



Upper Tribunal
(Immigration and Asylum Chamber)

KAM (Nuba - return) Sudan CG [2020] UKUT 269 (IAC)

THE IMMIGRATION ACTS

Heard at Cardiff Civil and Family Justice Centre
and Field House

On 31 May and 1 June 2018; 30 August 2018;
24 and 25 October 2019; final written submissions
completed on 5 December 2019

Decision & Reasons Promulgated

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Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

K A M
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jacobs, instructed by Albany Solicitors

For the Respondent: Mr C Thomann, instructed by the Government Legal Department

- (a) *An individual of Nuba ethnicity is not at real risk of persecution or serious ill-treatment on return to Sudan (whether in the Nuba Mountains, Greater Khartoum or Khartoum International Airport) simply because of their ethnicity.*
- (b) *A returning failed asylum-seeker (including of Nuba ethnicity) is not at real risk of persecution or serious ill-treatment at the airport simply on account of being a failed asylum-seeker.*

- (c) *Prior to the political developments in 2019, individuals who were at risk on return (whether at the airport or in Greater Khartoum) were those who were perceived by the Sudanese authorities to be a sufficiently serious threat to the Sudanese Government to warrant targeting.*
- (d) *The assessment of that risk required an evaluation of what was likely to be known to the authorities and a holistic assessment of the individual's circumstances including any previous political activity in Sudan or abroad and any past history of detention in Sudan. Factors include whether the individual was a student, a political activist or a journalist; their ethnicity; their religion (in particular Christianity); and whether they came from a former conflict area (such as the Nuba Mountains).*
- (e) *Whilst the question of perception of political opposition underlying (c) above remains the same since the 2019 political developments, when assessing any risk to an individual now, the effects of the 2019 political developments are relevant and are likely to affect the Sudanese authorities' view of, and attitude towards, those who might be perceived as political opponents. Further, the 2019 political developments are likely to have greatly reduced the interest of the Sudanese government in suppressing political opposition by violent or military action.*
- (f) *Internal relocation to Greater Khartoum for a person of Nuba ethnicity must depend upon an assessment of all the individual's circumstances including their living conditions, their ability to access education, healthcare and employment. Despite the impoverished conditions and discrimination faced by Nuba when living in the so-called 'Black Belt' area of Greater Khartoum, relocating there will not generally be unduly harsh or unreasonable.*

DECISION AND REASONS

1. This decision provides country guidance on two principal issues. First, what, if any, is the risk of persecution and/or serious ill-treatment for a person of Nuba ethnicity in Sudan? Second, what, if any, internal relocation option is available to a person of Nuba ethnicity if at risk of persecution in their home area?

I. BACKGROUND

2. The Nuba peoples comprise various non-Arab ethnic groups who are indigenous to, and inhabit, the Nuba Mountains (in particular the foothills) in South Kordofan State in Sudan. That area borders the (now) independent country of South Sudan. The Nuba also live in the Blue Nile State of Sudan. Together these areas are known as the "Two Areas". They are a disparate group of tribes (perhaps around 50) lacking any political unity and speak a number of languages (estimated as over 100). They live in villages, organised in clans or extended family groups, with clan elders being in authority. The Nuba practise a number of different religions including Islam, Christianity and traditional African beliefs.
3. Estimates of how many Nuba live in Sudan vary. In 2003, the Sudanese Government estimated there were 1.07 million Nuba in Sudan. Some estimates put the number higher. Many Nuba, as a result of conflict in their home area, now live in or around

the capital, Khartoum which, as “Greater Khartoum”, is comprised of the three urban conurbations of Khartoum, Khartoum North and Omdurman (also known as the “Three Towns”). Although there is no verified figure, we heard evidence that put the number of Nuba in Greater Khartoum in the 100,000s. Together with Non-Arab Darfuris, some sources have estimated that the numbers may be higher reaching as many as 1 million, and some sources estimating as high as 5 million, living in Greater Khartoum. It is said that the joint Nuba/Non-Arab Darfuri population represents 60% or 70% of the total population of Greater Khartoum (see Joint Danish Immigration Service and Home Office Fact-finding Missions to Khartoum, Kampala and Nairobi, “Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum” (4 August 2016) at para 1.1). Whatever the correct figure, there is undoubtedly a very sizable population of Nuba living in Greater Khartoum. Most live in shanty towns in an area called the ‘Black Belt’ on the outskirts of the conurbation.

4. It is helpful to set out as background a brief summary of the relevant political history of Sudan. We include a number of factual matters widely reported in the news which took place in Sudan after the October 2019 hearing.
5. Sudan became an independent country in 1956. Its immediately relevant political history dates from June 1989 when a military coup led by Colonel al-Bashir (“al-Bashir”) deposed the existing government and installed a military government (with him as the Chairman of the Revolutionary Command Council for National Salvation) and created an Islamic state. In October 1993 al-Bashir appointed himself President with executive and legislative powers. Sudan became a one-party state under the National Congress Party (the “NCP”).
6. Sudan has seen a number of internal military conflicts between rebel groups and the Government both in the western Darfur region and in the east and south of the country.
7. A conflict in the Darfur region began in 2003 led by rebel groups including the Sudanese Liberation Movement/Army (“SLM/A”) and Justice and Equality Movement (“JEM”) arising from dissatisfaction with the treatment of Non-Arabs in Darfur. The conflict lasted until 2007. The Sudanese Government has been widely accused of genocide in Darfur, in particular as a result of the actions of its proxy, the Janjaweed militia. As a consequence, in March 2009 al-Bashir was indicted for war crimes and crimes of genocide and against humanity before the International Criminal Court in The Hague.
8. In the south of Sudan a further conflict arose between 2003 and 2005 waged against the Sudanese Government by a coalition of rebel groups, primarily led by the Sudanese People’s Liberation Movement (“SPLM”). Following the signing of a peace agreement between the SPLM and the Sudanese Government in 2006, a referendum in 2011 led to the secession, and creation of the independent country, of South Sudan in 2011.
9. In 2010, in the lead-up to the referendum, a military conflict broke out in the South Kordofan region between the rebel group, the Sudanese People’s Liberation

Movement-North (“SPLM-N”) (affiliated to the SPLM) and the Sudanese Government. The conflict in South Kordofan has been described as creating a humanitarian crisis in that area and a blockade was in force to prevent humanitarian aid reaching the area until that was lifted in late 2019. The conflict continued until the Sudanese Government declared a ceasefire in June 2016, initially for 4 months. The ceasefire has been periodically renewed and remains in place, though this is not to say that sporadic violent incidents or attacks have not continued to occur.

10. The most recent political changes in Sudan began as a result of events beginning in late 2018 when there were widespread public protests, in particularly in Khartoum. The protest movement was initially led by professionals - the Sudanese Professional Association (“SPA”) - and subsequently a broader coalition of protestors known as the Forces of Freedom and Change (“FFC”). The protests were motivated by the significant economic down-turn in Sudan and its day-to-day impact on the price of food and other goods. The protests were sustained and grew in early 2019.
11. On 11 April 2019, al-Bashir was overthrown by a military coup. He was replaced by a Transitional Military Council (“TMC”). The protests, however, continued, resulting in a violent crack-down on protestors by the new Sudanese authorities on 3 June 2019. Nevertheless, the protests continued.
12. On 5 July 2019, the TMC and FFC signed an agreement for a transition to a democratic state. This was followed by the adoption of a draft constitution on 21 August 2019 and, in September 2019, the creation of a Sovereign Council (“SC”) comprised of military and civilian members, presently chaired by Lieut-General al-Burhan (“al-Burhan”). The chair of the SC will change to a civilian in June 2021 and the country to civilian rule after 39 months, i.e. in the summer of 2022. The present Government is led by a respected economist, Prime Minister Abdalla Hamdok appointed on 21 August 2019. An independent Chief Justice and Attorney-General were subsequently selected and appointed.
13. Peace talks between the new Sudanese Government and the two factions of the SPLM-N in the Nuba Mountains and the Blue Nile (led respectively by Abdelaziz al Hilu (“al Hilu”) and Malik Agar) began in the autumn of 2019 in Juba, the capital of South Sudan. Despite withdrawing at one point, al Hilu subsequently returned to participate in the talks.
14. In November 2019, the restrictive Public Order law, whose use by the al-Bashir regime was widely recognised as a means to control how women acted and dressed, was repealed by the new Legislative Council (BBC News, “Sudan crisis: Women praise end of strict public order law”, 29 November 2019). The Sudanese authorities also dissolved the NCP, the political party of the former President.
15. In December 2019, al-Bashir was convicted of corruption in Sudan and sentenced to 2 years’ detention in a prison for the elderly (BBC News, “Omar al-Bashir: Sudan ex-leader sentenced for corruption”, 14 December 2019). In addition, Sudan has begun an investigation into the crimes committed in Darfur under the al-Bashir regime and in February 2020 the new Sudanese Government agreed to hand over al-Bashir to the

ICC to face the March 2009 indictment arising out of the Darfur conflict (BBC News, "Omar al-Bashir: Sudan agrees ex-president must face ICC", 11 February 2020).

16. In January 2020, the Sudanese army quelled a brief rebellion in Greater Khartoum by elite troops loyal to al-Bashir (BBC News, "Sudan army quells Khartoum mutiny by pro-Bashir troops", 15 January 2020). The rebellion appears to have been caused by a disagreement over severance pay to members of the General Intelligence Service ("GIS") - which had resulted from renaming in July 2019 of the National Intelligence and Security Service ("NISS") headed by Salah Ghosh until he was sacked by al-Burhan in April 2019 - which is being overhauled. The action of the rebels was condemned by both al-Burhan, as head of the SC, and General Mohammed Dagalo (widely known as "Hemeti" or "Himiti"), a powerful figure in Sudan who previously led the Janjaweed and now leads its successor, the Rapid Support Force ("RSF") and who is a member of the SC. In March 2020, the Prime Minister Hamdok survived an assassination attempt in Greater Khartoum (BBC News, "Sudan PM Abdalla Hamdok survives assassination attempt", 9 March 2020). Finally, in July 2020, the Sudanese Government announced new laws reforming laws from the period of Islamic rule: allowing non-Muslims to drink, sell and import alcohol, removing the requirement that women have permission from a male relative to travel with their children, abolishing the crime of apostasy and banning the practice of female genital mutilation (BBC News, "Sudan scraps apostasy law and alcohol ban for non-Muslims", 13 July 2020).

II. THE PARTIES' CASES IN SUMMARY

17. The appellant's case is that all Nuba (including the appellant), regardless of any political or other profile, face a real risk of persecution and/or serious ill-treatment contrary to Art 3 of the ECHR on return to Sudan on the basis of their ethnicity and political opinion because of their perceived association with rebel groups, in particular the SPLM-N. That position is said to be sustained on two bases.
18. First, the Nuba are treated in the same way as non-Arab Darfuris which, the CG cases of AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 000010 (IAC) recognise, are at risk on return. Secondly, the evidence from the witnesses and background evidence establishes that there is a real risk of persecution and/or serious ill-treatment to all Nuba (a) in the Nuba Mountains in South Kordofan; (b) in Greater Khartoum; and (c) on return at the airport. The present situation, despite the developments in 2019 remains fragile and it remains unsafe to return Nuba asylum-seekers to Sudan.
19. Finally, the appellant contends that internal relocation to Greater Khartoum is not reasonably open to an individual at risk in their home area.
20. The respondent rejects any analogy with, and reliance upon, the CG decisions relating to non-Arabs from Darfur. Further, the respondent contends that there is no risk *per se* to an individual of Nuba ethnicity on return. The respondent contends that there are no specific categories of individuals who cannot safely be returned - each case must be assessed on a holistic basis and is fact-sensitive by analogy to the approach of the Upper Tribunal ("UT") in IM and AI (Risks - membership of Beja

Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 000188 (IAC). Any risk flows from an individual's perceived political profile or activism and not from the mere fact of being from a Nuba tribe. The issue is whether the individual's profile or political activity presents (or is perceived to present) a sufficiently serious threat to the Sudanese regime to warrant targeting. It is the respondent's contention that the political developments in 2019 have shifted the threat to the Sudanese regime, and by the regime, from a military to a political dimension.

21. Finally, the Respondent accepts that internal relocation is not available when an individual is at risk from the Sudanese State. She also accepts that, if there is a serious risk of harm, for example, in Greater Khartoum an individual cannot reasonably be expected to relocate to the Nuba Mountains. The respondent contends that the reasonableness of internal relocation from some other area to Greater Khartoum, however, will be fact-sensitive.

III. THE APPEAL

22. The appellant is a citizen of Sudan who was born in 1983. He comes from Omdurman, Sudan's second largest city and part of Greater Khartoum. He is of Nuba ethnicity. He left Sudan on 21 November 2014 and, having travelled through a number of countries, arrived in the United Kingdom on 31 August 2015 and claimed asylum. His claim had four elements.
23. First, the appellant claimed that he had left Omdurman in 2009 and moved to the Nuba Mountains. After conflict broke out there in 2011 between the SPLM-N and the Sudanese authorities, he decided to return to Omdurman and, he claimed, whilst travelling to Omdurman in 2013 or 2014 (his evidence referred to both dates), he had been arrested and detained by the government and accused of being a member of the SPLM-N. Secondly, he claimed to fear the SPLM-N whom he had refused to join. Thirdly, the appellant relied upon *sur place* activities, namely a television interview criticising the Government. Finally, he claimed to be at risk from the Sudanese Government because he was of Nuba ethnicity.
24. On 18 December 2015, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Article 8 of the ECHR.
25. Following the refusal of his claims, the appellant appealed to the First-tier Tribunal ("FtT"). His appeal was heard by Judge Sweeney on 3 August 2016. Judge Sweeney dismissed the appellant's appeal on all grounds. Judge Sweeney accepted that the appellant was a Sudanese citizen and of Nuba ethnicity. However, the judge rejected the appellant's account including that he had left Omdurman to go to the Nuba Mountains and that he had been arrested and detained by the Sudanese Government whilst returning to Omdurman. The judge concluded that the appellant would not be at risk from the SPLM-N, not least because they had shown no adverse interest in him since 2011/12. Finally, the judge rejected the appellant's claim to be at risk because of his *sur place* activities because there was no evidence that he had come to the attention of the Sudanese authorities nor was it likely that his limited activities would do so.

26. The appellant appealed, with permission, to the Upper Tribunal (“UT”). The appellant did not challenge the judge’s adverse credibility finding. The grounds argued that the judge failed to consider the risk to the appellant because of his Nuba ethnicity in the light of his *sur place* activities which would result in him being regarded as a political opponent.
27. In a decision sent on 24 February 2017 (Appendix 2), the UT (UTJ Grubb and DUTJ Chalkley) concluded that the appellant’s grounds were made out and set aside the FtT’s decision. The judge’s factual findings were preserved. The appeal was adjourned in order that, at a resumed hearing, the decision could be re-made on the sole issue of whether the appellant had established that he would be at risk on return to Sudan because of his Nuba ethnicity. Subsequently, the appeal was identified as one appropriate to give country guidance on that general issue.

IV. THE HEARINGS

28. The substantive appeal to re-make the decision, ignoring intervening case management hearings, was listed on three occasions between May/June 2018 and October 2019.
29. On 31 May and 1 June 2018, we heard oral evidence from three witness: (1) Dame Rosalind Marsden DCMG (a former British Ambassador and EU Special Representative to Sudan), (2) Madeline Crowther (Director of Waging Peace, an organisation which campaigns against human rights abuses in Sudan) and (3) Dr Eric Reeves (a Senior Fellow at Harvard University’s Centre for Health and Human Rights). The latter’s evidence was given, not without technical difficulties, by Skype from the USA.
30. On 30 August 2018, the hearing resumed for submissions. However, it transpired at that hearing that a Home Office fact-finding visit to Sudan had taken place earlier in August and a report was expected in October. In the light of that, we adjourned the hearing to await the report and any further evidence or submissions in respect of it. In the result the report was delayed and only became available in November 2018 (Home Office, “Report of a Fact-Finding Mission to Khartoum, Sudan” (the “F-FR 2018”). In January 2019, supplementary reports were prepared by both Dame Rosalind Marsden and Madeline Crowther in relation to the F-FR 2018.
31. However, the supervening events in Sudan beginning in late 2018 further delayed, with the parties’ agreement, the re-listing of the appeal. At a CMH on 29 August 2019, despite the evolving situation in Sudan it was agreed by the parties that the appeal should be re-listed in October 2019 in order to hear further evidence (if appropriate) and final submissions.
32. On 24 and 25 October 2019 the appeal was re-listed when further reports were prepared by, and there was further oral evidence from, Dame Rosalind Marsden and Madeline Crowther. We received no further evidence from the parties after the hearing on 24/25 October. Both representatives agreed that only if there was evidence which changed the ‘direction of travel’ of a party’s case would further evidence be submitted by the parties. In the result, neither party sought to introduce any post-hearing evidence, despite the events to which we have referred above. We

have referred to news reports above, in order to give context and to show that there has been no change in the direction of travel. Our decision, however, is made on the evidence we heard, not taking into account any post-hearing news reports.

33. Following the 24/25 October hearing, the parties provided us with sequential written submissions ending with the appellant's response on 5 December 2019. We are grateful to both counsel for their detailed and helpful written submissions. We are also grateful to them for their helpful written, and for the most part agreed, summary of the oral evidence given at the initial hearing in May/June 2018.

V. THE EXISTING COUNTRY GUIDANCE

34. There is no existing country guidance directly concerned with the Nuba in Sudan.
35. However, existing country guidance recognises that non-Arab Darfuris are at risk on return to Sudan. That was accepted by the AIT in AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056. As summarised in the headnote, the AIT decided:

“All non-Arab Darfuris are at real risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan.”

36. AA was re-affirmed by the Upper Tribunal in MM (Darfuris) Sudan CG [2015] UKUT 000010 (IAC) where it was emphasised that the term “Darfuri” was to be understood as an “ethnic term” relating to origins and not a geographical term such that it covered Darfuris who were not born in Darfur. As a consequence, the UT recognised that there is a real risk of persecution for a non-Arab Darfuri whatever their home area (e.g. including Greater Khartoum) in Sudan.

37. Despite the developments in Sudan since December 2018, MM has recently been affirmed by the UT (albeit without a CG designation) in AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 282 (IAC). The headnote reads as follows:

“The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC) requires revision. Those cases should still be followed.”

38. The CG decisions, therefore, in respect of non-Arab Darfuris remain at present unchanged, if only because the Tribunal has not yet had the opportunity to consider fully the position in Sudan following the recent changes.

39. There is one further CG decision we should mention. IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM) Sudan CG [2016] UKUT 000188 (IAC) concerned the risk to members of the Beja tribe and those politically active with the Justice and Equality Movement (“the JEM”) in Sudan. The guidance is detailed and is summarised in the headnote (emphasis added). It reflects a distinction between those who are (or are perceived as) politically active and a sufficient threat to the regime, and those who are not (references to “NISS” are to the former National Intelligence and Security Service, for which see para 16 above):

- “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."

