the JEM on the basis of her claim that during the asylum interview she became confused because of her anxiety and perceived hostility or aggression on the part of the interviewer. The First-tier Tribunal judge said that for reasons given in paragraph 52 of his determination, he found there were concerns about the reliability of this allegation against the interviewer that Mr Verney was clearly oblivious to. Furthermore, Mr Verney did not comment on how plausible it was for a member of the JEM to be unaware of the identity of the leader of the JEM. On the face of it that seemed extremely unlikely. Whatever branch of the organisation the appellant worked for it seemed reasonable to expect her to know who her leader was. In paragraph 52 of his determination the First-tier Tribunal judge said the appellant claimed that one of the reasons she gave less than full answers in her asylum interview was because the interviewer was "not very friendly" and she became stressed. Mr Verney believed

the appellant found the interviewer hostile. No examples were given of this hostility. The First-tier Tribunal judge said that the interview was audio recorded and it was reasonable to expect examples to be identified in order to support what was a serious allegation. Furthermore, he noted no reference was made to the interviewer being hostile in the asylum interview submissions letter. This was when it would be reasonable to expect such an allegation to have been made. In that letter it was poor interpreting that was being blamed for any confusion. Again, notwithstanding the fact that the interview was recorded, no specific examples of poor interpreting were identified. No explanation was provided for the failure to mention the allegations against the interviewer in the asylum interview submissions letter. He said, looking at the evidence as a whole, he did not feel able to give this late allegation a great deal of weight. In my view this was a perfectly reasonable approach to take.

19. In paragraph 30 of his determination the First-tier Tribunal judge said the appellant appeared to have told Mr Verney that the reason she chose not to assist women in Darfur by joining a recognised NGO was because these organisations were subjected to obstruction and restriction by the government. He said that Mr Verney found this to be a plausible explanation. The First-tier Tribunal judge agreed. He said, however, it was not an explanation she gave in her asylum interview. He said he had taken into account the fact that the questioning in the asylum interview on this topic was very poor. He said the appellant was not asked about NGOs in general as was suggested in the refusal letter, she was specifically asked about why she did not get involved in the ICRC. He said that given the extent of the ICRC's involvement in the Sudan and the length of time they had been there trying to assist those in western Sudan, the appellant's claim not to know anything about the ICRC at all seemed implausible. He acknowledged that Mr Verney's view was that *"there was no reason why Ms Mohamed should know about [the ICRC] in any detail"* but that appeared to miss the point that she claimed not to know whether there was an ICRC active in Sudan at all. Notwithstanding the poor standard of questioning in his view the appellant must have understood that in the asylum interview she was being asked why she chose to join an illegal organisation rather than a legal NGO. He said no explanation had been provided as to why in the asylum interview she failed to give the answer that she now relied upon.

20. In paragraph 32 the First-tier Tribunal judge said there were a number of apparent discrepant inconsistencies in the account given to Mr Verney by the appellant and her account during the asylum interview. It was unclear from Mr Verney's report whether the appellant mentioned suffering any discrimination at university beyond name-calling. It would appear likely that he would have recorded it, if she had. He said in her statement she set out a catalogue of systematic discrimination but gave no reason for not mentioning it before. Again there was no plausible explanation given as to why these details were not given at the asylum interview.

21. In paragraph 3 of his determination the First-tier Tribunal judge said that in her interview with Mr Verney the appellant told him that her uncle had told her that she would be under surveillance. She had not mentioned this before and in her asylum interview appeared to claim it was solely her own belief that she was under

surveillance. He said Mr Verney had not appeared to explore why the appellant believed that she was no longer under surveillance and it would be safe for her to resume her JEM activities or give an opinion as to whether her claim to hold such a belief was plausible given the paranoid and vicious nature of the government regime in Sudan. This related to the appellant's account that after having been arrested and ill-treated by the authorities she resumed her JEM activities by attending a meeting.

22. In paragraph 35 of his determination the First-tier Tribunal judge said that Mr Verney's opinion about the manner in which the appellant claimed to have left Sudan was set out at paragraph 69 of his report where he said *"I note that this procedure has been reported to me on several occasions and appears to be genuinely possible with the right 'agent' or 'fixer'."* He said without minimising Mr Verney's expertise, his use of the word "appears" and the fact that his knowledge about this aspect of the appellant's account seemed (at that point) to be derived from the very limited number of reports suggested this was not something he was clear about. However, in paragraph 166 of his report he stated *"I have met numerous interviewees who have described a similar method of departure through Khartoum airport, and regard it as plausible."* The First-tier Tribunal judge noted that whilst he had direct experience of the activities of agents and their ability to pay off government officials, he had no personal experience of this method of leaving Khartoum and was reliant upon the reports of others. Overall, he felt able to give only limited weight to his endorsement of this part of the appellant's account and if this account was plausible because the appellant was describing a well-known method of escape, this did not exclude the possibility of concoction.