40. At [203], the UT made brief mention of individuals from South Kordofan and the Blue Nile:

"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." (our emphasis)

41. So far as we are aware, this is the only reference in the CG cases to those from South Kordofan which must refer to the Nuba. It places them in the same position as those with whom the UT in IM and AI were concerned, the risk to whom has to be assessed holistically to determine whether as a result of their activities they are likely to be perceived as a potential threat to the Sudanese regime.

42. Although not referred to in the headnote, the UT specifically concluded that individuals were not at risk on return to Sudan merely by reason of being failed asylum-seekers ([222]-[225]).

VI. THE LEGAL FRAMEWORK

43. The applicable law was not a matter of contention between the parties. The appellant relies upon the Refugee Convention and Art 3 of the ECHR. (Reference is also made to Art 2 ('right to life') but we did not understand this to add anything to the reliance upon Art 3 or the Refugee Convention in this case.) Consequently, we are not concerned with, and heard no argument upon, any issue concerning humanitarian protection under Art 15(c) of Council Directive 2004/83/EC ("the Qualification Directive"). We can, therefore, state the applicable law briefly.

A. Refugee Convention

44. Article 1A(2) of the Refugee Convention, defines a refugee as being a person who:

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

(See also Art 2(c) of the Qualification Directive.)

45. A fear of persecution will be well-founded, if the decision-maker is satisfied that there is a reasonable degree of likelihood (or real risk) that the individual would be persecuted for a Convention reason if returned to his own country (R v SSHD, ex p Sivakumaran [1988] AC 958 at 197-198, 202, per Lord Keith of Kinkel and at 994, 1000, per Lord Goff of Chieveley).

46. Whilst caution must be exercised in adding any gloss to the "reasonable degree of likelihood" and "real risk" standards, where it is said that a particular group, or return in particular circumstances, gives rise to a claim by an individual who fits that group or circumstance, as the AIT pointed out in AA (Risk for involuntary returnees) Zimbabwe CG [2006] UKAIT 00061 at [29]:

"The point is that where risk is said to arise based upon the perception that the appellant falls within a class of persons he will not be able to demonstrate that he faces a real risk unless the evidence shows that the abuse is consistently applied to that class of persons."

47. The AIT added (at [31]) in the context of a claim that all failed asylum-seekers were at risk on return:

"The issue is whether the evidence establishes a real risk. The appellant does not need to show a certainty or a probability that all failed asylum seekers returned involuntarily will face serious ill-treatment upon return. He needs to show only

that there is a consistent pattern of such mistreatment such that anyone returning in those circumstances faces a real risk of coming to harm even though not everyone does.”

48. Persecution may arise from sufficiently serious physical or mental ill-treatment, or discrimination by the state: actions which are “sufficiently serious by their nature or repetition as to constitute a severe violation of basis human rights” (see Art 9 of the Qualification Directive).
49. The persecution must be “for” one of the stated Convention reasons: relevant in this appeal particularly are political opinion, religion and race. The last includes “colour, descent, or membership of a particular ethnic group” (see Art 10.1 of the Qualification Directive). It is immaterial whether the individual possesses the relevant characteristic (such as political opinion) which attracts persecution provided that such a characteristic is attributed to (or perceived to be held by) the individual by the persecutor (Art 10.2 of the Qualification Directive).

B. Article 3

50. In respect of Article 3 of the ECHR, the appellant must establish that there are substantial grounds for believing that there is a real risk of treatment contrary to Article 3, i.e. “torture or inhuman or degrading treatment or punishment”. This is frequently equated with “serious ill-treatment” or “serious harm” which is reflected in the terms of Art 15(b) of the Qualification Directive. Further,

“the requirement that there must be substantial grounds for believing that there is a real risk of treatment contrary to Article 3 on return means not more than that there must be a proper evidential basis for concluding that there [is] such a real risk.” (AS and DD (Libya) v SSHD [2008] EWCA Civ 289 at [24]).

51. In the context of a claim based upon living conditions in the country of return, Art 3 requires a ‘high threshold’ to be met before it will be breached. This is particularly so where the living conditions are “predominantly attributable to poverty or the state’s lack of resources to deal with naturally occurring phenomenon, such as drought” (see Sufi and Elmi v UK 54 EHRR 209 at [282]). In SSHD v Said [2016] EWCA Civ 442, the Court of Appeal applied this approach and at [31], Burnett LJ (as he then was) said this:

“An appeal to article 3 which suggests that the person concerned would face impoverished conditions of living on removal to Somalia should, as the Strasbourg Court indicated in *Sufi and Elmi* at para 292, be viewed by reference to the test in the *N case*. Impoverished conditions which were the direct result of violent activities may be viewed differently as would cases where the risk suggested is of direct violence itself.”

(See also Burnett LJ at [18].)

52. Whilst the case of N v UK (2008) 47 EHRR 39 has recently been reconsidered by the Strasbourg Court in Paposhvili v Belgium [2017] Imm AR 867 and adopted by the Supreme Court in AM(Zimbabwe) v SSHD [2020] UKSC 17 so as to broaden the

category of 'exceptional case' falling within Art 3 in medical/health cases (and here by analogy we assume in 'living condition' cases), it remains a rigorous test requiring serious and immediate suffering reaching the high Art 3 threshold or a significant diminution in life expectancy (see [27]-[31] per Lord Wilson in AM).

53. Where the humanitarian conditions are the result of a conflict, war or a state's discriminatory policy, the 'high threshold' required to establish a breach of Art 3 does not apply. In Sufi & Elmi v UK (2012) 54 EHRR 9, the Strasbourg Court said this at [282]-[283]:

"282. If the dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought, the test in *N. v. the United Kingdom* may well have been considered to be the appropriate one. However, it is clear that while drought has contributed to the humanitarian crisis, that crisis is predominantly due to the direct and indirect actions of the parties to the conflict. The reports indicate that all parties to the conflict have employed indiscriminate methods of warfare in densely populated urban areas with no regard to the safety of the civilian population ... This fact alone has resulted in widespread displacement and the breakdown of social, political and economic infrastructures. Moreover, the situation has been greatly exacerbated by al-Shabab's refusal to permit international aid agencies to operate in the areas under its control, despite the fact that between a third and a half of all Somalis are living in a situation of serious deprivation ...

283. Consequently, the Court does not consider the approach adopted in *N. v. the United Kingdom* to be appropriate in the circumstances of the present case. Rather, it prefers the approach adopted in *M.S.S. v. Belgium and Greece*, which requires it to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame (see *M.S.S. v. Belgium and Greece*, cited above, § 254)."

54. In AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) the UT identified that the 'high threshold' in N did not apply where the "predominant cause" of the circumstances, said to give rise to a breach of Art 3, is human actions rather than naturally occurring (at [129]):

"If the predominant cause of the poor living conditions faced by a person is due to human actions in the State in question, rather than to naturally occurring phenomena, coupled with a lack of resources to deal with those phenomena, then the high threshold set by N need not be reached."

C. Internal Relocation

55. Art 8 of the Qualification Directive sets out the legal approach to internal relocation in the case of a person who is able to show a risk of persecution in their home area. For our purposes, it suffices to set out its adoption, in substance, in para 399O of the Immigration Rules which is as follows:

“399O(i) The Secretary of State will not make:

(a) a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.”

56. There are two limbs to be considered: (1) will the individual be exposed to a real risk of serious harm in the place of proposed internal relocation?; and (2) if not, will it be reasonable (or unduly harsh) for that individual to live in the place of proposed relocation? The issue of reasonableness only arises if there is not a real risk of serious harm in the place of proposed relocation (see, SSHD v SC (Jamaica) [2017] EWCA Civ 2112 at [39]).

57. The approach to ‘reasonableness’ and ‘undue harshness’ as the second limb of the internal relocation test was analysed by the House of Lords in Januzi v SSHD [2006] UKHL 5 and AH (Sudan) v SSHD [2006] UKHL 49. For our purposes, as there was no dispute before us on the applicable law, it suffices to set out the helpful summary of the law, drawing together the earlier cases, by the Court of Appeal in AS (Afghanistan) v SSHD [2019] EWCA Civ 873. At [61] Underhill LJ (with whom King and Singh LJJ agreed) said:

“61. I start by summarising the essential points, so far as relevant to this appeal, established by the authorities about the nature of the exercise required by article 8 of the Directive. I emphasise that this is not intended as a comprehensive analysis of all the issues raised by the authorities to which I have referred.

(1) By way of preliminary, internal relocation is obviously not an alternative where there is a real risk that the applicant for asylum will suffer persecution, or serious harm within the meaning of article 15 of the Directive (which includes treatment which would be contrary to article 3 of the ECHR), in the putative safe haven. We are concerned with cases where there is no such risk.

(2) The ultimate question is whether in such a case "taking account of all relevant circumstances pertaining to the claimant and his country of origin, ... it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so". That is the formulation of Lord Bingham in *Januzi*, repeated in *AH (Sudan)*. It pre-dates the Directive and is not identically worded: in particular, the reference to whether relocation

would be "unduly harsh" is not present in article 8 but derives from the UNHCR 2003 Guidelines (see *Januzi*, para. 20). But it was common ground before us that it states the test required by article 8 [of the Qualification Directive]. When in doubt it is to that question that tribunals should return.

(3) The test so stated is one of great generality (save only that it excludes any comparison of the conditions, including the degree of respect for human rights, between those obtaining in the safe haven and those of the country of refuge - this being the ratio of *Januzi*). It requires consideration of all matters relevant to the reasonableness of relocation, none having inherent priority over the others (*AH (Sudan)*, para. 13). This is the same as Lady Hale's description of the necessary assessment as "holistic" (*AH (Sudan)* paras. 27-28).

(4) One way of approaching that assessment is to ask whether in the safe haven the applicant can lead "a relatively normal life without facing undue hardship ... in the context of the country concerned". That language derives from the UNHCR Guidelines and is quoted by Lord Bingham with approval in *Januzi* (para. 20) and also used by Lord Hope (para. 47); but it does not appear in the Directive or in Lord Bingham's formulation of the test, and it should not be treated as a substitute for the latter. Rather, it is a valuable way of approaching the reasonableness analysis - "one touchstone", as Lord Brown puts it (*AH (Sudan)* para. 42). Its value is because if a person is able to lead in the safe haven a life which is relatively normal for people in the context of his or her own country, it will be reasonable to expect them to stay there (*AH (Sudan)*, para. 47).

(5) It may be reasonable, and not unduly harsh, to expect a refugee to relocate even if conditions in the safe haven are, by the standards of the country of refuge, very bad. That is part of what is decided by *Januzi* itself, and the passages quoted at paras. 34 and 35 above reinforce it. It is also vividly illustrated by the outcome of *AH (Sudan)*, where the House of Lords upheld the decision of the AIT that it was reasonable for Darfuri refugees to be expected to relocate to the camps or squatter slums of Khartoum. That may seem inconsistent with the suggested approach of asking whether the applicant would be able lead a "relatively normal life" in the safe haven; but the reconciliation lies in the qualification "in the context of the country concerned".

(6) Point (5) does not mean that it will be reasonable for a person to relocate to a safe haven, however bad the conditions they will face there, as long as such conditions are normal in their country. Conditions may be normal but nevertheless unduly harsh: this is the point emphasised by Lady Hale in *AH (Sudan)* and is exemplified by *AA (Uganda)*.

(7) The UNHCR Guidelines contain a full discussion of factors relevant to the reasonableness analysis. These are described by Lord Bingham as "valuable" and partly quoted by him (*Januzi* para. 20); and at para. 20 of her opinion in *AH (Sudan)* Lady Hale endorses a submission made in that case by UNHCR which summarises the factors in question. A decision-maker must consider those factors, so far as material, in each case (though it does not follow that everything said in the detailed discussion in the Guidelines is authoritative).

(8) The assessment must in each case be conducted by reference to the reasonableness of relocation for the particular individual."

58. The burden of proof is upon the appellant to establish the real risk of serious harm in the proposed place of relocation (see SMO and others (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) at [206]).

59. As regards reasonableness or undue harshness, an evaluative and holistic assessment of all the relevant circumstances is required. In MB (Internal relocation - burden of proof) Albania [2019] UKUT 392 (IAC), the UT stated:

“The burden of proof remains on the appellant, where the respondent has identified the location to which it is asserted they could relocate, to prove why that location would be unduly harsh, in line with *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia* CG [2011] UKUT 445 (IAC), but within that burden, the evaluation exercise should be holistic. An holistic approach to such an assessment is consistent with the balance-sheet approach endorsed later in *SSHD v SC (Jamaica)* [2017] EWCA Civ 2112, at paragraphs [40] and [41]. *MM v Minister for Justice, Equality and Law Reform, Ireland (Common European Asylum System - Directive 2004/83/EC)* Case C-277/11 does not impose a burden on the respondent or result in a formal sharing of the burden of proof, but merely confirms a duty of cooperation at the stage of assessment, for example the production of the country information reports.”

60. The UT in MB pointed out (at [25]) that “[a]n over-emphasis on the overall burden of proof can be a distraction from that holistic assessment”.

VII. THE EVIDENCE

61. The evidence in this appeal developed over the period of time that the appeal took to be completed, not least due to the political developments in Sudan. Both the oral and written evidence are voluminous. The initial written and oral evidence in May/June 2018 pre-dated the political developments in Sudan beginning in December 2018 and through 2019. We were provided with further written evidence, and we heard further oral evidence, from two of the witnesses (Dame Rosalind Marsden and Ms Madeline Crowther) at the hearing in October 2019 but the evidence of Dr Eric Reeves, given at the May/June 2018 hearing, was not updated and so necessarily did not address the effects, if any, of the political developments in 2019.
62. Dame Rosalind has had considerable experience in Sudan itself, some of it recent. She has maintained her interest in the country by high-level diplomatic contact. Much of what she told us she was able to support by personal experience. Ms Crowther’s knowledge of Sudan is derived from her work for a human rights organisation in London. She has not visited Sudan and does not speak Arabic or any of the languages in which those on whose behalf she works express themselves. Dr Reeves is an academic with considerable knowledge of Sudan but who has not been in Sudan since 2003. All three referred to contacts with others who have experience in Sudan, from whom they derived some of the opinions they incorporated in their evidence. In relation to facts, we attribute more weight to those derived from direct personal observation by witnesses. That inevitably means that we give considerable weight to the factual evidence of Dame Rosalind, if rather less to those of the other witnesses. In the same way, we attribute considerable weight to factual statements in the written reports received in evidence, where they are based on direct observation. We treat opinions with some caution, bearing in mind particularly whether they are expressed by a person or body that has any campaigning role. In general, we have attempted to test expressed opinions against the touchstone of observed facts in order to form our own views on the realities of the position of Nuba in Sudan.

63. At our request, both Mr Jacobs and Mr Thomann helpfully made specific reference to the evidence upon which they relied in their detained final written submissions. We set out that evidence in Appendix 1 as follows: (a) Dame Rosalind Marsden; (b) Ms Madeline Crowther; (c) Dr Eric Reeves; (d) country background documents; and (e) Home Office documents. In what follows, we assume that Appendix 1 has been read.

VIII. THE SUBMISSIONS

A. The Appellant

64. Mr Jacobs summarises the appellant's case in 11 points in his final written submissions at para [1] and which are further amplified at paras [185]-[203].

65. Mr Jacobs' submission is that *all* Nuba (including the appellant) regardless of any political or other profile face a real risk of persecution and/or serious ill-treatment on return to Sudan on the basis of their ethnicity and political opinion because of their perceived association with rebel groups, in particular the SPLM-N:

(1) the Nuba are treated the same as non-Arab Darfuris who, following the CG decisions concerning Darfuris, are at risk on return;

(2) the expert and background evidence establishes a real risk to all Nuba in the Nuba Mountains, in Greater Khartoum and, on arrival, at the airport due to their ethnicity and perceived political association with rebel groups;

(3) the current situation in Sudan remains fragile despite the recent political developments and it is too soon to say that Nuba can be safely returned; and

(4) the situation in Greater Khartoum is such that it would be unduly harsh for any Nuba not from there to relocate there.

66. Mr Jacobs, in particular, places reliance on the evidence of three witnesses (Dame Rosalind Marsden, Ms Madeline Crowther and Dr Eric Reeves) that the Nuba have been targeted for ill-treatment under the al-Bashir regime as suspected supporters of rebel groups in particular the SPLM-N (see paras [185]-[186]).

67. Moreover, the present situation, despite the developments in 2018-2019, remains fragile and, again relying in particular upon Dame Rosalind's most recent evidence, it remains unsafe to return Nuba asylum-seekers to Sudan. Mr Jacobs summarises what he says is the impact of the current developments in 11 points at para [1] of his written submissions as follows:

(1) Notwithstanding the positive developments in Sudan since the fall of President Bashir in April 2019, the 'deep state' remains in place.

(2) Consequently, a majority of officials in Sudan retain entrenched views as to non-Arab Sudanese from marginalised areas

(3) Those views necessarily impute Nuba with a political opinion - namely that or support for SPLM-N, or other rebel groups.

(4) Arabist policies were racially discriminatory against Nuba - using terms such as Abid (slave). Nuba were targeted on grounds of race and imputed political

opinion. Those Nuba returning from overseas are more likely to be seen as politically active.

- (5) Nuba failed asylum-seekers could still be at risk of ill-treatment in Khartoum today as long as members of the former regime continue to control NISS and other security organs; the National Security Act has not been amended to remove NISS's powers of arrest and detention; and the RSF still has a presence in urban areas.
- (6) General Mohamed Hamdan Dagalo (widely known as Hemeti) has become the most powerful man in Sudan. He is the leader of the Rapid Support Force (RSF), which comprises the former Janjawid and which has committed atrocities and perpetrated human rights abuses in Darfur and the Nuba mountains, most recently in relation to a mining dispute. Those forces retain an 'Arabist' mindset.
- (7) The present administration is subject to the same threat that led to the downfall of the Bashir regime - namely the economic crisis. In the event that the current government is unable to raise international finance to alleviate the crisis, there is a significant possibility that the military under Hemeti and/or a pro Bashir Islamist faction may take power, which would result in a restoration of active oppression of marginalized and rebel associated groups, such as the Nuba.
- (8) There is a close parallel between the former regime's perception of non-Arab Darfuris and Nuba because members of both groups were suspected of being sympathetic to the rebel armed movements in Darfur, the Nuba Mountains or Blue Nile. In particular, the armed movements from Darfur, the Nuba Mountains and Blue Nile are closely inter-related and have formed joint alliances.....
- (9) In the same way that the Secretary of State concedes that the position has not stabilised sufficiently for the position relating to returns of Darfuris to change, neither can it logically be said that Nuba (who share a number of characteristics with Darfuris) can safely be returned.
- (10) There is evidence of recent targeting of Nuba in Khartoum. Dame Rosalind Marsden has recently interviewed a group of professional Nuba men in Khartoum.
- (11) The Nuba Mountains are described as a 'war zone' by Dr Catena (a credible source). As matters stand there is no peace agreement and Nuba continue to face persecution at the hands of RSF in their home areas. It is unreasonable to expect returning Nuba asylum seekers to settle or resettle in Khartoum/Omdurman in circumstances where Hemeti's forces continue to persecute Nuba in their tribal areas.

68. In relation to the risk to Nuba in South Kordofan, Mr Jacobs, in addition to Dr Catena's characterisation of the situation there, relies (at para [73]) upon the evidence of incidents in the Nuba Mountains in October 2019 referred to in Dame Rosalind's evidence (October 2019):

- (i) [On] 4 October, RSF forces recruited from the Hawazma and Salamat (Arab nomadic tribes), attacked the Nuba village of Tongal in Habila locality, using 25 pick-up trucks with mounted machine guns (paragraph 28)
- (ii) On 5 October, Shamseddin Kabbashi, a military member of the Sovereign Council (who is himself a Nuba from the Gulfan tribe) is reported to have met with Chiefs from both the Gulfan and Dar Naele and given each of them SDG 500,000 to unite against the SPLM/N. (paragraph 28)
- (iii) On 16 October Abdel Aziz al Hilu's spokesman announced that RSF soldiers in 25 Landcruisers had ambushed civilians inside SPLM/N-controlled territory near

Khor Waral in Habila locality, abducting 13 people, and killing two, including a local Sheikh who had objected to the local nomads passing through farmland (paragraph 29)

(iv) [O]n 7 October, the RSF mounted an attack on people living near the gold mines at Talodi, using 27 armed pick-up trucks. They beat and arrested civilians, injuring ten people, and looted their property. Demonstrations by local residents had been going on for months over the use of mercury and cyanide by gold-mining companies which they said had caused serious health and environmental problems. Most of these companies are owned by the RSF and the security apparatus (paragraph 30)

69. Mr Jacobs concludes his submissions (at paras [185]-[203]) with a number of points relating to the country guidance and disposal of the appellant's appeal as follows:

185. ...The objective evidence ... and the evidence from the three experts confirms that Nuba were targeted for ill treatment under the Bashir regime as suspected members or supporters of rebel groups. They have been singled out for ill treatment as a consequence of the former regime's Arabisation policies.

186. The expert witnesses have all given reliable evidence and the Tribunal is requested to accept their conclusions, which have been derived from a wide range of sources. Dame Rosalind Marsden is a credible source in her own right. Madeleine Crowther has assisted the Tribunal through Waging Peace in previous country guidance; has provided source material to the Belgian COI and ARC. Dr Reeves is a well-regarded and long-standing country expert.

187. The evidence of Dame Rosalind Marsden is consistent with that of the International Crisis Group, upon which the Secretary of State's position is based (save for the cursory assessment by the Embassy official, to which it is submitted, little weight should attach). Both Dame Rosalind and the ICG assert that the current situation in Khartoum is fragile for a number of reasons.

188. Firstly, the Government is unable to respond to the ongoing economic crisis, a situation which brought down the Bashir Regime.

189. Secondly, the military are unlikely to relinquish power and have an effective veto in the current administration.

190. Thirdly, the Deep State remains intact outside Khartoum and within Khartoum only the upper layer of bureaucracy (under secretary level) has been replaced. The pro Islamist and Arabist culture within all government institutions remains as the mindset of the Bashir regime.

191. Fourthly, NISS retains its wide-ranging powers and immunity pending changes which have not been brought into effect. NISS retains a desk at Khartoum airport. It is uncontroversial that NISS have systematically ill treated those to whom it has imputed a political opinion. Failed asylum seekers from marginalised rebel areas would engage that perceived opinion.

192. Fifthly, Hemeti is the most powerful man in Sudan. He is the leader of the Rapid Support Forces, formerly the Janjawid, which has persecuted Darfuris and Nuba in their home areas. RSF continue to be active in South Kordofan and the Nuba Mountains and have recently carried out attacks in Nuba areas.

193. Sixthly, there is evidence that RSF targeted Nuba during the June 2019 massacre and in the aftermath of that incident. Madeleine Crowther has spoken to the Director of HUDO concerning attacks in the Black Belt after 3 June and Dame Rosalind Marsden has interviewed Nuba in Khartoum recently, who have given accounts of recent harassment on grounds of ethnicity. The Public Order legislation continues to apply in the Nuba areas of the capital and surrounding areas, thus facilitating continuing harassment of Nuba.
194. Seventhly, the position of Al Hilu and the disengagement of Al Noor are likely to prevent the conclusion of a peace process, particularly in the Nuba Mountains and South Kordofan. It is likely that Hemeti and the RSF will seek to bring the rebels to heel or would otherwise which use the impasse to take power back from the current administration.
195. The above factors all impact on the risk of ill treatment amounting to persecution and Article 3 ill treatment that Nuba would face in the event of return now as failed asylum seekers. The Refugee Convention is engaged by way of imputed political opinion and ethnicity.
196. The Appellant has established that he would have been persecuted in the event of return under the Bashir regime by way of ethnicity and imputed political opinion. Nuba are dark skinned, non-Arab and from rebel areas. Furthermore, rebel groups associated with Nuba have in recent years posed an existential threat to the Government of Sudan. These are all factors which Nuba have in common with Darfuris.
197. It is respectfully submitted that the situation in Sudan is still unstable, for the reasons set out by Dame Rosalind Marsden, Madeleine Crowther and the recent ICG report. In the same way that Darfuris currently face persecution in their home areas are not able to return to Khartoum, neither can Nuba reasonably be expected to return. The characteristics of both groups are strikingly similar. It is submitted that the Upper Tribunal should follow a consistent approach.
198. Notwithstanding the positive changes made in Khartoum, Nuba failed asylum seekers would be at risk of ill treatment at the hands of NISS/GIS in the event of return. That risk would increase substantially should the current government fall from power and the Islamist faction of Hemeti takes power. These scenarios are not unlikely for reasons set out by Dame Rosalind Marsden and Madeleine Crowther.
199. The Tribunal is therefore invited to issue country guidance for Nuba in the same terms as in AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 00282 (IAC).
200. It is submitted that the Appellant's appeal against refusal of asylum should be allowed and the decision of FTJ Sweeney remade on the basis that the Appellant, as a member of the Nuba Tribes, will be at risk of persecution and Article 3 ill treatment on the basis of his ethnicity and the imputed political opinion (suspected support of SPLM/N) that would attach to a Nuba who is returned to Khartoum as a failed asylum seeker from the United Kingdom.
201. It is relevant for the purposes of Country Guidance to note that the Secretary of State appears to accept that certain categories of Nuba cannot be safely returned. These categories are: those who are politically active; students; and Christians. If,

which is denied, the Appellant is not entitled to succeed in this appeal, the Tribunal is nevertheless requested to confirm that the categories of Nuba as identified above cannot be safely returned to Khartoum and should succeed in asylum claims.

202. Alternatively, it is established that Nuba are subjected to ethnically and politically motivated attacks in their home areas and would be refugees in the event of return to those areas. In these circumstances, life in Khartoum for such Nuba, in displacement areas such as the black belt would be unduly harsh for a returned failed asylum seeker from the Nuba Mountains and South Kordofan.
203. The level of discrimination in Khartoum and Omdurman, if not persecutory in nature, would be unduly harsh within the meaning of Januzi. The evidence establishes that there is no access to effective medical services, education, employment Additionally, Nuba are routinely denied citizenship through being required to provide birth certificates from their areas of origin. This denial impacts on access to essential services.

B. The Respondent

70. In his submissions, Mr Thomann, on behalf of the respondent, rejects any analogy with, and reliance upon, the CG decisions relating to non-Arabs from Darfur. The respondent contends that there is no risk *per se* to an individual of Nuba ethnicity on return. Instead, it is said that the risk flows from perceived political profile or activism and not from the mere fact of being from a Nuba tribe.
71. The respondent contends that there are no specific categories of individuals who cannot safely be returned – each case must be assessed on a holistic basis and is fact-sensitive by analogy to the approach of the UT in IM and AI. The issue is whether the individual's profile or political activity presents a sufficiently serious threat to the Sudanese regime to warrant targeting.
72. Mr Thomann, nevertheless, accepts that a person who has a credible claim to a political profile or activism such that they will have come to the attention of the Sudanese authorities (or is likely to have done so) is likely to have a well-founded fear of persecution and/or ill-treatment on return.
73. The respondent contends that a returned asylum-seeker will not, simply on that basis, be at risk on return at the airport or elsewhere.
74. Further, the respondent accepts that internal relocation to Greater Khartoum will not be reasonable if the individual has a well-founded fear from the Sudanese state. However, the reasonableness of relocation to Greater Khartoum for other individuals who cannot return to their home area by reason of a risk of serious harm will depend upon an assessment of all the circumstances. Finally, the respondent accepts that relocation to the Nuba Mountains is not a reasonable option.
75. Mr Thomann sets out the respondent's position in paras [4]-[14] of his final written submissions as follows (footnotes omitted):

4. The population of Nuba in the wider Khartoum Area, the focus of this appeal, is not known precisely, but is likely to number many hundreds of thousands. It is not, moreover, possible to speak of a “single Nuba experience” within that population. Rather, the position, both before and after the changes of 2019, remains that a person from a tribe which originates from the Nuba Mountains is not, on that account alone, at risk on return to Khartoum and its environs.
5. As this Tribunal found in *IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM)* Sudan CG [2016] UKUT 188 (IAC)...it has at all material times been necessary to build up a comprehensive picture of the returnee, taking into account all relevant material, in order to establish risk on return. The Secretary of State accepts that, as part of that composite assessment, a person’s Nuba ethnicity is a factor, amongst others, to be considered when determining whether the individual would be perceived as a sufficiently serious threat to the regime to warrant targeting, and treatment that amounts to serious harm. Other factors, including the returnee’s
 - a. profession,
 - b. any political activity,
 - c. evidence as to whether that activity has come to the adverse attention of the Sudanese authorities,
 - d. any past history of detention and the circumstances of such detentionwill also be relevant to that in the round assessment.
6. The Appellant’s suggestion that it is appropriate to depart from the country guidance by drawing an analogy with the extant country guidance on Non-Arab Darfuris is mistaken for a number of reasons. Whilst there are analogies, set out below, there are also significant distinctions pertaining to the communities of Nuba and Non-Arab Darfuris in the Khartoum Area. In summary the latter community is perceived not merely as larger, but more organised and politically active. It posed a greater threat to forces seeking to counter reform in 2019. Forensically, there is another important distinction. The position in this appeal is not that the Secretary of State is inviting this Tribunal to depart from extant country guidance concerning the position of the Nuba, or Non-Arabs generally in the Khartoum area. It is rather, one of endorsing the nuanced and, with respect, careful Country guidance promulgated by this Tribunal in *IM and AI*.
7. In so far as concerns the developments in the passage of time between the promulgation of *IM and AI* and this Tribunal’s determination, the changes effected have improved the position in Khartoum, and indeed between July (when the Darfuri case was considered) and now, the process of democratic transition has further progressed and the position of the interim government has further stabilised.
8. The evidence did not support in 2018, and still less does it now support, the Appellant’s core submission that a Nuba would be at real risk of ill-treatment on return to Khartoum. The Appellant’s general statements to this effect in his written submissions of 12 November 2019 are not supported by the country evidence.
9. The principal significance of the 2019 developments, and the two transitions of power associated with them, is as follows. First, these developments shed light on the nature of the popular threat presented to the Sudanese regime in 2019: a threat which takes political rather than military shape. Secondly, the Bashir

regime's response to the protests in early 2019, and that of the Transitional Military Council later in 2019, further shed light on the extent, if any, that existential threats to the regime may translate into a heightened risk to the Nuba living in the Khartoum Area. Thirdly, the change of government, and change of the political climate consequent upon it, bears upon the assessment of immediate risk, if any, on return to Khartoum International Airport.

10. Beyond this, the Secretary of State does not suggest that the formation of the Interim Government, and the opening up of democratic and civic space associated with it, represents a permanent democratic settlement. Nor that the democratic transition is bound to succeed. The Tribunal is not invited to approach this Country Guidance determination through Panglossian eyes. The institutional changes, and changes of political culture effected by the Interim Government do, however, properly fall to be taken into account in deciding, according to the relevant legal principles set out below, on the claims of the present Appellant to international protection, and on the giving of current country guidance.
 11. The Secretary of State has previously accepted that the fact that a person originates from the Nuba Mountains is a material matter to be brought to bear in assessing how the authorities are likely to react on the strength of the information known to them about him. She does not resile from that position. However, this factor alone does not suffice to place a returnee at risk per se.
 12. On a careful examination of the evidence, written and oral, it was necessary in 2018 to draw a distinction between those perceived to have an influence or history of activism considered to be a threat to the regime, and those that do not. The evidence before this Tribunal in *IM and AI* was that targeting by the, then Sudanese National Intelligence and Security Service (NISS) is not random, but the result of suspicion based upon information in the authorities' possession. None of the testimonies heard by the Tribunal at the hearing undermine the validity of that assessment.
 13. On the first issue identified for country guidance therefore, the Secretary of State's position is that neither an Appellant's ethnicity, tribal background nor his activities sur place will, per se, give rise to a real risk of persecution on return to Omdurman, nor at Khartoum International Airport.
 14. The size and diversity of the Nuba population in Greater Khartoum (Omdurman is one of Three Towns that comprise Greater Khartoum) and their environs renders it difficult to generalise whether relocation to Khartoum would give rise to unduly harsh circumstances on return. It would be wrong to underestimate the challenge of accessing housing, services and employment for an internally displaced person or a returnee with no contacts or roots in Khartoum State. There is, however, no single Nuba experience, and each individual's circumstances would need to be assessed carefully.
76. The respondent's position on the "general risk" to Nuba is further set out at paras [174]-181] of Mr Thomann's submissions as follows (footnotes omitted):
174. **General Risk:** The human rights abuses committed by the Sudanese authorities and in particular the National Intelligence Security Services (NISS) in recent years are well documented. That country evidence further suggested that a

wide range of persons may be at risk of detention and ill-treatment or serious harm. The last category may include in particular those returning to conflict areas such as Darfur and South Kordofan (see the Tribunal's guidance in *IM and AI, ...*

175. The Secretary of State accepted as part of her 2018 submissions that a person who had a credible claim to a political profile or activism such that they will have come to the adverse attention of the Sudanese authorities, or is likely to have done so, was likely to qualify for asylum. The Appellant's Nuba background is, in that context, a factor material to the assessment in the round. It is not suggested that the country position has changed so significantly that this concession, which formed part of this Tribunal's Country Guidance in 2016, should be revisited.
176. By contrast, the extant Country Guidance, and the evidence considered as part of this appeal, does not show that mere membership of a tribe from the Nuba Mountains gives rise to a real risk of persecution or serious harm on return. Nor will a failed asylum seeker from a tribe originating from the Nuba Mountains be at risk, by reason only of this status, of undue hardship on relocation to Khartoum.
177. The threat posed to the regime in 2019 is more broadly based, political, and organised. At its spearhead are professionals, and civic activists. This contrasts with the existential military threats posed to the regime in the past, in conjunction with the Darfuri and South Kordofan insurgencies. Indeed, as [Rosalind Marsden] accepted, the military strength of the ethnic communities on the periphery of Sudan was, by 2018, much reduced.
178. Consistently with those developments, the focus of recent evidence of mistreatment and targeting has been, principally, upon professionals, activists and persons partaking in the 2019 demonstrations.
179. The Appellant's case as to a bright-line risk on ethnic lines is not reconcilable either with by the size of the population of Nuba in and around Khartoum and the paucity of evidence that Nuba being targeted or mistreated there. Rather, a person's ethnic background remains one of the factors to take into account when conducting the nuanced assessment of risk described by this Tribunal in its 2016 Country Guidance on returns to Sudan generally.
180. There is not, as the Appellant's submission pre-supposes, a single Nuba experience in Khartoum (see, inter alia, the number of appointments of Nuba to the government and Supervisory Council). That absence of evidence is particularly telling in the context of the existential threats posed to successive Sudanese governments in the last 12 months.
181. A Nuba Failed Asylum Seeker likewise will not by reason of that status alone, face a real risk of persecution, serious harm or treatment contrary to Article 3 of the European Convention on Human Rights on return to Sudan. Such a claim is not, contrary to Dr Reeves' understanding, a political act which stands to be assessed by the Sudanese security services as a threat to internal stability.

77. Then at paras [192]-[194], Mr Thomann concludes his submissions as follows:

192. There is no extant country guidance dealing specifically with Nuba. Instead, the careful guidance of this Tribunal promulgated in 2016 considered the submission that risk of mistreatment may be derived solely from non-Arab ethnicity, and specifically rejected a suggestion that bright line risk distinctions could be made premised upon ethnic lines.

193. For the avoidance of doubt, and in accordance with that guidance, the Secretary of State does not accept, as suggested by the Appellant, that “certain categories of Nuba cannot be safely returned”, such as those who are politically active, students or Christians.

194. Rather, those factors form a relevant, rather than decisive, part of the overall assessment of risk on return advocated by the Tribunal in *IM and AI*. The evidence is not [that] either Christian Nuba, Nuba students, or politically engaged Nuba are a group at risk per se. Rather, such aspects are factors which need to be weighed up as part of the decision-maker’s overall assessment. Further, and in addition, the process of strengthening of civic and democratic forces, the adoption of the constitutional documents, the civic engagement of the professions, and the concurrent weakening of the Islamist forces since the 2016 country guidance was promulgated has, if anything, improved the position on return for Nuba who are Christian, educated, or active religiously.

78. Further the respondent contends that a real risk of ill-treatment does not arise simply from being a returned failed asylum-seeker. The same “nuanced” approach in IM and AI is contended to be applicable. There is no risk simply being a failed asylum-seeker. In relation to the latter, Mr Thomann contends (at paras [185]-[189]) that there is no real risk of mistreatment on return at the airport. The evidence, post the 2019 developments, does not support any real risk of mistreatment at the airport:

185. **Risk at the Airport:** The Respondent accepts that there was evidence in 2018 that Sudanese authorities, may be able to identify a person as a failed asylum seeker on return, depending on the circumstances of their departure from and return to Sudan and question such a returnee closely. That risk materialises when an individual travels on an emergency travel document, or a passport lacking a valid exit stamp, or is accompanied by escort staff on return. It is further likely that such a person would be questioned about activities since leaving Sudan.