23. In paragraph 36 of his determination the First-tier Tribunal judge said in respect of the appellant being able to obtain an exit stamp from the Sudan, Mr Verney said that he had personal experience of agents who obtained official stamps on documents by paying government officials. In paragraph 164 of his report he said that there was no reason to doubt the appellant's account in this regard. The First-tier Tribunal judge then went on to make what in my view was a very telling point. He said Mr Verney, however, did not give any reason why the exit stamp on her passport would be dated a day before she claimed to have decided to leave the country. It would appear he had not considered this apparent inconsistency in her account.

24. In paragraph 37 of his determination the First-tier Tribunal judge said that Mr Verney did not specifically comment on whether the appellant's claim that one of the reasons she failed to claim asylum immediately was because *"there were hopes of the imminent downfall of the regime"*, was consistent with what was happening in Sudan at that time. That was also something that the appellant had not mentioned before. Nothing in the objective material he was provided with suggested that the government was in danger of collapsing or being overthrown at this time.

25. In paragraph 38 of his determination the First-tier Tribunal judge said that, on her own account, the appellant was wanted by the authorities to the extent that they had kept her under surveillance, raided a property that she attended and issued a warrant for her arrest. It appeared highly implausible that either she or her uncle

could believe that while the current regime was in power, the situation for her in Sudan would have "cooled off" so that she could return. Again Mr Verney did not comment on the plausibility or otherwise of this belief, which appeared totally at odds with the reports in the objective material about the government's attitude to those it believed were its enemies.

26. In paragraph 39 the First-tier Tribunal judge said that in respect of the trigger event that caused the appellant to flee Sudan, Mr Verney recorded that the appellant's uncle actually told her that security agents had already infiltrated the wedding party and were actively looking for her and her friends. Again this did not appear to be what she said in her asylum interview, when she claimed her uncle had telephoned her to tell her that she or her friend were being watched. In paragraph 40 the First-tier Tribunal judge said that Mr Verney did not comment on the appellant's claim that an arrest warrant was delivered to her mother or on the fact that the appellant had been unable to produce this warrant and had given no explanation for it.

27. The First-tier Tribunal judge went on, having dealt with the evidence of Dr Arnold, to deal with other reasons for his finding that the appellant was not credible. In paragraph 51 he said in her statement she claimed she was unable to get a place at a public university in Sudan because of racial discrimination and her father had to pay for her to attend a private university. She also said that whilst at university it was clear to her that she was unfairly given low grades because of her ethnicity. At work it was clear to her that she was being ostracised because of her ethnicity. She also believed that two prospective suitors for marriage broke off any intention to marry when they discovered her mother's ethnicity. The First-tier Tribunal judge said it was reasonable to expect her to have mentioned these details in her asylum interview when asked what discrimination she suffered. In her statement she claimed that the reason she had not mentioned this was because she was not specifically asked about discrimination she had suffered. The First-tier Tribunal judge said that that was simply not true; she was specifically asked about this in question 88. I observe that in question 88 the question was "You mentioned that you and your family felt racial discrimination in Sudan, can you explain what you mean by this?" which gave the appellant the opportunity of describing the discrimination she had suffered. It is apparent that she was capable of giving long answers to questions since her answer to question 90 filled almost a whole page of the typed interview record.

28. In paragraph 53 the First-tier Tribunal judge said the appellant was clearly intelligent. This was apparent from the manner in which she answered (and asked) questions during the hearing. He noted Mr Verney also considered her to be educated. She was fortunate to have been assisted by a solicitor who was self-evidently able and diligent. If she had met JEM members in the United Kingdom he did not find it credible that she would not have made some effort to obtain evidence from them. He found her claim that it never crossed her mind to do this to be incredible.