186. Beyond this, there remains a lack of evidence that a failed asylum seeker, if detained on arrival in Khartoum, would become of interest to NISS or experience treatment which would put him at real risk merely by reason of the fact of claiming asylum. The fact that there is no formal monitoring of returns to Khartoum International Airport by human rights groups, and that removals from the UK and other countries take place in low numbers does not explain such an absence.

187. The testimonies collected by *Waging Peace* likewise cannot be described as presenting a consistent pattern of mistreatment such as to support the Appellant’s case as to risk on return by mere reason of being a Nuba.

188. The Tribunal has been provided with a 22 October 2019 CPIT Response to Information Request showing figures for Returns to Sudan compiled with the assistance of Eurostat’s published numbers and European Asylum Support Office responses.... Those figures do not purport to be complete. As will be

apparent, the numbers of voluntary and enforced returns is not large (para 4.2.3, and response to Query 6). It will further be noted that there is no formal post-return monitoring. It is nonetheless striking that the evidence of a risk of serious mistreatment on return, as opposed to questioning, by reference to ethnic profile only, is absent. The Appellant's suggestion that such a risk may exist, in the absence of such evidence, is mistaken.

189. In so far as that position has changed since 2018, the evidence is that the security position at the airport has, if anything, become less strict. There are no reports of recent mistreatment. RM's supposition that historical opposition to the Bashir regime would not be viewed negatively in the current climate is astute, and her anecdotal evidence as to the nature of the remaining security presence reflects this.

79. The respondent accepts internal relocation is not available to an individual who is at risk from the Sudanese Government (para [183]). However, whilst in principle available to a returnee who cannot return to his home area by reason of risk of serious harm, relocation to Greater Khartoum will not generally be unreasonable (para [184]):

184. For returnees more generally, not fearing state persecution but unable to return to their home area by reason of a risk of serious harm, the feasibility of internal relocation has depended upon all the circumstances of the case. In principle, Khartoum and Omdurman remain areas of viable relocation for those seeking to leave the conflict areas in South Kordofan. That submission does not overlook the difficulties described by interlocutors for those arriving in the poorer areas of Khartoum in accessing healthcare, education and employment. The description of societal factors and discrimination is further noted. However, the sheer size and diversity of the population in Khartoum from Darfur and the Two Areas renders the submission that relocation will be unreasonable in the generality of cases unsustainable. Instead, the question as to whether access to economic activity, basic services and shelter will be available to a returnee or displaced person requires a fact-specific assessment of the circumstances of the individual returnee. See, for example, the position of the present Appellant, considered further below.

IX. THE COUNTRY GUIDANCE ARGUMENT

80. We set out the existing guidance above because, although (apart from that one reference in IM and AI) it is not concerned with those of Nuba ethnicity, Mr Jacobs places considerable reliance upon it, contending that Nuba are treated in a like manner to non-Arab Darfuris as a marginalised group who are likely to be linked through their ethnicity to political and military conflicts in their areas of origin. In his submission, the CG decisions on non-Arab Darfuris should be followed and the appellant succeeds. He relies on the fact that before the UT in AAR and AA the respondent conceded that the situation in Sudan remained volatile and that there was insufficient evidence currently to show that the guidance in AA and MM should be changed.

81. By contrast, Mr Thomann invites us not to follow or apply AA and MM where the respondent's concession was merely that there was not "cogent evidence", given the

volatile situation, to justify revising the CG decisions and, in the cases of the particular appellants before the UT, further delay was not appropriate and their appeals should be dealt with on the basis of the existing CG cases.

82. Instead, he relies upon IM and AI and invites us to apply its approach (by analogy) in assessing, what if any, is the risk of persecution to those of Nuba ethnicity returning to Sudan.

83. The argument is as follows: (i) Country Guidance establishes that group A is subject to risks X. (ii) In the present case evidence shows that the position of group B is the same as that of group A. (iii) Therefore the Country Guidance applies to group B. Proposition (ii) is a matter for the evidence in the present case; but the derivation of proposition (iii) from propositions (i) and (ii) is an issue of law. We reject Mr Jacobs' submission that Country Guidance applies by analogy in the circumstances he seeks to set up.

84. The relevance of the CG decision (in the context with which we are concerned) is that it has a precedential effect in any case before the FtT or UT where the individual claims to be at risk as a non-Arab Darfuri. That is made clear by the paragraph 12.2 of the Senior President's *Practice Direction (Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal)* (10 February 2010 as amended):

"12.2. A reported determination of the Tribunal, the AIT or the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:(a) relates to the country guidance issue in question; and (b) depends upon the same or similar evidence."

85. The "authoritative" nature of a CG decision "in respect of a particular matter" as set out in para 12.2 of the Practice Direction derives its force from s.107(3) of the Nationality, Immigration and Asylum Act 2002 (as amended).

86. Paragraph 12.4 of the Practice Direction emphasises the importance CG decisions play in treating like cases alike and that a failure to apply the decision (or properly explain why it is not applicable, in all likelihood because of new cogent evidence) is likely to be an error of law:

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

87. A Country Guidance decision's precedential effect extends, therefore, to any other appeal so far as it "relates to the country guidance issue in question". A tribunal hearing an appeal in respect of a non-Arab Dafuri must, therefore, apply the CG decision in the absence of "very strong grounds supported by cogent evidence" (see SG (Iraq) v SSHD [2012] EWCA Civ 940 at [47]). The parties in a case covered by

Country Guidance are not required, indeed are relieved of the obligation, to lead the relevant country background evidence: the CG decision will suffice.

88. However, a CG decision dealing with the risk to non-Arab Darfuris returning to Sudan has no precedential effect in a case not concerned with a non-Arab Darfuri. That is because it has no collateral precedential effect in other cases. A CG decision cannot be used as *the* evidential tool to overcome (or indeed replace) the need to establish by evidence the position of non-Arab Darfuris in this or, indeed, in any other case not involving a non-Arab Darfuri.
89. If we were concerned in this case with a non-Arab Darfuri appellant, we would know, applying the CG cases, the correct outcome of the appeal, subject to there not being cogent evidence to justify not applying them. That is not the same as us knowing what is the actual position of non-Arab Darfuris in the absence of evidence on that issue. This appeal was not argued on the basis of evidence about non-Arab Darfuris but rather, on this point at least, that they are at risk (applying the CG decisions) and the Nuba are in the same position (see the expert and background evidence). We are not in any position to second-guess the UT's position (and the respondent's concession) in August 2019 in the case of AAR and AA and we do not do so. Despite Mr Jacobs' assertion that the position of Nuba is the same as that of non-Arab Darfuris, this is not a decision about non-Arab Darfuris and, subject only to what is said at paragraph 252, nothing in this decision should be taken to comment in any way on the existing Country Guidance in relation to non-Arab Darfuris.
90. So we reject Mr Jacobs' submission that we should base our decision on the guidance contained in AA and MM. The risk, if any, to Nuba on return to Sudan must be determined on the relevant evidence before us relating to the position of Nuba in Sudan.
91. Likewise, of course, IM and AI cannot be 'applied' as country guidance to Nuba as the case did not concern them. The country guidance issue was different even though, in passing the UT made some reference to their position at [203]. The UT's view on there being no real risk simply as a failed asylum-seeker might be considered part of the country guidance but for the fact that it is not identified in the UT's decision as a point on which the decision gives guidance. We are content to treat it, therefore, as not a country guidance finding and to reach our own conclusion on the evidence before us.
92. In any event, it seems to us that Mr Thomann was not seeking to ask us to apply IM and AI as a CG decision but rather contending for a "composite assessment" and "fact-sensitive" approach in determining whether an individual of Nuba ethnicity would be at risk on return as someone who would be (or would be perceived to be) a sufficiently serious threat to the Sudanese regime to warrant targeting and, therefore, at real risk of serious harm. In other words, the general position is that an individual who claims to be at risk will need to establish the risk on the facts of the individual case, without the benefit of any sweeping assertion derived from a Country Guidance case. The need to consider any Nuba claim individually was the position which Mr Thomann sought to substantiate on the basis of the evidence.

X. DISCUSSION

93. Having rejected the appellant's argument based on the non-Arab Darfuri CG cases, we turn to consider the appellant's claim based upon the evidence relating to Nuba in Sudan. In reaching our findings, we consider the risk to an individual of Nuba ethnicity:

(i) in the Nuba Mountains in South Kordofan;

(ii) in Greater Khartoum; and

(iii) at Khartoum International Airport on return; and

(iv) we conclude by considering whether internal relocation to Greater Khartoum is an option for a person of Nuba ethnicity at risk in their home area elsewhere.

A. The Nuba Mountains and South Kordofan

94. We consider the position in the Nuba Mountains over two time periods: (a) between 2011 and 2016, covering the period from the beginning of hostilities and ending with the ceasefire in 2016; and (b) since the 2016 ceasefire to the present.

95. The conflict in the south of Sudan (2003-2005) which led to the cessation of South Sudan (2011) was followed by an armed struggle by rebels (2011-2016) based in the Two Areas, i.e. South Kordofan and the Blue Nile, under the umbrella of the SPLM-N. That armed struggle commenced in June 2011 in the Nuba Mountains and spread to the Blue Nile in September 2011. The SPLM-N split into two factions in 2017: that in the Blue Nile led by Malik Agar and in the Nuba Mountains by led by al Hilu. As Dame Rosalind told us in her oral evidence and March 2018 report, the al-Bashir regime was opposed to the Nuba tribes because many Nuba fought with the SPLM-N on the side of the south Sudanese in the North/South civil war. Her evidence was that in the 1990s the regime declared a Jihad against the Nuba. The armed conflict in the Nuba Mountains in 2010/2011 led to aerial bombing campaigns, ground attack, forcible displacement and a humanitarian crisis. The situation is documented in the Asylum Research Consultancy Report: "South Kordofan and the Blue Nile Country Report" (dated 1 June 2016) covering the period up to 1 April 2016. We have no reason to doubt that evidence or that of the witnesses we heard about the period up to the ceasefire in 2016.

96. Dr Reeves described events in the South Kordofan region including ethnic cleansing, the Sudanese government's blockade of humanitarian assistance to those in the Nuba Mountains and, on the basis of a leaked Minute of a meeting of senior military officials on 31 August 2014, the use of starvation as a method of war when it was agreed that the sorghum crop in the Nuba Mountains should be destroyed. He characterised the government's approach as amounting to genocide. As his evidence was given in June 2018, Dr Reeves' evidence did not take into account the recent developments in the political situation in Sudan since April 2019.

97. In the Waging Peace Report of March 2018, Ms Crowther referred to attacks on civilians and the indiscriminate bombing of civilian targets including schools and hospitals. She also referred to the blockade of humanitarian aid to the region. She also said that the situation on the ground “has largely played itself out away from public attention” as a result of the expulsion on NGOs in 2009 and the almost “non-existent” press coverage due to the Government’s deliberate obstruction of media freedom.
98. Both Dr Reeves and Ms Crowther spoke of contacts with Dr Tom Catena, who worked – and continues to work – in the Nuba Mountains as describing the situation as a “war zone”. That said, there has in fact been a continuing cease-fire by the Sudanese authorities and the rebels since 2016 and, in our view, the developments in 2019 including the peace-talks in Juba between the Government and the rebels, have only made the cessation of hostilities more stable. Ms Crowther, in her evidence, said that there had been no aerial bombing activity in 2017 because “the government of Sudan has been on its best behaviour” whilst negotiating with, and obtaining a lifting of sanctions by, the US government in 2017. The same report does, however, record harassment of women students at University in South Kordofan in January 2018.

2011-2016

99. What, then, was the position in the Nuba Mountains up to the cease-fire in 2016? We accept that the situation at that time created dire humanitarian conditions engineered and maintained by the Sudanese state. We can well understand why individuals of Nuba ethnicity left the Nuba Mountains area prior to the 2016 cease-fire when faced with the violence and humanitarian conditions that then pertained there. Based upon the evidence we have been referred to, it is likely that Government action, including the use of violence and attacks by Government forces, would have engaged Art 15(c) of the Qualification Directive. Equally, the conditions of deprivation for the Nuba inhabitations of the region – the “humanitarian crisis” including the blockade of humanitarian assistance and the deliberate Government tactic of starvation – up to the cease-fire in 2016 may well have, in an individual case, reached the ‘threshold’ of “inhumane or degrading treatment” contrary to Art 3 of the ECHR.

Since 2016

100. What of the current situation? The appellant’s case is that the ongoing violence in South Kordofan creates a real risk of serious harm and targeting of all Nuba. By contrast, the Secretary of State, whilst not accepting that there was previously a real risk to all Nuba prior to the cessation of hostilities in 2016, contends that the current circumstances since the cease-fire do not give rise to a real risk of serious harm or persecution to an individual simply due to their Nuba ethnicity.
101. We acknowledge that despite the 2016 cease-fire, violent attacks by government forces, including the RSF (headed by Hemeti) have taken place in South Kordofan. The “Human Rights Update: April – June 2019” notes that:

“Although the number of attacks still have not reached the level prior to sharp dehumanisation that began in June 2016, there were more human rights violation incidents perpetrated by the Sudanese government in the Two Areas during the first six months of 2019, compared to the prior two years. Similarly, as a result, there were more people injured and killed during the first six months 2019 than during the last six months of 2018.”

102. In that regard, what is said there may reflect the heightened tension during early 2019 as a result of the protests taking place in Sudan, principally in Greater Khartoum, against the al-Bashir regime.
103. In his written submissions (at para [73]), Mr Jacobs places particular reliance upon four examples of recent incidents or attacks by government or RSF forces which were referred to by Dame Rosalind in her Addendum Report of 17 October 2019. The incidents took place in October 2019.
104. First, on 4 October, it is reported that RSF’s forces attacked the Nuba village of Tongal using 25 pick-up trucks mounted with machine guns. Secondly, on 5 October Shamseddin Kabbashi, a military member of the Sovereign Council (who is himself a Nuba) and General Hemeti have been recruiting from both Arab and Nuba tribes in government-controlled areas to join the RSF. Thirdly, on 16 October, al Hilu’s spokesman announced that RSF soldiers in 25 land cruisers had ambushed civilians inside SPLM-N controlled territory near Khor Warl abducting 13 people and killing two others including a local Sheikh who had objected to the local nomads passing through farm lands. Fourthly, on 7 October the RSF mounted an attack on people living near the goldmines at Talodi using 27 armed pick-up trucks. They beat and arrested civilians, injuring 10 people, and looted their property. Dame Rosalind told us that most of these companies are owned by the RSF, including Hemeti and others in the regime.
105. Whilst we have no reason to doubt the evidence of these violent incidents in the Nuba Mountains, they do not, in our judgment, demonstrate a real risk to all Nuba living there. In our view, the attacks were targeted in very particular circumstances against certain individuals and/or organisations and are not representative of widespread abuses or violence directed against Nuba generally. The incident around the goldmine in Talodi appears to arise as a result of demonstrations by local residents which had been going on for a number of months over the use of mercury and cyanide by goldmining companies which they claim have caused serious health and environmental problems. Ms Crowther also gave the example of recent violence in South Kordofan as the attack on the goldmine at Talodi. That incident has the feature of a targeted attack as a result of a grievance felt by the forces of the government or supported by the government. The same can be said of the attack following the ‘dispute’ with the nomads passing through farmland.
106. In her oral evidence, Ms Crowther referred to an e-mail dated 19 July 2019 from the South Kordofan/Blue Nile Coordination Unit (Annex V of her statement dated 27 August 2019) and its reference to cattle raiding incidents by militia in South Kordofan. In her oral evidence, she agreed these were individual incidents and that there was no evidence of general round-ups in South Kordofan. Ms Crowther also referred to evidence from an activist (Annex VII of the same statement) who said that

the security and humanitarian situation in South Kordofan had not changed and the militias were committing many atrocities. In her oral evidence, she agreed that he had not given any specific examples but that was because he had not been asked but he had given her some in discussions. We do not know what those examples were and, in reality, his evidence is general without giving any supporting incidents.

107. Dr Reeves' evidence was, necessarily, restricted to the position prior to the recent developments when he gave his evidence in May/June 2018. In our judgment, Dr Reeves' opinion that there was in 2018, prior to the 2019 political developments, a real risk to *all* Nuba in South Kordofan on return is also not borne out by the evidence.
108. Both Ms Crowther and Dr Reeves referred to communications from Dr Catena. Dr Catena, working as a doctor, is based in the Nuba Mountains. He characterises the Nuba Mountain area as having been, and continuing to be, a "war zone". Whilst that may be an entirely fitting historical characterisation of the situation given the history of conflict and violence in South Kordofan between 2011 and 2016, in our judgment, it is not a fitting description of the present situation in South Kordofan supported by the evidence of the current circumstances.
109. Whilst attacks against Nuba individuals have taken place, the examples we were referred to are limited. We were told that there was effectively a media blackout on what was happening in the Nuba Mountains. We can, however, only reach a decision on the evidence before us; not on evidence that could not be produced if that is the case. The clear position, in any event, is that we saw nothing to suggest that the sources of information from the Nuba Mountains have simply ceased. On the contrary, we were presented with evidence through the witnesses (including from Dr Catena) and from Ms Crowther following a visit in December 2018 to camps on the South Sudan side of the border with Sudan and the South Kordofan region.
110. Mr Thomann conceded that an individual of Nuba ethnicity, if at risk elsewhere in Sudan, could not be expected reasonably to relocate to the Nuba Mountains. We will consider internal relocation, *inter alia* to the Nuba Mountains, later but, for the present, we should not be taken to be endorsing that concession. However, of course, it is not a concession that there is a real risk of persecution or serious ill-treatment to all Nuba in the Nuba Mountains. Rather, it is an acceptance by the respondent that a person of Nuba ethnicity, not from the Nuba Mountains, cannot reasonably be expected to relocate there to live.
111. We accept that there has been some violence and there have been some attacks against Nuba individuals in South Kordofan in the recent past. The situation in the Nuba Mountains, unlike that in Greater Khartoum, has been one of real conflict and humanitarian crisis. Nevertheless, the evidence concerning the current position does not support a finding that the level of conflict rises above that of a few, albeit highly deplorable, violent incidents. The humanitarian blockade has now been lifted and the Sudanese government is permitting aid to pass into South Kordofan both from within Sudan and from foreign sources. We will deal below more generally with the events in Sudan in 2018/2019 and the positive political developments since mid-2019. A ceasefire by both sides has held since 2016 and has, in our view, only become

more secure since the political developments in 2019. A negotiated peace-process continues between the Sudanese government and the rebel groups, including the SPLM-N. Even though, briefly in the Autumn of 2019 al-Hilu withdrew, he has now returned to take part in the talks. The events in 2019 have, in our judgment, 'dampened down' the motivation to use military action in the Nuba Mountains and turned the Government's focus towards a political settlement.

112. The evidence does not establish a widespread or consistent pattern of targeted or random violence or attacks directed against Nuba by Government forces (or those acting on behalf of the Government) in the Nuba Mountains. The incidents are limited in number and, as we have said above, arise in specific contexts. The evidence falls well short of showing that in October 2019 or now there is a risk to Nuba in the Nuba mountains that is universal or consistent or that arises solely from their ethnicity. Whatever was the position during the conflict between 2011 and 2016, the evidence of the current circumstances does not establish that there is a real risk of persecution or serious ill-treatment contrary to Art 3 of the ECHR faced by all Nuba in South Kordofan.
113. We were not invited to consider the application of Art 15(c) of the Qualification Directive to the present situation in the Nuba Mountains. In the light of that we would only say this: nothing in the evidence suggests that a claim for humanitarian or subsidiary protection, based upon Art 15(c) and establishing a real risk of indiscriminate violence, would have any prospect of succeeding now.

B. Greater Khartoum

114. The position of Nuba in Greater Khartoum was the subject of a great deal of evidence before us. The witnesses' evidence had to traverse the emerging situation in Sudan, in particular in Greater Khartoum, following the protests in late 2018, the fall of the al-Bashir government in April 2019 and the establishment of a new government and constitution in the summer of 2019. The emerging political situation inevitably created evidential uncertainties and ambiguity, not least arguments concerning the sustainability of what are accepted by the appellant to be, positive, democratic developments in Sudan.
115. It was, we have no doubt, a challenge for the witnesses to maintain an up to date assessment of the situation in Sudan. In that regard, of course, Dr Reeves' evidence did not deal with these developments as it pre-dated them. Ms Crowther's most recent evidence was informed by her contacts within the relevant communities in the UK and following a visit to refugee camps in South Sudan in December 2018. Dame Rosalind Marden's evidence was, at least in part, more directly informed. In October 2019, she made a visit to Greater Khartoum where she met a number of individuals, including a group of six young Nuba men in Greater Khartoum.

Prior to the 2018/2019 political developments

116. The Nuba have historically been discriminated against in Sudan. There was a consistency of evidence before us that this was the case (see, e.g. the evidence of Dame Rosalind, Madeline Crowther and Dr Reeves). Their physical appearance, often not being Muslim and being non-Arab, has marked them out as different;

particularly since the policy of 'Arabisation' and Islamisation of the state which was part of the al-Bashir government's policy. We accept that the Nuba have often been the subject of discrimination, for example, in their social, economic and religious lives both in the Nuba Mountains and Greater Khartoum and have been verbally abused being referred to as "abid" or "zurgha" derogatory terms meaning "slave" and "dirty black" respectively. In Greater Khartoum, Nuba live predominantly in the shanty towns of the 'Black Belt', where their circumstances are likely to include poverty and deprivation.

117. Dame Rosalind told us, and we accept, that the al-Bashir regime (and its security apparatus in particular) has treated Nuba (and those who came from the Nuba Mountains) with suspicion because they were regarded as possible political opponents and associated with the rebel forces, in particular, the SPLM-N. We accept that this suspicion might well have led to a risk of arbitrary arrest and detention by the NISS particularly so at times of heightened political tension, for example during the active conflict in the Nuba Mountains between 2011 and 2016. The advance by the SPLM-N out of South Kordofan towards Greater Khartoum in April 2013 was, as Dame Rosalind told us, a major humiliation for the (then) Sudanese government and, she told us, resulted in round ups and arrests of Nuba. In her last 2018 report she stated:

"As long as there is no comprehensive peace settlement addressed as the root causes of Sudan's internal conflicts, the Nuba will continue to be regarded with suspicion by the authorities as likely political opponents and will remain at risk of arbitrary arrest and detention by Sudan's powerful National Intelligence and Security Service (NISS)."

118. In her oral evidence in May/June 2018, Dame Rosalind said that not all Nuba would be suspected of supporting the SPLM-N but those who had received a higher education were more likely to be targeted (that is to say, for the most part, not those living in deprived circumstances in the 'Black Belt'). She said that the authorities could not monitor all Nuba and that the NISS worked in Greater Khartoum, through a network of informers. Her evidence was that large numbers of Nuba - in the hundreds of thousands or in her later evidence as many as 1.5 million - lived in Greater Khartoum, largely in the 'Black Belt'. Dame Rosalind spoke of the arrest of 200 activist individuals in January/February 2018 but that all had been released. In that, she disagreed with the evidence of Ms Crowther that a number of detainees had not been released. Overall, on this point, we prefer Dame Rosalind's evidence given her exceptional experience of Sudan based upon her diplomatic experience and her recent meeting with representatives in Nairobi and her recent visit to Sudan. In our judgment, Dame Rosalind's 2018 evidence - given before the recent developments in Sudan - did not go as far as supporting a finding that there was a real risk of persecution or serious ill-treatment to *all* Nuba in Greater Khartoum.
119. In her October 2019 oral evidence, Dame Rosalind said that there was no evidence of Nuba being targeted prior to the April 2019 fall of the al-Bashir regime. She said that "could well have been taking place" but emphasised that any targeting was "to do with politics and not ethnicity".

120. Ms Crowther in her 2018 evidence, postulated a risk to Nuba in Greater Khartoum as a result of their association with rebel groups. She also said that “at times of political upheaval” this risk is increased because of the perception of association with all, or at least sympathy for, rebel and opposition activity. She noted the wide scale protests in early 2018 which were marked by arrest and ill-treatment of hundreds of opposition figures. When the regime is threatened, Ms Crowther expressed the view that the targeting of the Nuba intensified. That, she said, involved attacks upon demonstrators and arrests at the beginning of 2018 when widespread protests against the economic crisis began. Much of Ms Crowther’s evidence related to the position of returnees to Sudan which we will deal with below.
121. Ms Crowther also said that there was systematic discrimination against Nuba in Greater Khartoum as a result of the government’s Arabisation policies. She identified difficulties in access to employment, housing, healthcare and education. She also, like Dame Rosalind, referred to the difficulties that an individual of Nuba ethnicity might have in obtaining an ID card, which was crucial to access to a number of services.
122. In our judgment, Ms Crowther’s evidence does not establish a consistent picture of a risk of persecution or serious ill-treatment to Nuba in Greater Khartoum prior to the recent political developments in Sudan. The difficulties to which she referred are not persecution; and the incidents of ill-treatment are not tied solely to ethnicity.
123. Speaking to the situation in 2018, Dr Reeves’ evidence was that all Nuba would face “unacceptably high risks” if returned to Sudan including Greater Khartoum. We are here only concerned with risk whilst in Greater Khartoum and not with any risk on return at the airport. Much of his evidence was directed to that latter issue. We accept his evidence, consistent with the other witnesses and material to which we were referred, that the Nuba are, as an ethnic group, discriminated against, and that a vast majority undoubtedly live in impoverished circumstances in the shanty towns in the ‘Black Belt’ of Greater Khartoum. However, Dr Reeves’ evidence of any risk to returning Nuba was given at a time when, in his view, there was an intensification of government repression as a consequence of the economic situation and protest beginning in 2018. In his evidence, Dr Reeves was asked to identify recent examples of Nuba being subject to random targeting. The example given was in the 2015 report by Asylum Research Consultancy, “Situation in Khartoum and Omdurman” (9 September 2015). That concerned an activist who had been arrested at a meeting. It does not begin to support Dr Reeves’ position that there was a real risk to all Nuba in Greater Khartoum.
124. Looking at the position in 2018 prior to the 2019 political developments, in our judgment, the evidence of Dame Rosalind and Ms Crowther does not support a conclusion that all Nuba were at risk simply because of their ethnicity. The sheer number of Nuba said to live in Greater Khartoum, whether in the hundreds of thousands (or in even greater numbers) but with only limited examples of ill-treatment, strongly suggests the contrary: that Nuba were not at risk as such. Looking at the evidence as a whole, we consider that it goes no further than being consistent with a conclusion that the risk to any individual was based on being perceived to have been a political threat to the regime. Being Nuba would be a

relevant factor as it could create a suspicion of support for rebel groups such as the SPLM-N (particularly at times of heightened political tension), but would not, in itself, result in risk of being perceived as a threat and consequent risk of arrest, detention or ill-treatment that could amount to persecution or serious ill-treatment; a risk of that sort might, however, flow from political activity in Sudan or abroad which was known to the authorities.

125. In the F-FR 2016 the risk to Darfuri students was highlighted:

“Asked about the profile of groups of persons monitored and targeted by the authorities in Khartoum, the two lawyers explained that Darfuri activists were the most targeted group compared to activists from the Two Areas, particularly Darfuri Student activists who took part in demonstrations. According to the sources, Darfuris were more organised than people from the Two Areas, and this made Darfuris the most targeted group and caused them to be treated most harshly by the authorities when arrested.”

126. The targeted group was activists, in particular student activists in Darfur but the report also recognised that student activists from the “Two Areas” may also have been monitored and targeted though, to a lesser extent. The relevance of being involved in what was, or was perceived to be, “political activity” was also emphasised in the Landinfo Report, “Sudan, Scope Political activity critical of the regime” (11 November 2013).

127. Likewise, the examples relied upon by Mr Jacobs from the Asylum Research Consultancy report in 2015 do not support there having been a general targeting of Nuba. One example concerned Nuba attacked and detained by police following a retaliatory beating by Nuba of a police officer accused of raping a woman of Nuba ethnicity. Another entailed the arrest and ill-treatment of Nuba by the NISS at the time of the April 2015 elections. The final passage specifically focused upon ill-treatment focussed on those perceived as political opponents.

128. In the F-FR 2016, at para 3.3 the absence of targeting exclusively due to ethnic background was noted as follows:

“Four sources observe that all communities from Darfur or the Two Areas in Khartoum could be at risk of mistreatment by the NISS or indicated that persons from these communities may be targeted by the authorities due to the ethnicity alone. However, none of the sources provided specific information indicating that persons from Darfur or the Two Areas were being subject to mistreatment by the authorities exclusively due to their ethnic background.”

129. The interest, however, that the Sudanese authorities had in students, journalists and activists including political and human rights activists was noted by two human rights lawyers in the F-FR 2016 at page 67:

“The source added that in addition to Darfuri student activists who were the most targeted group, journalists, lawyers and other individuals or groups were in opposition to the government were monitored by NISS. It was added although the political department in the NISS, which was responsible for monitoring the opposition, was a small department, it was divided into small

specialist sections which each was responsible for a certain opposition group, for example one section for political parties, another section for students, the third section for rebel groups etc.”

130. Mr Jacobs, in his written submissions, referred to two passages quoting sources in the F-FR Report 2018 at para 3.4.5 and 3.4.7. The report mainly concerned the position of Darfuris and the risk to returned failed asylum seekers. One source stated that he thought “Darfuris would be targeted if they took part in demonstrations” (para 3.4.5). Whilst one civil society activist stated that the Nuba people and Darfuris are often associated with rebel groups, a human rights defender considered that “not all Darfuris are suspected of supporting rebels; just those that are suspected of opposing the government” (para 3.4.7). The many sources link any round-ups and large scale arrests of Darfuris in Greater Khartoum (and not all sources were aware of wide-scale round-ups or arrests of Darfuris) to the war in Darfur (see section 3.3) and now that that conflict intensity has reduced, one source at the British Embassy said that “there is no need to lock up Darfuris” (para 3.3.2). To the extent relevant to Nuba, in our judgment, the focus of the accounts of ill-treatment, arrest and detention is on those who are politically active, for example, those involved in demonstrations and students (see citations at [A224]-[A230]).
131. We note the Australian Government Report (Department of Foreign Affairs and Trade), Country Information Report: Sudan (27 April 2016) at paras 3.10 – 3.12. At 3.12 states:
- “Overall, DFAT assesses that Nuba currently face a high risk of discrimination and violence. Given the actual or perceived association of Nuba with the armed opposition, Nuba are likely to face a high risk of discrimination and violence outside the Nuba Mountains, including in Khartoum.”
132. That was said, however, in a report covering a period prior to April 2016 when the cease-fire first took effect in the Nuba Mountains. It was, therefore, reflecting on a time of considerably heightened political tension given the on-going conflict with the SPLM-N in South Kordofan. As we have noted, the evidence suggests that there was an increased risk to individuals such as the Nuba at such times.
133. Overall, therefore, we have concluded that the mantra that there was a risk to all Nuba, because being Nuba was perceived prior to the 2019 political developments as making an individual a potential political opponent, is not borne out by the evidence. In our judgment, prior to those recent developments, the evidence does not establish that a real risk of persecution or serious ill-treatment arose from being Nuba and living in Greater Khartoum. There was, however, evidence of specific targeting of individuals (with Nuba ethnicity) who had been politically active, for example a journalist and someone who had spoken on Sudanese political issues at the UK Parliament. There are examples in the evidence of individuals of Nuba ethnicity being subject to harassment and even detention (e.g., those involved in football) but the level of such incidents prior to 2019, was not widespread or sufficient in number to lead us to conclude that all Nuba were at real risk of being subjected to harm amounting to persecution or serious ill-treatment.

134. In her oral evidence in May/June 2018, Ms Crowther identified a number of risk factors that would, in her view, have given rise to specific concerns for Nuba on return: students, those participating in demonstrations, those engaged in political activities, those educated above primary level, those who have travelled abroad, and those returning with documents which identified them as failed asylum-seekers.
135. Dame Rosalind in her response to the F-FT 2018 stated that being a Nuba failed asylum seeker created a significant risk of ill-treatment because of presumed association with the SPLM-N. That view was, in many respects, backed away from in her oral evidence, in that she accepted that not all Nuba were at risk in Greater Khartoum and she did not know of any recent examples of targeting of Nuba. In addition, she referred to a number of risk factors, albeit again in the context of returnees: actual oppositional activity in Sudan or abroad; membership of professional classes; profile of being a human rights defender or activist; a blogger/social media activist; young male of military age; a student. However, she goes on to state that it is difficult to predict who the NISS will target as the way they operate is “arbitrary”.
136. The evidence, in our view, read as a whole, focused any potential risk upon political activists, journalists, human rights activists and students who may, as a result, have been perceived by the government to be a threat. (We will return to whether a failed asylum seeker (whether or not of Nuba ethnicity) would have been at risk on return to Sudan at the airport.) Given the history of conflicts in Sudan, we also accept that being Nuba and/or being from the Nuba Mountains was a factor to take into account in assessing whether the individual would fall into the category which we have identified as potentially being at risk of persecution or serious ill-treatment. Ethnic origins and geographical origins had the potential to raise suspicions of rebel sympathies for the al-Bashir regime. They were not, however, in themselves sufficient to put an individual at risk.
137. As we have already commented, the appellant’s contention that *all* Nuba were (and still are) at risk of persecution or serious ill-treatment in Greater Khartoum as perceived supporters of the SPLM-N is difficult to sustain given the size of the Nuba population in Greater Khartoum (whether in the hundreds of thousands or even greater) and the incidence of the tensions, arrests and ill-treatment to which the witness and background evidence spoke. Of course, a conclusion that any particular individual would have been at “real risk” of persecution and/or serious ill-treatment does not mean that *every* Nuba in Greater Khartoum was, in fact, subject to persecution or serious ill-treatment. Nevertheless, the disparity or, as Mr Thomann put in his submissions, the disconnect between the size of the Nuba population in Greater Khartoum and the incidence of targeted mistreatment documented in the evidence speaks powerfully against the appellant’s submission that *all* Nuba were at real risk.
138. We accept the evidence, for example of Dame Rosalind and in the F-FR 2018 (sections 5.1 and 5.2), that the Sudanese authorities monitored political activism through informers both in Greater Khartoum and also abroad such as in the UK. Potentially, therefore, political activism in-country and abroad could have come to the attention of the NISS. But, as Dame Rosalind told us, the NISS could not, in practice, monitor

all the Nuba population in Greater Khartoum given its size. Knowledge, therefore, of any particular individual's activities, which might have put an individual at risk, cannot necessarily be inferred simply by the evidence that NISS did monitor groups, such as the Nuba, in Greater Khartoum.

139. In our view, a number of factors would be relevant in order to determine whether, prior to the developments in 2019, an individual would be both known to the authorities, and also be perceived as a threat to the regime. Those factors include the individual's ethnicity, their place of origin (where it is a conflict zone), any actual political activity in Sudan or abroad, their profession (including whether they are a journalist or human rights activist), any previous detention or past interest by the Sudanese authorities in the individual and also whether they were a student. As regards the latter, we heard evidence concerning the student activity both of Darfuris and Nuba. Whilst the evidence was that the Darfuri students were better organised and, it can perhaps be said, more politically active, we accept that being a student was a relevant factor when assessing risk regardless of whether the individual was a Darfuri or Nuba.
140. One other potential risk factor which arose in the evidence was an individual's religion, in particular that some Nuba were Christians. It was not suggested to us that as such a person would have been at real risk of persecution. Mr Jacobs did not make much of this factor in his initial written submissions. However, in response to Mr Thomann's submissions, he relied upon the evidence that, he said, showed that "Christians from the Nuba Mountains are uniquely targeted" (US Commission on International Religious Freedom, "Annual Report 2019, Sudan" set out in "CPIT 1" at para 11.2.2 and at [A283]). He relied on evidence that Christian Churches had been demolished and Christian schools were forced to operate on Sundays. He also relied on Dame Rosalind's evidence, following her October 2019 visit to Greater Khartoum, that she had been told by one Nuba man of continuing harassment of Christians, including the Supreme Court's decision in October 2019 to confirm criminal charges against the executive committee of a Christian church which was predominantly Nuban. He submitted that Christians suffered systematic discrimination and that "Nuba Christians form a risk category".
141. We do not accept that the evidence supports such a view. We accept that there are examples of Christians in Greater Khartoum experiencing harassment and limitations on their ability to follow their faith. The evidence does not demonstrate, however, this is widespread or, in itself, reached a sufficiently high and sustained level to have amounted to persecution or serious ill-treatment of Christians. However, religion, in particular if an individual were Christian, was a risk factor. It was a factor that might potentially have contributed to the overall assessment of risk to an individual given the Islamic nature of the Sudanese State under al-Bashir. This may, of course, have been inter-linked with an individual's Nuba ethnicity given that some Nuba are Christian.