29. In paragraph 54 he said the appellant's explanation about why her parents were unaware she was missing for nine days in the aftermath of her detention was implausible. He took account of the fact that some of the questions she was asked about this were confused but the fact remained that when the confusion has been cleared up she said she always kept in regular contact with her parents while she was away whether in the United Kingdom or Dubai. Even if her account of having been able to tell them exactly when she was coming back because her flight was cancelled was true, it seemed strange she did not notify them when she knew she would be returning and even stranger that they were not concerned when she was out of contact for nine days. An explanation was given as to how she got home after being abandoned by her captors on the airport road after nine days of serious physical and psychological mistreatment, during which time she was unable to wash, was not fed properly and was doused with water while fully clothed. She did not say the captors kept or returned her luggage to her. It seemed highly implausible she would be able to get home in that state, possibly without her luggage, without having to explain in detail to her parents what had happened. Her claim that she was able not to tell her mother the details of what had happened to her and was able to conceal it from her father completely seemed implausible to him. But although his view about the implausibility of this aspect of her account would not lead him to dismiss her entire story, it did fit a pattern of what he considered to be unreliable and inconsistent evidence. He took into account that by the time she made her statement she had provided an explanation that satisfied Mr Verney. He noted that he appeared to accept her claim that her father lived in a separate part of the family home to her mother although it was never properly explained why this would be so.

30. I take the view, having considered the entirety of the First-tier Tribunal judge's determination, that he gave adequate reasons for his view that the expert evidence of Mr Verney did not satisfy him as to the credibility of the appellant's account.

31. The third ground of appeal asserted that the First-tier Tribunal judge had made an error in rejecting the conclusions of Dr Arnold. The first assertion in that ground, that the First-tier Tribunal judge was wrong to find that Dr Arnold had not expressly considered the possibility that the appellant deliberately caused the marks on her body with the assistance of someone else, as Ms McCarthy frankly conceded, depended upon evidence of Dr Arnold produced after the hearing before the First-tier Tribunal judge and therefore I cannot take that evidence into account in assessing whether on the evidence before him the First-tier Tribunal judge made an error of law.

32. It was said that the First-tier Tribunal judge had commented that the appellant did not mention many of her scars or the mechanism of causation. It was said that if she had caused them herself or conspired with another to cause them to support her claim it would make no sense to fail to mention them at the earliest opportunity. That in my view is no more than a point of advocacy.

33. It was also said that the First-tier Tribunal judge incorrectly stated that Dr Arnold was not competent to recognise PTSD when he had had relevant experience of

training at a number of institutions. In my view there is force in this submission but this error was not material to the outcome of the appeal, for reasons which will be apparent when I deal with the way in which the First-tier Tribunal judge treated the evidence of PTSD.

34. The real issue in my view is whether the First-tier Tribunal judge was entitled to refuse to accept the credibility of the appellant's account in the light of the medical evidence provided by Dr Arnold. In paragraph 41 of his determination the First-tier Tribunal judge said that the report of Dr Arnold too disclosed some striking inconsistencies in the appellant's account. In her asylum interview the appellant described how she was mistreated when she was detained. She said:

> *"I was subjected to verbal insults and physical abuse. I was beaten up. With metal on my legs on my left leg. They extinguished cigarettes on my left arm. [She showed the interviewer two marks on her left arm]. There is a scar on my left knee which resulted from hitting me with bar. I was subject to many harassment. The verbal mistreatment was daily. But the cigarettes was the first day and four days later from the same person. The sexually* [sic] *harassment happened three times. I was beaten once with metal bars."*

The First-tier Tribunal judge said the appellant went on to clarify that sexual harassment consisted of *"it was just touches and sometimes it was painful"*. When it was put to her that she was claiming to have suffered extensive mistreatment but that in her screening interview she was said to have told the interviewer that she was *"tortured a little bit"* she explained that *"[I meant by a] little bit that I was beaten once. Even when I tried to elaborate on that the officer said I need brief answers."* The First-tier Tribunal judge said that she also made clear that she was only questioned twice. When she saw Dr Arnold he recorded her as claiming that: "*On several occasions she was taken for further questioning and abuse. During at least one of these episodes her feet were tied. The latter included: a) Pulling her hair, which has continued to fall out since these events. b) Whipping to her back. c) Burns with cigarettes and heated metal objects. d) Beating. e) Sexual molestation (but she denies actual rape).*" He said that in paragraph M4 of his report Dr Arnold also noted that she reported that she was *"transiently rendered unconscious by a blow to the head."*

35. In paragraph 42 of his determination the First-tier Tribunal judge said that between her asylum interview and the assessment by Dr Arnold, the mistreatment the appellant claimed to have suffered became more extensive. In her asylum interview she had not mentioned being tied up, whipped, rendered unconscious or being burnt by a metal bar. He said these were things that she seemed to have mentioned for the first time to Dr Arnold and then repeated in her statement dated 6th March 2013. He said no explanation had been provided as to why she failed to mention these highly significant details in her asylum interview. If she had suffered this serious mistreatment there was no obvious reason he could see, why she would have been reluctant to mention it or that she would not have mentioned it during her asylum interview. In paragraph 44 he said the appellant's failure to mention these important details in her asylum interview raised concern that she had concocted that part of her

account and had the injuries noted by Dr Arnold inflicted on her in order to assist her claim. Experience had shown that "self-harm" of this nature did take place. He noted Dr Arnold's views about the possibility of "self-harm" but it was clear to him that he was referring to an individual harming himself without the assistance of others. It was not even clear whether he had considered self-harm in the context of a deliberate attempt to manufacture and create injuries consistent with torture as opposed to the sort of self-harm that those with psychological or psychiatric disorders inflict on themselves. In paragraph 45 he said Dr Arnold's comments about the age of the appellant's scars/injuries did not assist in resolving that issue. They were really quite vague. In paragraph 07, Dr Arnold stated "*Where the appearances of the lesions of scars are cited above lend themselves to an estimation of their ages, the maturing characteristics accord with the timing she attributed to them.*" The First-tier Tribunal judge said that he had not, however, given any indication as to which of the lesions and scars he cited actually lent themselves to an estimation of their age. The only scar the appellant had that Dr Arnold appeared to have been able to age was a scar on her knee. He described that injury as maturing although he was not precise as to whether he considered the injury was "early maturing" (i.e. 21 to 42 days old), "intermediate maturing" (i.e. 42 to 180 days old). He said in any event this injury was considered by Dr Arnold to be non-specific with many possible causes.

36. The First-tier Tribunal judge could have made the observation that whereas Dr Arnold described the scars at E6a, which were scars on the appellant's left arm, as having the appearance to be expected after a lit cigarette was rubbed, rather than pressed, against the skin, the appellant herself in answer to question 101 in her asylum interview said they extinguished cigarettes on her left arm, which was inconsistent with Dr Arnold's evidence. In paragraph 43 of his determination the First-tier Tribunal judge said that, apart from the cigarette burns, it was the whipping injury and the burns, said to have been caused by a hot metal rod, that Dr Arnold graded as "typical" and therefore most consistent with the appellant's story. He went on to comment on the appellant's failure to mention these important details in her asylum interview which raised concern that she had concocted that part of her account.

37. Ms McCarthy had to concede that the First-tier Tribunal judge was correct in stating that Dr Arnold's comments about the ages of the appellant's injuries not resolving the issue of precisely when they were caused were valid. Had the appellant received her injuries after her claim had been refused by the Secretary of State then they would have fallen into the immediate maturing classification in respect of which Dr Arnold gave a period of 42 to 180 days as they would also have done if they had been inflicted at the time that the appellant said they had been.

38. As I have indicated I agree that the criticism of the First-tier Tribunal judge for stating that Dr Arnold was not qualified to make an assessment that the appellant was suffering from PTSD was wrong. In paragraph 47 of his determination, however, he said that the diagnosis of PTSD was dependent on a patient self-reporting rather than objective observation and physical symptoms. He said the reliability of information provided by the patient was self-evidently key to the

diagnosis being correct. Obviously a patient who was prepared to endure self-harm in order to give the appearance of having been tortured was likely to be capable of pretending to be suffering from PTSD. In paragraph 48 of his determination he said the disturbing and significant symptoms the appellant reported were clearly consistent with PTSD. She claimed to have been suffering the symptoms since she came to the United Kingdom but she had not sought medical help and had not even registered with a GP. He said no explanation had been provided as to why she had not done this. Her failure to seek treatment had been highly inconsistent with her claimed symptoms. As far as he could see the first time she had mentioned these symptoms was when she was interviewed by Dr Arnold.

39. In my view looking at the matter overall it cannot be said that the First-tier Tribunal judge made an error of law in his treatment of the expert evidence of Dr Arnold.

40. The fourth ground of appeal criticised the First-tier Tribunal judge for having failed to have regard to relevant evidence and relevant explanations for apparent discrepancies. Some of these have been dealt with already. The first criticism was that the First-tier Tribunal judge did not have regard to the appellant's explanation that she was only unsure of the new leader of the JEM in the period after Dr Khalid was assassinated. In paragraph 9 of his determination, however, the First-tier Tribunal judge recorded the appellant's oral evidence that she had been unaware of who had replaced Ibrahim as the leader of the JEM because he had been in charge of military action and her role was confined to the civilian side. The appellant did not deal with her lack of knowledge of the leader after Dr Khalid Ibrahim in paragraph 10 of her witness statement, which dealt with paragraphs 29 to 31 of the letter of refusal, in which the question of the appellant's lack of knowledge of the leader of the JEM was raised. In any event it is clear from paragraphs 6 and 8 of his determination that the First-tier Tribunal judge took into account the oral evidence of the appellant and all of the documentary evidence before him.