After the 2018/2019 political developments

142. That being the position prior to the 2018/2019 developments, what, if any, impact have those developments had upon any assessment of risk to Nuba in Greater Khartoum?
143. The political developments in Sudan between December 2018 and the final hearings in this appeal were charted in the written and oral evidence of Dame Rosalind and Ms Crowther and a number of up-to-date documents, in particular the developments are set out in detail in the "CPIT 1" document. We earlier summarised the main developments (paras 10-13).
144. The essential features of the developments are not in dispute. Mr Jacobs, in his submissions, described what had occurred in Sudan since the fall of al-Bashir in April 2019 as "positive" developments. Principally, these consisted of the establishment of the TMC in April 2019 following the overthrow of al-Bashir.
145. Even more significant are the developments that followed in the summer of 2019. Following agreement reached on 5 July 2019 between the TMC and the FFC, the SC was established consisting of eleven civilian and military members, which, for the first 21 months, is chaired by a military member (para 6) who is al Burhan. The SC has a majority (six) of civilian members – five nominated by the FFC and one selected by agreement between the FCC and TMC (para 5). It will be chaired by a civilian member for the remaining 18 months (para 7). The transition to civilian control is planned for 2021. During the transitional period, a stated aim is to dismantle the al-Bashir regime and establish "the state of law and institutions". The agreement provides for a Legislative Council (paras 14-18) and an independent Investigation Committee to investigate the 3 June 2019 incidents and "related incidents of human rights violations committed against civilians and militaries" (para 19).
146. A new Constitution, which was appended to Dame Rosalind's report of 27 August 2019, was agreed on 21 August 2019 and provides for democratic institutions and a civil society. The present structure is to remain in effect for 39 months (the transitional period) when elections will be held.
147. The Constitution enshrines a number of institutions including the SC (Ch 4), the Cabinet and its constitution (Ch 5), the judiciary including an independent Constitutional Court (Ch 8), and an independent public prosecutor (Ch 9). The Constitution also enshrines a number of "uniformed agencies" (Ch 11): the armed forces, the police, the GIS and military courts. The role of the GIS is limited to "gathering and analysing information" and providing it to the competent authorities (para 36).
148. The Constitution also provides, in some detail, for the "state agencies" seeking to achieve "a just and comprehensive peace" ending regional conflicts in Sudan (Ch 15).
149. The Constitution contains a "Rights and freedoms Charter" (Ch 14) setting out a number of rights, including the right to "life and dignity", to "citizenship and nationality", to "protection from torture", to "personal freedom and security", for "women", for "children", to a "fair trial", to "freedom of belief and worship" to "freedom of assembly and organisation" and to "political participation".

150. A further “positive” development has been the appointment on 21 August 2019 of a civilian Prime Minister, Abdalla Hamdok a respected international economist and his cabinet which includes a number of civilian members and individuals from the Blue Nile and the Nuba Mountains regions.
151. Further, there has been the appointment of a respected female judge to be the Chief Justice together with the appointment of an independent Attorney General.
152. Since the autumn of 2019 on-going peace talks have been held in Juba, the capital of South Sudan between the Sudanese Government and rebel movements including both factions of the SPLM-N, albeit at one point al Hilu temporarily withdrew.
153. We set out earlier a number of events which post-date the hearing in October 2019 (see paras 14-16). Those events do nothing to deflect from the direction of travel in the political developments and changes in Sudan that were in place at the date of the October hearing.
154. Mr Jacobs’ detailed submissions advance two principal lines of argument; first, the evidence shows that Nuba are still at risk in Greater Khartoum and continue to be subject to violence etc at the hands of the Sudanese Government, in particular the GIS; secondly, any changes that have occurred are “fragile” and could collapse with a return to a military regime more akin to that of al-Bashir. In relation to the period covered by the political developments, Mr Jacobs relied upon the violent suppression of protestors following the overthrow of al-Bashir in particular, on 3 June 2019. He also relied upon the continuing enforcement of the Public Order law on the outskirts of Greater Khartoum directed towards women; the harassment of Christians as evidenced by the Supreme Court’s confirmation of an order of 7 October 2019 of criminal charges against an executive committee of the Sudanese Church of Christ, accused of refusing to hand over church property; and the targeting of women “tea sellers” in Greater Khartoum during the protests. Both Dame Rosalind and Ms Crowther gave evidence about these matters.
155. Dame Rosalind, in her reports of 27 August 2019 and 17 October 2019 together with her oral evidence dealt with the current position in Greater Khartoum.
156. Dame Rosalind was critical of the “CPIT 1” report which appended correspondence from the British Embassy in which it is said Sudanese contacts expressed

“surprise at the suggestion that Nuba people are subject to systematic discrimination or mistreatment in Khartoum, with the exception that they might find it more difficult to obtain employment.”
157. She told us that it was not clear whether any Nuba individuals had been consulted (see para 98 above). The document stated that the view is made “[a]necdotally” and we do not place much weight or reliance upon it.
158. Dame Rosalind told us that Nuba women were continuing to be targeted by the enforcement of the Public Order law in Greater Khartoum and Christians were harassed as evidenced by the Supreme Court’s recent confirmation of criminal charges against a committee of the Sudanese Church of Christ. She told us of the

example of female tea sellers (who are largely from ethnic groups such as Nuba) being targeted and harassed under the Public Order law. She also described a meeting with a group of six young Nuba and said they had told her that two weeks before the meeting two of them had been sitting drinking tea on a pavement at a tea seller's store when they were taken to a police station but were later released without charge.

159. In our judgment, the evidence relayed by Dame Rosalind from the group of six young Nuba that she met, does not support a claim that there is a continuing risk to all Nuba in Greater Khartoum. Dame Rosalind's visit was during the time when hearings in this appeal were taking place and her motive in seeking to meet a group of Nuba was in order to see for herself the difficulties she had already described to us. The group she met appear to have been sought out as individuals who perceived themselves as having been targeted. There was only one example given of personal mistreatment and, at its highest, it concerned arrest and detention for a short period and release, unharmed, without charge by one or two of the individuals. It comes nowhere near to being supportive of a conclusion that all Nuba are at risk of serious ill-treatment in Greater Khartoum.
160. Further, the incidents reported to Dame Rosalind of harassment (including arrest and summary conviction and punishment) of women tea sellers on the outskirts of Greater Khartoum do not support a conclusion that there is a widespread and real risk of serious ill-treatment to all individuals of Nuba ethnicity even though female tea sellers largely come from ethnic groups such as the Nuba.
161. Other instances of mistreatment, and even the killing, of tea sellers was given in the evidence. The evidence was that a number of tea sellers were killed during the 3 June suppression of protestors by the military. The evidence concerning the suppression of protestors does not support, in our judgment, the targeting of an ethnic group such as the Nuba by the (then) military Government. Rather, it represents the (then) Government's interest in those protesting at the time either seeking the removal of al-Bashir or, in the wake of his removal, further reform away from the TMC. In our view, the female tea sellers (many of whom were providing refreshment to the protestors) were perceived as associated with those demonstrations and protests. Their mistreatment (or worse) clearly arises from that perception at the time leading up to, and at the time of, the June protests rather than their ethnic background, Nuba or otherwise.
162. The recent decision of the Sudanese Supreme Court does not, in our view, support a conclusion that Christians *per se* (Nuba or otherwise) are at risk. It must be seen in the context of all the evidence including the continuing political development in Sudan from 2019, including the adoption of a Constitution which protects freedom of religion. Most recently, the crime of apostasy has been abolished.
163. In her evidence, Ms Crowther acknowledged that the circumstances in Sudan had dramatically changed since the May/June 2018 hearing. She referred to the rise of Hemeti, as the leader of the RSF and the involvement of Hemeti and others in the suppression of the protestors on 3 June 2019. She spoke of attacks in the Black Belt after 3 June 2019 and the incident of a Nuba footballer being targeted. She also

referred to the government's failure to release 25 individuals of Nuba and Darfuri ethnicity who had previously been detained. As we have already noted, Dame Rosalind's evidence was that all detainees had been released. Even if these latter incidents are accepted, they do not demonstrate the widespread targeting of the vast number of Nuba.

164. Though Ms Crowther and Dame Rosalind referred to the continued enforcement of the Public Order law against women, particularly in the 'Black Belt' area of Greater Khartoum, the new government had suspended that law in central Khartoum but it continued to remain in force in the 'Black Belt' area. (Subsequently, the Public Order law was repealed.)
165. In our judgment, the evidence of the circumstances in Greater Khartoum since the political developments of 2019 do not establish a real risk to Nuba because of their ethnicity. Whilst we accept that the TMC responded severely to the protests following the removal of al-Bashir and which culminated in the violent suppression of the demonstrators and others perceived to be involved in the protests on 3 June, this action was targeted against the protestors and not Nuba because of their ethnicity. The political developments have clearly made a difference since the 3 June protests. As we heard, the October 21 protests were not met by a violent response from the new Government and its forces. Indeed, the attitude of the Government seems to have discouraged the involvement of Islamist protestors who might have clashed with other protestors. In any event, the demonstrations passed without the violent intervention that was seen on 3 June. The other evidence of incidents involving action (harassment or worse) against Nuba do not, as we have already said, establish a level of incident that lead us to conclude Nuba because of their ethnicity are at risk in Greater Khartoum.
166. Mr Jacobs relied upon the evidence of Dame Rosalind and Ms Crowther as to the "fragile" nature of the democratic changes that have occurred in 2009 and the continued threat that the military (in particular Hemeti) may represent if, for example, the economic fortunes of Sudan do not improve. Reliance was also placed upon the continued threat of the "deep state", namely the remaining political and governmental posts held by those who occupied those posts during the al-Bashir regime. The threat, it is said, is that the Islamists, together with the military, will regain power and any democratic gains in 2019 will be lost.
167. Dame Rosalind was of the view that it was too early to determine whether the progress made towards democracy and civilian rule was reversible. However, she said that the military threat posed by the rebel groups in Darfur and South Kordofan had "declined significantly" and the security threat posed to the regime by the SPLM-N had weakened. She said that the better organisation and widespread nature of the protests in 2019, together with the availability of social media to document its atrocities, and the interests of external parties in stability, rendered strong-armed tactics less likely to succeed in 2019. She stated that there had been a falling out between Hemeti and the Islamist faction. She said that there was no immediate Islamic threat of force and considered that its efforts might be targeted to preparing politically for an election in three years' time. She accepted that the profile of those mistreated and arrested in early 2009 appeared to be little focused upon ethnic

background. She said that there had been a degree of opening up of democratic space, a strengthening of the civic forces by the appointment of independently minded persons, and a commitment by the Prime Minister and his cabinet to “a radical set of reform measures in dismantling the deep state” as set out in the constitutional declaration. However, she said that the economic challenges and uncertainty and the risk of the loss of credibility on the part of the civilian government in the absence of tangible progress rendered the outcome of the transition to democratic and civilian government, uncertain. Dame Rosalind said that the threat of an Islamic counter-revolutionary coup was real. Nevertheless, she recognised that there had been a failed coup attempt in July. She said that the Islamic shadow militias still existed. She said that in a recent demonstration on 21 October, the Islamists had not taken part.

168. As regards the peace process, Dame Rosalind pointed out that there was no peace agreement on the table, although a preliminary document had been signed. She pointed out that al Hilu’s demand for the right to self-determination and a secular Sudan was a potential impediment to the peace process. Any change would be very difficult and would have to be debated in a broader constitutional forum. Dame Rosalind placed great store in the importance of a comprehensive peace agreement being reached.
169. Ms Crowther’s evidence of the impact of the 2019 developments, and changes in the Sudanese Government and State, was largely to the same effect.
170. The political landscape in Sudan has changed since April 2019 – and particularly since August/September 2019 with the new Constitution, the joint military/civilian SC and new civilian-led Government. There have, undoubtedly, been positive democratic changes in Sudan in 2019. We were told that the changes are “fragile”. Mr Thomann accepted that the changes may not be permanent. Whilst we acknowledge that there are risks to the regime as identified by both Dame Rosalind and Ms Crowther, nevertheless, the progress is all one way and with the passage of time and the continuing democratisation, the risk that there may be a reversionary regime change in Sudan, becomes more speculative.
171. A shift to a constitutional democracy is now part of Sudanese law and, without any impediment to which our attention was drawn, it continues to be the situation in Sudan. Further, recent changes such as abolishing the Public Order law and the apostasy law point to the reduction of Islamicist influence. The weight of the evidence was indicative of a real intention by the new Government to see through the reforms and resolve the economic problems facing Sudan.
172. The threat of a military or Islamic (“deep state”) overthrow of the new order has not eventuated and, indeed, the military have, if anything, aligned themselves with pro-democracy protestors, for example in their approach to the demonstrations on 21 October. There is no evidence that the ‘deep state’ has worked effectively to undermine the on-going democratic changes. If that has been tried, it appears not to have succeeded. The military have acted to support the new political order by defeating the GIS revolt in July 2019, and the Islamists failed to take part in the 21 October demonstration, it would seem because the Sudanese government and

military made it clear they would not be allowed to approach government buildings. Hemeti, we were told, has fallen out with the Islamists and there has been no effective resurgence of the apparatus of the former regime to defeat the new developments. On the contrary, the principal actors, both military and civilian, are acting in consort to effect the democratic changes in the new Constitution.

173. At the date of the final written submissions in early December 2019, no evidence was drawn to our attention by either party that was said to deflect from the 'direction of travel' in Sudan, namely the establishment of a democratic state post al-Bashir. In addition, despite the inherent complexities and potential impediments to achieving peace in Sudan, the evidence was that the Sudanese government and the rebel groups (apart from Al Nour group from Darfur) were actively engaged in peace talks in Juba, even if there had been a temporary withdrawal by al Hilu. Whilst Ms Crowther spoke of the need for caution given the number of failed earlier attempts to achieve a peace settlement, those earlier attempts were, of course, during the al-Bashir regime. The political climate in Sudan has changed.
174. At the time of those submissions, the Sudanese government had already indicated its intention to repeal the Public Order law. An attempted rebellion by members of the former NISS who objected to the reform of the security services, was quelled by the military and condemned by Hemeti. We have no doubt that the traditional Sudanese mindset against non-Arabs, and the resulting casual and sometimes serious discrimination will not have completely disappeared and may never do so. However, the evidence indicates to us strongly that the manifestation of ongoing disputes between the new Sudanese government and rebel groups has moved from a military response to a political one. Dame Rosalind accepted that in her evidence. The search for a comprehensive peace agreement is enshrined in the new Constitution and the peace process continues in talks in Juba including al Hilu.
175. The direction of travel remains firmly pointing in the way of democratic change and the powers of law and order and a move to stability and resolving difficulties politically rather than through force or violence.
176. Likewise, the government's response to al-Bashir following his fall is entirely consistent with the rule of law. He has been sentenced to two years detention (not imprisonment, because of his age) and the Sudanese Government has indicated its willingness to hand al-Bashir over to the ICC in The Hague to face the charges of genocide and war crimes which are outstanding against him.
177. The longer the situation remains stable the weaker the arguments based on 'fragility' become: the speculation inherent in the submissions made to us becomes more distant from the reality. In our judgment, the continuing stability of the democratic changes does not justify any inference that in the immediate and foreseeable future the current regime will fall and there will be a return to an Islamic based/military government.
178. What does that mean for an assessment of the risk to Nuba in Greater Khartoum?
179. Mr Thomann accepted that there remains a risk of persecution or serious ill-treatment for those who are perceived as a sufficiently serious threat to the Sudanese

regime to prompt targeting, which may lead to mistreatment that amounts to serious harm. We agree that the situation has not evolved such that we can be confident that the risk to those who are, or are perceived to be, a threat to the Sudanese Government, which we have accepted existed before the political developments in 2019, has now completely evaporated with the fall of the al-Bashir regime and the installation since August 2019 of a democratic State with a new Constitution and Government. In time, however, that may well be the proper inference to be drawn from the changes. What is clear, however, is that the assessment of whether a person is, or is perceived to be, a threat to the Sudanese Government has to be determined by reference to the change of Government and all that that entails.

180. As Dame Rosalind pointed out in her 27 August 2019 report:

“Civilians in the new transitional government would not regard membership of the UK diaspora or an anti-Bashir political profile as a negative factor. Indeed, those who supported the revolution and opposed the previous regime would be welcomed. However, it is not yet clear to what extent the civilians will be able to exercise authority over GIS and other parts of the military-security apparatus given that security sector reform is to be left in the hands of the military institutions and the Ministers of Defence and Interior in the Cabinet will be chosen by the TMC.”

181. We acknowledge that the GIS remains active, although its previous head, Salah Ghosh has disappeared and is no longer its head. The new Constitution limits its role to “gathering and analyzing information” (para 36). But, as Dame Rosalind stated in her evidence, the existing law (the National Security Act) remains in force until repealed and that it confers powers of arrest and detention, and grants immunity to GIS officers. The military remain a central and powerful part of the new Government. Hemeti remains a central part of the new Government with control of the RFS; but his siding with the democratic protestors against the Islamists in 21 October 2019, offers no support for the view that he will seek to undermine the political developments in Sudan. As Dame Rosalind told us, the new Government has moved from a military to a political solution to resolving Sudan’s internal problems. Taken as a whole, the evidence does not lead us to conclude that the Sudanese Government is not at present in control of its forces, including the RSF and GIS.

182. The central question remains (as it was before 2019) whether the individual’s circumstances as known to (or suspected by) the Sudanese authorities create a perception that the individual is a sufficiently serious threat to the Sudanese government to warrant targeting and ill-treatment. A fact-sensitive assessment is required taking into account all the circumstances.

183. We draw on the instances of “risk” *categories* identified in the evidence of Dame Rosalind and Ms Crowther as relevant risk *factors* in assessing the Sudanese authorities’ perception of an individual. These include the individual’s ethnicity, their place of origin (where it is a conflict zone), any actual political activity in Sudan or abroad, their profession (including whether they are a journalist or human rights activist), any previous detention or past interest by the Sudanese authorities in the

individual, their religion and also whether they are a student. In making the distinction between 'categories' and 'factors' we apply our general conclusion that the risk of persecution, if it exists, will be found in a holistic examination of a claimant's history, profile and identity, not in the simplistic assignment of a claimant to a category.

184. The 2019 "positive political developments" in Sudan have, in our judgment, substantially lowered the interest of the Sudanese government in suppressing political opposition by violent or military action. The present Government, after all, owes its existence in part to the political opposition that manifested itself in the streets in 2018/2019. In particular, it will be relevant in assessing whether an individual will be at risk on this basis to take into account that any "oppositional" political activity against the al-Bashir regime may have a dwindling relevance to the current Sudanese government, including the army and the GIS.
185. Further, the evidence relating to the Government's response to Nuba in Greater Khartoum since the democratic changes in the summer of 2019 does not support a conclusion that Sudanese authorities (including the GIS) consider a person of Nuba ethnicity (without more) as a sufficiently serious threat to the political regime or as a perceived political opponent as a supporter of the SPLM-N.