41. The second matter raised was that the irrelevance of the many questions that the appellant was asked in her asylum interview was not given any weight in assessing the appellant's overall credibility. As has been pointed out, the alleged unsatisfactory answers that the appellant gave were disregarded by the First-tier Tribunal judge. The third point related to the appellant's lack of knowledge of the ICRC which has already been dealt with.

42. The fourth point was a criticism of the finding by the First-tier Tribunal judge in paragraph 34 of his determination that the appellant's explanation to Mr Verney and at the appeal of being given her passport back *"on board the plane"* was inconsistent with her evidence in the asylum interview record where she said it was before she boarded the plane. The suggestion that the appellant had explained that both statements were right as she gave her passport back as she was boarding the plane, relied upon evidence that the appellant provided to her representatives subsequent to the hearing of the appeal. In any event, as the First-tier Tribunal judge said in paragraph 34 of his determination, this inconsistency was a minor one to which he attached little weight.

43. The fifth point made under this heading was that the First-tier Tribunal judge failed to have regard to the fact that the period in which the appellant failed to claim asylum was the period of the Arab Spring, when political change was rapid and regimes fell even though not considered likely. Although Mr Saunders pointed to a passage in the report of Mr Verney which indicated that the regime had an iron grip on the situation in Sudan, in my view the criticism of the First-tier Tribunal judge is no more than a point of advocacy.

44. The sixth point was that the First-tier Tribunal judge found that the appellant had been inconsistent as to the trigger event causing her to claim asylum. Again the appellant confirmed that both versions were true. This criticism of the First-tier Tribunal judge is also based upon evidence that the appellant has provided since the date of the hearing and is inadmissible to show that the First-tier Tribunal judge made an error of law.

45. The seventh criticism was that the appellant was not asked in her asylum interview for details of her torture, whereas the questions put to her by Dr Arnold were specific. It was suggested the appellant was told in the asylum interview only to answer the questions and to give brief answers. Ms McCarthy conceded that that would have applied to the screening interview and not the asylum interview. Moreover it is apparent from question 101 in the asylum interview that the appellant was asked an open-ended question, namely "How were you mistreated?" thereby giving her the opportunity to say whatever she wished to say about the way in which she was allegedly mistreated.

46. The eighth point, made in relation to the inconsistency between what she said about discrimination in her asylum interview and in her later account, is based on the same premise. The appellant was asked at question 142 "Have you suffered any discrimination in Sudan?" and at question 143 she was asked what discrimination she had suffered, which was an open-ended question which again enabled her to give whatever reply she thought was appropriate.

47. The ninth point, namely that the explanation that the appellant told her mother that she had been detained but did not tell her father was not properly examined in the determination, is not borne out by what the First-tier Tribunal judge said in paragraph 54 of his determination. He mentioned her claim that she was able not to tell her mother the details of what had happened to her and was able to conceal it from her father completely. That seemed implausible to the First-tier Tribunal judge. This passage in his determination shows that the First-tier Tribunal judge did consider the appellant's explanation, but nonetheless did not find it plausible. In my view it cannot be said that the First-tier Tribunal judge's conclusions in relation to the appellant's credibility failed to have regard to the totality of the evidence or were perverse.

48. In paragraph 55 of his determination the First-tier Tribunal judge said that the appeal hinged on the appellant's credibility. He said that having considered the evidence very carefully and applying the lower standard of proof he did not find her to be a

credible witness. He said the inconsistencies which he had set out were, in his view, too numerous and too significant for him to accept her account. Following her asylum interview, the extra information and detail provided in the asylum interview submissions letter, in her statement and given to the experts, all bore the hallmarks of an attempt to shore up and repair an account that was, in the words of the Home Office Presenting Officer, so full of holes that it crossed the line between being implausible to being incredible. In my view that conclusion was open to the First-tier Tribunal judge on the evidence before him, notwithstanding the expert reports from Mr Verney and Dr Arnold.

49. In these circumstances the First-tier Tribunal judge did not make an error of law in his determination of the appeal. The appeal to the Upper Tribunal is dismissed so that the determination of the First-tier Tribunal shall stand.

Signed Dated

P A Spencer
Judge of the Upper Tribunal