C. At Khartoum International Airport

186. Mr Jacobs submitted that the appellant as a failed asylum seeker of Nuba ethnicity would be at risk of persecution or serious ill-treatment at Khartoum International Airport at the hands of the NISS (or as it is now rebranded, the GIS). He relied upon the witnesses' evidence and the background evidence to support his submissions. He submitted that all Nuba, as failed asylum seekers, would be at risk of persecution or serious ill-treatment at the hands of the GIS on return.
187. Mr Jacobs relied upon the evidence of Dr Reeves and the individuals whom he had consulted and referred to his report and oral evidence. Dr Reeves' view was that because of the history of racism towards the Nuba and (speaking in 2018) the intensification of government repression and the consequence of the budget issues, there was a risk of ill-treatment amounting to persecution for any returning failed asylum seeker of Nuba ethnicity. Dr Reeves' view was that returnees were asked for details of their ethnicity at Khartoum airport. He referred to the killing of a returnee in November 2015 and that, for the NISS, there was no distinction to be made between non-Arabs from Darfur and those from the Nuba Mountains. Because there were, he said, fewer Nuba, they were exposed to a greater risk as a member of a politically active diaspora returning to Sudan. His view was that failed asylum seekers of Nuba ethnicity, who were returned on ETDs, were likely to be singled out for detention and the probability of torture was high. He rejected the proposition, put to him in cross-examination, that a 'low level' Nuba would not be subject to interrogation and ill-treatment on return. They were perceived as opponents of the government.
188. Mr Thomann submitted that there were difficulties with Dr Reeves' evidence.

189. First, Dr Reeves' report did not mention a number of recent documents referring to the position of returnees to Sudan, including the F-FR 2016, the investigation of the Office of the Belgian Commissioner for Refugees in relation to the "Belgian COI Report" and the claimed mistreatment of returnees; and this was despite the fact that Dr Reeves asserted that he had excluded nothing in preparing his report. He stated in cross-examination that, although he was aware of some of this material, he had chosen not to refer to them because of their poor quality or partiality.
190. Secondly, Mr Thomann submitted that Dr Reeves had failed to incorporate into his report what had been said by one of his expert consultees (Ted Dagne) who had stated that it was necessary in assessing risk to distinguish between returnees who were activists/leaders and others. In other words, Mr Thomann submitted, that consultee had not taken the view that Nuba ethnicity in itself gave rise to a risk of harm on return without more.
191. Thirdly, Mr Thomann submitted that, on enquiry, Dr Reeves had been unable to estimate how many Nuba had been returned to Sudan.
192. Finally, Mr Thomann submitted that Dr Reeves' evidence involved sweeping generalisations including the size of the Nuba diaspora and there was a "disconnect" between the nature of the risk posited by Dr Reeves and the portion of the specific examples of mistreatment in the evidence. The specific example he was able to give, based upon the Asylum Research Consultancy Report for 2015 involved the targeted mistreatment directed at a single individual who was perceived to have a profile of interest to the NISS. It did not support Dr Reeves' generalisation that all Nuba returned as failed asylum seekers were at risk.
193. We agree with Mr Thomann's criticisms of Dr Reeves' evidence. As we have said, Dr Reeves' evidence was limited to the period before the changes in 2019. Nevertheless, even as regards that period, we have considerable doubt whether Dr Reeves' assertion of risk to all Nuba on return can be accommodated by the evidence (as a whole) concerning specific examples of ill-treatment to Nuba on return at the airport (or indeed in Greater Khartoum). He did not refer to recent evidence such as the F-FR 2016 and failed to incorporate the more nuanced view of one source that the risk was focused on the politically active. In stating his view of risk to all Nuba returnees, he was unaware of the number of Nuba returnees to Sudan. The empirical evidence does not, in our judgment, provide a sufficient underpinning for the scale and nature of the risk to all Nuba posited by Dr Reeves prior to 2019, whether within Greater Khartoum or on arrival at Khartoum International Airport. There are instances of harassment, detention and ill-treatment but they are not, in our view, sufficiently widespread to justify an inference that all Nuba are at risk. We discuss the documentary evidence about returnees to the airport below. For the present, we say this: like Ms Crowther, Dr Reeves based his view upon examples of returnees from Belgium and Italy referred to in the "Belgium COI Report". In forming his view, however, Dr Reeves fails to have regard to the report of the Belgian Commissioner for Refugees where it is said that there are very real problems with the examples, including that many accounts were flawed by the acceptance of the individuals' credibility.

194. Mr Jacobs also relied upon the evidence of Madeleine Crowther and her 2018 report prepared for Waging Peace. That report, in turn, referred to the “Belgian COI Report” collating evidence derived from the Tahrir Institute, in the summer of 2017.
195. Ms Crowther concluded, in her 2018 report, that it was likely that individuals (including Nuba) will be detained and interrogated upon return. There was a two-stage process of detention at the airport. The first stage involved detention at an immigration office and the second stage at an NISS office, although Ms Crowther stated that the separation between these stages was not to be looked at as “strict”. She stated that detainees are released only on the condition that they do not leave the country and that they gather information on opposition groups in preparation for a period of further questioning.
196. Ms Crowther told us that she was in regular contact with Nuba groups and she estimated that there were around 2,000 Nuba in the UK. She told us that Waging Peace had “1,000 active cases” on its books and estimated that in 90% of the cases the individuals had “experienced torture”. She referred to an interview carried out by Waging Peace of a detainee who had witnessed a Nuba individual being questioned for hours on arrival in Khartoum about his political activities and support for the rebels. Her evidence was that claiming asylum abroad was seen by the NISS as a political act – reflecting a similar view of Dr Reeves. The NISS were not subject to judicial oversight and enjoyed complete impunity under Sudanese law. Her evidence was that individuals are routinely questioned about their political activities and connection in the country from which they had travelled. The risk continues after release from the airport as release is conditional with family guarantees and the prospects of re-detention at any time. She noted that the government do not monitor the position of returnees after they have returned. Waging Peace did not meet individuals at the airport as this would add to the risk by showing engagement with local human rights defenders or groups.
197. In her evidence, Ms Crowther told us that she had seen the testimonies of those returnees referred to in the “Belgian COI Report” which had been compiled by the Tahrir Institute. She said that the testimonies confirmed the accounts of detention and interrogation on arrival and incidences of beatings. She did not accept the criticism of the Belgian Commissioner that the testimonies of the individuals were not credible.
198. Ms Crowther identified the categories of Nuba who would be at specific risk including, students, those participating in demonstrations, those engaged in political activities, those educated above primary level, those who had travelled abroad, and those returning with documents which identify them as failed asylum seekers.
199. Mr Thomann submitted that Ms Crowther’s evidence did not support the contention that all Nuba were at risk on return as failed asylum seekers. First, he submitted that she had not provided any verification of “1,000 cases” and whether they supported her contention that all Nuba failed asylum seekers were at risk on return. He pointed out that the majority of the testimonies were anonymous.

200. Secondly, as regards her reliance upon the “Belgian COI Report”, the Belgian Commissioner had called into question the conclusions on the basis that the accounts given by some of the individuals were not credible. Her explanation that inconsistencies in their evidence arose from the use of the Arabic language or “fraught period” experienced by the individuals, was not an adequate explanation not least because Ms Crowther accepted that she did not speak Sudanese Arabic.
201. Thirdly, Mr Thomann submitted that the two specific examples given by Ms Crowther in her 2018 report were, on analysis, not supportive of the contention that the mere fact of being a Nuba on return created a real risk of serious ill-treatment. The first, concerning Ms B, Mr Thomann submitted, was an account of a returnee in March 2014 who had worked as a journalist in Khartoum and who had conducted research in the Nuba Mountains. The second, Mr C, was an account of a person from the Nuba Mountains but whose studies in the UK had been funded by a company part-owned by the Sudanese government. However, Mr Thomann pointed out that he had spoken at a meeting in the UK parliament headed “The Ticking Time-bomb: Preventing a Return to War in Sudan” about the future of the Two Areas along with the head of the Nuba Mountains Solidarity Abroad organisation. These examples, Mr Thomann submitted, were targeted against those who were perceived as politically active or journalists.
202. We accept Mr Thomann’s submissions and criticisms of Ms Crowther’s evidence. Ms Crowther’s view that all Nuba failed asylum seekers are at risk on return to Khartoum airport is not supported by the evidence upon which she relies. The “1,000” known cases which she relied upon are unparticularised and provide no verifiable evidence of ill-treatment to failed asylum-seekers on return. Nor is her position supported by the “COI Belgian Report” and the specific examples of Ms B and Mr C which she gave. In relying on the former, Ms Crowther failed to take into account the Belgium Commissioner’s view that the accounts of many of the individuals returned from Belgium lacked credibility. Ms Crowther’s contention that the returnees were, in some way misunderstood, because they spoke Arabic and where hampered by it being a “fraught period” was unsubstantiated in the face of the Belgium Commissioner’s thorough investigation of their cases. The latter instances of Ms B and Mr C, in our judgment, does provide some support for specific targeting of those who had been politically active including journalists. They do not support a generalised risk to all returning Nuba failed asylum seekers.
203. In her most recent evidence, Ms Crowther maintained that the position was the same in 2019 despite the political changes. Ms Crowther’s evidence, both in writing and orally, subsequent to the hearings in May/June 2018 focussed more on the political developments in Sudan. We have already indicated, despite his reference to it in his written submissions, Mr Jacobs disavowed any reliance upon Ms Crowther’s response to the Home Office’s F-FR 2018. The thrust of her evidence was that the Nuba would continue to be associated with the SPLM-N and therefore suspected of opposition activism and the political developments did not remove the risk of ill-treatment to returned Nuba failed asylum seekers. Again, Ms Crowther’s assertion of a continued risk to all Nuba failed asylum seekers is not supported, in our judgment, by the political developments and move to democracy which we have

already identified or the empirical evidence concerning the treatment of Nuba on return.

204. Mr Jacobs also relied upon the evidence from Dame Rosalind. She also gave evidence concerning the position of returned Nuba failed asylum seekers. In her oral evidence in May 2018, she said that such individuals would be under “suspicion” on return. She had heard from several sources that they were interviewed and then monitored over a longer period. She posited that the risk did not necessarily arise immediately as the authorities could monitor the Nuba, through the network of NISS informers, once living in Sudan.
205. In her 4 January 2019 report, Dame Rosalind again said that a failed asylum seeker of Nuba ethnicity was likely to be viewed with “increased suspicion” by the Sudanese government on the basis of presumed support for the SPLM-N in the Nuba Mountains. Dame Rosalind was critical of the F-FR 2018’s methodology in assessing the contrasting views of different sources – some stating that returnees did not face any problems, whilst others referred to difficulties and ill-treatment for those who were activists or, in some instances, simply because they claimed asylum abroad. The F-FR 2018 drew only on 20 sources and there was no attempt to resolve contradictory opinions (paras 26-27). She maintained failed asylum-seekers of Nuba ethnicity were at risk.
206. We accept that the F-FR 2018 sources do not provide consistent accounts of who, prior to the 2019 developments, would be of interest and at risk on return. The weight of that evidence (set out in summary at [A240]-[A251]) is, however, not supportive of the appellant’s case that *all* returning failed asylum-seekers of Nuba ethnicity would have been at risk.
207. In her oral evidence Dame Rosalind was more circumspect about the current situation. She was unable to give any recent examples of ill-treatment of returning Nuba at Khartoum airport. She said it was a difficult question to answer whether a person who had claimed asylum overseas and was of Nuba ethnicity would be at risk. This was because there was no actual evidence relating to treatment of returning failed asylum seekers under the new regime. However, she repeated that there was still an NISS/GIS desk at the airport but she said that checks appeared to be more cursory than before. She suspected that there were different procedures on entry for known failed asylum seekers. She stated that there was a concern that the NISS/GIS mindset was to suspect failed asylum seekers of Nuba ethnicity of involvement with the SPLM-N and that that had not changed and so there remained a risk that Nuba failed asylum seekers would be subject to ill-treatment.
208. We consider Dame Rosalind’s evidence concerning the present situation to be important. She said that any investigation in Khartoum airport is likely to be more “cursory” since the fall of the al-Bashir regime. We also note that she was unable to give any examples of mistreatment of returning failed asylum seekers under the new regime. We remind ourselves of Dame Rosalind’s observation during her evidence that the social media had a part to play in exposing actions by the Sudanese authorities. We were referred to none that could support specific recent instances of ill-treatment to arrivals at Khartoum airport.

209. At various points in the case, including the evidence of Ms Crowther, it appeared that the argument being posited was that the absence of evidence did not show that Nuba were not at risk. We do not accept that argument. The absence of evidence, in the circumstances we are considering, is not probative evidence that a risk does exist. The appellant bears the burden of proof and without evidence we cannot infer that what is said happens (or happened) does, in fact, happen. The absence of external monitoring of the position of returned asylum seekers cannot probatively assist the appellant where there is otherwise no evidence of those individuals' position in Sudan.
210. Mr Jacobs also placed reliance upon a number of the country background documents.
211. First, he relied upon the F-FR 2016 and, in particular, in relation to the position of failed asylum seekers on return to Khartoum International airport. At page 15 of the report the following is reported:
- “NHRMO considered that those from Darfur or the Two Areas, who had been outside Sudan for a considerable period, would be questioned extensively about their political activities and risked detention if they were suspected of activities against the government.”
212. At page 16, the same source referred to a detention of a Nuba person at the airport as follows:
- “NHRMO referring to their own human rights monitoring work, considered that it would not be safe for NHRMO staff to visit Khartoum and referred to a specific case of detention at the airport involving a Nuba person who was detained for alleged political activity.”
213. Then, finally at page 17 those sources are quoted as reporting the following:
- “Western embassy (C) noted that upon arrival at KIA, Darfuris and persons from the Two Areas may be treated impolitely and probably asked to pay a bribe, but they would not face any difficulties if they already were not ‘flagged’ by the NISS. NHRMO observed that those from the Two Areas travelling through Khartoum International Airport (KIA) would be subject to more intensive questioning about their background and political involvement, with ethnic Nuba most likely to experience harassment.”
214. In our judgment, this evidence, dating from August 2016 and therefore prior to the overthrow of the al-Bashir government, goes no further than recognising that ethnic Nuba were likely to experience harassment but the difficulties, in particular detention by the NISS, related to suspicion of actual political activities against the government and not simply because they are of Nuba ethnicity. It does not support a conclusion that all Nuba are perceived as potential supporters of rebel groups, such as the SPLM-N or that being a returned asylum-seeker and having claimed asylum abroad is, in itself, seen as apolitical act which will result in ill-treatment at the airport. It also does not support a generalised risk of ill-treatment to *all* ethnic Nuba returning as failed asylum seekers or being detained and ill-treated as a consequence.

215. Secondly, Mr Jacobs placed reliance upon the “COI Belgian Report” of February 2018. We discussed that report earlier and also considered Ms Crowther’s assessment of it. We find persuasive the conclusion of the Belgian Commissioner that these instances of claimed mistreatment by returned asylum seekers are unreliable. He concluded:

“The CGRS has not been able to obtain absolute certainty or clarity about whether the facts stated in the report of the Tahrir Institute actually took place. But regarding the three main testimonies from this report, it was found some important elements were not true, to such an extent that this raises serious doubts about the rest of the testimony.”

216. We are perhaps not concerned with ‘absolute certainty or clarity’, but we have no reason to disagree with the general conclusion that the accounts in question are not entitled to be treated as reliable. The “Belgian COI Report” does not add to the appellant’s case.

217. Thirdly, Mr Jacobs placed reliance upon paragraph 4.2 of the Asylum Research Consultancy document dated 13 September 2018 which adopts the F-FR 2016 on the treatment of persons travelling through Khartoum airport that:

“Persons from the Two Areas will be treated differently because of being perceived to be affiliated with the SPLM-N and they would be subject to more intensive questioning about their background and political involvement. Ethnic Nuba persons will be most likely to experience harassment and will be easily identifiable from their name.”

218. This, however, goes no further than recognising that failed asylum seekers, in particular those who are ethnic Nubas, would have been subject to “more intensive questioning” and would be most likely to experience harassment. It provides no support for the appellant’s contention that all Nuban failed asylum seekers are at real risk of detention and serious ill-treatment or persecution by the NISS/GIS at Khartoum airport.

219. In relation to any risk, at the airport, Mr Thomann referred us to “CPIT 2” dated 22 October 2019. It includes figures, inter alia, for enforced returns between 2014 and 2018 prepared from information provided by EASO. A table in para 2.1.1 shows UK returns to Sudan. The number of forced returns to Sudan were 48 (2014), 34 (2015), 11 (2016), 39 (2017) and 14 (2018). Mr Jacobs accepted that these figures do not assist in showing whether any Nuba have been returned to Khartoum during this period. The figures at para 4.3.1 show a total for the period of 2014 to June 2019 of 15 enforced returns. The disparity was not satisfactorily explained to us but may relate to different classification systems being used with the former figures reflecting the year an individual applied for asylum rather than the year they were returned.

220. At para 4.2.3 there is a table showing figures for forced returns to Sudan between 2014 and 2018 by four EU states who consented to disclosure of information: Belgium (13), Switzerland (27), Sweden (7) and Slovenia (1). But, as Mr Jacobs pointed out, Switzerland is the only country which was able to confirm that it returns Nuba to Sudan (para 4.2.5). Although the information provided did not indicate whether any

enforced returns were in fact Nuba. Mr Jacobs also pointed out that one country, Cyprus, confirmed that it did not return anyone to Sudan who originated from Darfur or South Kordofan (para 4.2.4). In the result, we have not found “CPIT 2” provided any significant information to assist us in assessing the risk, if any, to a failed asylum seeker of Nuba ethnicity returned to Sudan.

221. Mr Thomann contended that the evidence did not establish that a failed asylum seeker of Nuba ethnicity was for that reason alone at real risk of persecution or serious ill-treatment on return. However, he accepted that the evidence, as of 2018, was that Sudanese authorities may be able to identify a person as a failed asylum seeker on return, depending on the circumstances of their departure from and return to Sudan and by questioning such a returnee closely. He accepted that the risk of identification and close questioning arose when an individual travels on an emergency travel document, or a passport lacking a valid exit stamp, or if accompanied by escort staff on return. He accepted that it was likely, as of 2018, that such a person would be questioned about activities since leaving Sudan. However, he contended that beyond that there was a lack of evidence that a failed asylum seeker, if detained on return in Khartoum, would become of interest to the NISS or be subject to serious mistreatment which would put them at real risk merely by reason of the fact of claiming asylum.
222. As to the present position, Mr Thomann submitted that the evidence was that the security position at the airport had, if anything, become less strict. There were no reports of recent mistreatment and he relied upon Dame Rosalind’s view that opposition to the al-Bashir regime would not now be viewed negatively in the current climate and her evidence that any investigation in Khartoum airport was now likely to be more “cursory”.
223. We accept the evidence that there has been a two-stage process at the airport – first involving an immigration desk and then, secondly a NISS/GIS desk. That arrangement continues today.
224. As regards the situation prior to 2019, we accept the evidence that a failed asylum-seeker of Nuba ethnicity, if and when identified as a person of Nuba ethnicity or as coming from the Nuba Mountains, was likely to experience a heightened risk of inquiry about their political activities in Sudan or abroad. That process would have involved the NISS. The individual’s background might well have been readily apparent from his or her appearance and return on emergency travel documents or a passport lacking an exit stamp was likely to prompt the NISS to question an individual about their activities. We accept that a person of Nuba ethnicity might face a higher risk of *investigation*. However, the evidence does not establish that there would have been any continuing interest in a person, including a person of Nuba ethnicity, unless they were perceived to be a sufficiently serious threat to the al-Bashir Government. The risk was no more, and no less, than the risk we have identified in relation to individuals in Greater Khartoum. There was no risk *per se* to a failed asylum seeker. That what was found by this Tribunal in IM and AI at [225]:

“It is our firm conclusion that a failed asylum seeker, including an individual that has been subject to investigation by the immigration authorities on return, would not be at risk of further investigation by NISS on that basis alone.”

225. What of the current risk, since the 2019 political developments? Given the establishment of the new Government and political changes, opposition to the al-Bashir regime would, most likely, no longer be considered to be oppositional to the current government. The government has changed, and, as we have set out above, there is a developing move to a democratically based regime. Significant changes have been made along that route following the overthrow of the al-Bashir regime and its replacement, since August 2019 by the SC and a civilian government, headed by a well-respected international economist as Prime Minister. There is no evidence that the GIS (as the NISS' successor) has ill-treated any returned failed asylum seeker since the political developments in 2019. It would be pure speculation to conclude that the 'old ways' (relied upon by the appellant and in any event in our view lacking evidential support) remain the current practices in the absence of any evidence.
226. In our judgment, the evidence does not establish that there was a real risk to a failed asylum seeker on the ground that he was of Nuban ethnicity on return at Khartoum airport prior to the 2019 political developments. Further, the evidence does not establish any such risk since the 2019 political developments.
227. Despite recent changes, we accept that a person of Nuba ethnicity might face a higher risk of *investigation* but we are also of the firm conclusion that a failed asylum seeker (whether of Nuba ethnicity or not) is not at risk as such at Khartoum airport. The examination is, as Dame Rosalind told us, more "cursory" today than it was previously. The risk, if any, arises in the very same circumstances as it would arise in Greater Khartoum, namely, applying an holistic and fact-sensitive approach a person would be perceived as a sufficiently serious threat to the *current* regime to warrant targeting and treatment that amounts to serious harm. What we have said earlier concerning the risk to individuals in Greater Khartoum following the 2019 political developments applies with equal force when assessing any risk at the airport as a failed asylum-seeker.
228. The evidence we have discussed deals with returned failed asylum-seekers. There was no evidence that other Nuba travelling in and out of Khartoum airport were subject to any particular display of interest by the Sudanese authorities, in particular the NISS/GIS at the airport. In our view, the absence of any evidence of that reinforces the conclusions we have reached on the evidence that Nuba as such are not at risk on return.
229. Whether or not that is right, the position on the evidence we did hear is that there is no higher risk of persecution or serious ill-treatment to those of Nuba ethnicity at Khartoum airport beyond that which we have already identified in Greater Khartoum.

D. Internal Relocation

230. The parties' written submissions on the issue of internal relocation to Greater Khartoum were brief. It could have no application to the appellant as he is from Omdurman in Greater Khartoum and the Secretary of State did not suggest that the appellant could be expected to relocate to the Nuba Mountains (see para [89] of Mr Thomann's submissions).

231. Not surprisingly, Mr Thomann accepted that if an individual can establish a real risk of persecution by the Sudanese state in their home area, then internal relocation is not available (see para [182] of Mr Thomann's submissions). That is accepted by the Home Office in its CPIN: "Sudan, Rejected Asylum Seekers" (August 2017) at para 2.5.1). Consequently, if an ethnic Nuba from one of the Two Areas was able to establish a real risk of state persecution in his or her area, the issue of internal relocation to Greater Khartoum does not arise. It is, in general, the case that a person who has a well-founded fear of persecution by the national state authorities will not be able to avoid harm by internal relocation.
232. The scope for an internal relocation argument is, therefore, limited, given that we are concerned with the risk of ill-treatment to the individual *by the State* in their home area. It could, perhaps, more easily be seen to arise in a humanitarian protection claim where the risk in the home area falls within Art 15(c) of the Qualification Directive. That latter risk in, for example, the Nuba Mountains was not, however, an issue pursued or raised before us. We, nevertheless, address the issue of internal relocation to Greater Khartoum for those cases where it might arise, albeit not in relation to this appellant.
233. If a real risk of serious harm does otherwise arise in the home area of a person of Nuba ethnicity, the appellant contends that a level of discrimination (for example in the availability of services, education and employment) living in the 'Black Belt' in Greater Khartoum would be unduly harsh and unreasonable. The respondent contends that - assuming the risk is not from the State - that issue would depend upon all the circumstances of the case, involving a fact-specific assessment for the individual returnee. We agree with the respondent's submission.
234. We heard, and were referred to, evidence concerning the circumstances of Nuba living in Greater Khartoum (see, e.g., Dame Rosalind at [A21]-[A22] (oral evidence), [A30]-[A31] (written evidence); Madeline Crowther at [A100]-[A105] (Waging Peace Report, March 2018), [A124]-[A125] (oral evidence); F-FR 2016 at [A204]-[A214]; F-FR 2018 at [A231]-[A234]; Landinfo Response at [A270]). That evidence was directed to the issue of whether the circumstances were such that it would be unreasonable or unduly harsh for a person of Nuba ethnicity to relocate to Greater Khartoum, and, in addition, but much less prominently, whether the living and social circumstances in Greater Khartoum gave rise to a breach of article 3 of the ECHR
235. Mr Jacobs' submissions were briefly made in paras [202]-[203] of his initial written submission, contending that the level of discrimination in Greater Khartoum, if not persecutory in nature, would make it unduly harsh for a person of Nuba ethnicity to live there. In his submissions in response to those of Mr Thomann, Mr Jacobs relied, in effect, on the respondent's position in the CPIN that internal relocation is not available when the risk is from the State in the individual's home area.
236. He submitted that a person of Nuba ethnicity might well live in the 'Black Belt' and the evidence established that there is there no access to effective medical services, education and employment. He relied upon the evidence of Dame Rosalind of the impoverished conditions in the 'Black Belt' where there were no services and merely mud huts with no fences. The Public Order law continues in force. There was

discrimination in relation to employment and difficulties for Nuba such as obtaining a national identity card which is required to give them access to basic services.

237. Mr Thomann accepted that there are difficulties for those in the poorer areas of Greater Khartoum accessing healthcare, education and employment. He also accepted that discrimination occurs. Nevertheless, he contended that the sheer size and diversity of the population in Greater Khartoum coming from Darfur and the Two Areas, made the submission that relocation would be reasonable in the generality of cases sustainable. In his submission, whether a particular individual would be able to access economic activity, basic services and shelter will require a fact-specific assessment of the circumstances of that individual.
238. We have no doubt that Mr Thomann's approach is the correct one.
239. In assessing internal relocation, the correct approach is set out in para 339O of the Immigration Rules (HC 395 as amended) and in Januzi v SSHD and AH (Sudan) v SSHD (see above paras 55-60). We bear in mind the approach to the issue of internal relocation and, in particular, reasonableness or undue harshness set out in Underhill LJ's judgment in AS (Afghanistan) v SSHD at [61] which we set out above. A fact-sensitive, holistic assessment of all the circumstances is required.
240. Mr Jacobs relied upon discrimination experienced by Nuba in the 'Black Belt'. Those were the terms used by both Dame Rosalind and Ms Crowther. We are unsure precisely what they understood discrimination to mean in this context. It may well have implied that the Sudanese Government deliberately treated those in the 'Black Belt', in particular the Nuba (and perhaps non-Arab Darfuri), differently from Nuba living elsewhere or other inhabitants of Greater Khartoum not of Nuba (or non-Arab Darfuri) ethnicity. Consequently, Dame Rosalind was critical of the British Embassy's report, that "[a]necdotally" sources were surprised at the suggestion that there was *systematic* discrimination, because it was unclear who had been consulted. The evidence overall, however, does not lead us to conclude that there is "systematic" discrimination (in the sense of deliberate differential treatment by the State) against Nuba living in the 'Black Belt' in Greater Khartoum.
241. In our judgment, the crucial issue is an assessment of the actual social and living conditions that Nuba live in if their internal relocation option is, in reality, to the 'Black Belt'. Do the conditions in the 'Black Belt' make living there "unreasonable" or "unduly harsh"?
242. Many Nuba have been driven to move to Greater Khartoum because of the conflict in their respected home areas, and some have, no doubt, moved for economic and social reasons with better access to services and more job opportunities in Greater Khartoum than in their home area (see F-FR 2018 section 1.1). That may suggest that, at least for some, they find it a more reasonable prospect than living elsewhere. It is not, we accept, determinative.
243. There is a very large Nuba population (at least hundreds of thousands) living in Greater Khartoum. In reality, most Nuba live in the 'Black Belt'. There are also very large numbers of non-Arab Darfuris who live there. While we accept that those of Nuba ethnicity are likely to live in the 'Black Belt', some, however, may not, where,

for example, they hold professional or other jobs that allow greater economic freedom.

244. Some Nuba do hold high-ranking positions, not least in the SC and traditionally have held posts in the police force and armed forces. We accept Mr Thomann's submission that the evidence does not establish that education, whether at a secondary or tertiary level, is not in principle accessible for individuals living in Greater Khartoum from the Nuba Mountains. There was evidence before us of Nuba attending tertiary education in Greater Khartoum. On the other hand, the British Embassy has reported that Nuba who obtained employment in Greater Khartoum have "petty jobs in the informal sector". There is no doubt that the circumstances in the 'Black Belt', where the majority of such individuals live in shanty towns, are impoverished. Housing is of a generally poor standard, access to services is limited, and largely such work that can be obtained by inhabitants is low paid, but not exclusively so. Mr Jacobs pointed us to general material in the Asylum Research Centre Report, "Sudan Query: The Situation in Khartoum and Omdurman - an Update" (13, September 2018) concerning access to services and living conditions in Greater Khartoum (especially at pages 64-67) which cited, and reflected, as he accepted, what was said in the F-FR 2016 and the Waging Peace Report of March 2018. Whilst Dame Rosalind and Ms Crowther said that access to services is generally poorer for those living in the 'Black Belt', the evidence does not establish that services are generally unavailable. In our judgment, a fact-specific approach must be adopted to the consideration of access to services, including education, for any particular individual and its implications for the assessment of 'reasonableness' and 'undue harshness'.

245. We heard evidence concerning the importance of, and access to, ID cards. The evidence before us was that displaced persons from Darfur and the Two Areas may experience difficulties in reacquiring lost documents because of the need to obtain witnesses to prove their identity (see F-FR 2016 at para 4.1). That was also the evidence of Dame Rosalind in her first statement where she said:

"If Nuba have been displaced, they often have difficulty in getting national identity cards because they don't have a birth certificate and cannot get a certificate from a tribal elder to attest to their identity. If they do not have national identity cards, they cannot access basic services or sit exams to graduate from secondary school."

246. Whilst Mr Thomann in para [115] of his submissions drew our attention to evidence demonstrating that an ID card could be obtained regardless of place of origin or tribal background, there may still be difficulty for some individuals, particularly from the Two Areas and Darfur, if they cannot establish their identity in the required way. We also note, the evidence before us, in the F-FR 2016 (at page 77) from a Greater Khartoum based journalist that people from Darfur and the Two Areas may not be concerned about obtaining an ID card:

"Concerning the possibility of obtaining a national number, the source mentioned that people from Darfur and the Two Areas also can apply in obtaining national numbers; however, a large number of Darfuris in Khartoum as well as in Darfur have not applied for the national number yet. According to the

source, the main reason for this was that people did not care about the number and did not see any advantage in having it. They consider the card merely as a tool for the government to collect information about them in order to monitor and control them.”

247. Consequently, we accept that whether an individual has an ID card and, if not, whether they would be able to obtain one, *may* be a relevant factor, specific to their particular circumstances on return to Greater Khartoum when assessing whether it would be reasonable or unduly harsh for them to live there. On the evidence before us we do not accept either that an ID card is necessary for reasonable life in Greater Khartoum or that an ID card cannot be obtained by a migrant Nuba.
248. Overall, we do not accept that, as a general rule, it would be unduly harsh or unreasonable for a person of Nuba ethnicity returning to Sudan to relocate to Greater Khartoum. Applying the well-established tests of ‘reasonableness’ and ‘unduly harsh’, whether internal relocation is open to a particular individual must necessarily be a fact-sensitive assessment of all the relevant factors.
249. We did not receive detailed submissions on whether the situation in Greater Khartoum breached article 3 of the ECHR. We do not propose, therefore, to deal with this issue in detail. The claim, for these purposes, is based upon the circumstances in which a returned failed asylum seeker of Nuba ethnicity would live in Greater Khartoum, in particular, if that would be to the ‘Black Belt’. Establishing a breach of article 3 in these circumstances is likely to be extremely difficult. The threshold of such a claim is very high (see SSHD v Said at [31] and SSHD v MS (Somalia)). Only in an exceptional case will the standard of living and social conditions of the returned person violate article 3 (see Said at [26]). Whilst that must necessarily be a fact-sensitive assessment, we doubt whether, on the evidence we have seen, that high threshold is likely to be reached in the generality of cases.
250. Finally, the parties’ submissions did not explore the issue of whether internal relocation to the Nuba mountains for a person of Nuba ethnicity at risk in Greater Khartoum was reasonable and not unduly harsh. We noted earlier, Mr Thomann’s position on behalf of the Secretary of State that it was not suggested that the appellant (if at risk in greater Khartoum) could relocate to the Nuba Mountains. Given that the risk in Khartoum is likely to be a risk from the State, relocation elsewhere in Sudan is, rightly, accepted not to be an option. If the issue of relocation was to arise without the risk in Greater Khartoum emanating from the State, we should not be taken to be necessarily endorsing Mr Thomann’s position. All would turn on an assessment of the risk to that individual in the Nuba Mountains and whether the circumstances they would live in, and experience, there would make it unreasonable or unduly harsh to do so. It would, as ever, require a fact-sensitive assessment. In the absence of submissions directed to this issue and given that we consider it unlikely to arise as it would require the risk not to emanate from the State in Greater Khartoum, we say nothing more specific about relocation to the Nuba Mountains.

E. A Footnote

251. Our decision is solely concerned with the position of individuals of Nuba ethnicity in Sudan. We rejected earlier an argument based upon a reliance on the CG decisions dealing with non-Arab Darfuris. We have reached our conclusions based upon the evidence relating to Nuba and not non-Arab Darfuris. But a broader contention was made before us that the position of the Nuba is the same as non-Arab Darfuris, i.e all Nuba and non-Arab Darfuris are at risk in Greater Khartoum. We have rejected that contention in relation to those of Nuba ethnicity. We make no findings in relation to non-Arab Darfuris and, as we indicated above, nothing we said should be understood to undermine the existing CG decisions in respect of non-Arab Darfuris. We would simply observe that if the comparison is maintained, on the evidence we saw in relation to Nuba, it might well have implications for the assessment of the risk to non-Arab Darfuris on return.

XI. COUNTRY GUIDANCE

252. We set out the following country guidance in relation to individuals of Nuba ethnicity returning to Sudan:

- (a) An individual of Nuba ethnicity is not at real risk of persecution or serious ill-treatment on return to Sudan (whether in the Nuba Mountains, Greater Khartoum or Khartoum International Airport) simply because of their ethnicity.
- (b) A returning failed asylum-seeker (including of Nuba ethnicity) is not at real risk of persecution or serious ill-treatment at the airport simply on account of being a failed asylum-seeker.
- (c) Prior to the political developments in 2019, individuals who were at risk on return (whether at the airport or in Greater Khartoum) were those who were perceived by the Sudanese authorities to be a sufficiently serious threat to the Sudanese Government to warrant targeting.
- (d) The assessment of that risk required an evaluation of what was likely to be known to the authorities and a holistic assessment of the individual's circumstances including any previous political activity in Sudan or abroad and any past history of detention in Sudan. Factors include whether the individual was a student, a political activist or a journalist; their ethnicity; their religion (in particular Christianity); and whether they came from a former conflict area (such as the Nuba Mountains).
- (e) Whilst the question of perception of political opposition underlying (c) above remains the same since the 2019 political developments, when assessing any risk to an individual now, the effects of the 2019 political developments are relevant and are likely to affect the Sudanese authorities' view of, and attitude towards, those who might be perceived as political opponents. Further, the 2019 political developments are likely to have greatly reduced the interest of the Sudanese government in suppressing political opposition by violent or military action.

- (f) Internal relocation to Greater Khartoum for a person of Nuba ethnicity must depend upon an assessment of all the individual's circumstances including their living conditions, their ability to access education, healthcare and employment. Despite the impoverished conditions and discrimination faced by Nuba when living in the so-called 'Black Belt' area of Greater Khartoum, relocating there will not generally be unduly harsh or unreasonable.

XII. KAM'S APPEAL

253. Mr Jacobs' submission that the appellant's appeal should be allowed was based upon the contention that all Nuba, returned as failed asylum seekers, were at risk of persecution or serious ill-treatment because of their perceived association with rebel opponents to the government, in particular the SPLM-N. We have rejected that contention. The appellant cannot succeed simply on the basis that he is of Nuba ethnicity and a returning failed asylum seeker.
254. The preserved findings of the First-tier Tribunal are that the appellant comes from Omdurman (part of Greater Khartoum) and is of Nuba ethnicity. He has family who live in Omdurman. He has failed to establish any political activity in Sudan or that he has ever been of interest to the Sudanese authorities, including the NISS. The claim to have been arrested and ill-treated in Sudan was rejected as not credible by the First-tier Tribunal and that finding was upheld by this Tribunal.
255. The appellant relied upon *sur place* activities in the UK, as participating in a television interview criticising the Sudanese government and as having joined the Nuba Mountains Solidarity Abroad group. The First-tier Tribunal, having viewed the broadcast clip, concluded that it did not contain any criticism of the Sudanese government. As regards his activities with the Nuba Mountains Solidarity Abroad group his activities were limited to having attended one memorial meeting and one social gathering, as well as being a member of the Facebook and WhatsApp groups. There was no evidence that he had come to the attention of the Sudanese authorities nor that it was likely that his limited activities would come to the adverse attention of the authorities in Sudan. None of these findings were set aside by this Tribunal. They stand as part of the assessment of his appeal.
256. Consequently, the appellant has not established any political activity in Sudan and has never been of interest to the Sudanese authorities, including the NISS. His activity in the UK involved activity critical of the (then) al-Bashir government. His association with a political group in the UK was limited and was found not to be something of which the Sudanese government would be aware. All the elements of his claim predated the changes of 2019. The appellant is a person of Nuba ethnicity from Omdurman with no political activity which could conceivably be seen as giving rise to a potential threat to the current Government in Sudan. He is not at risk of persecution at the airport or at home. He will return to his home area where he can safely live with his family. No question of internal location arises.

257. For these reasons, we re-make the decision and dismiss the appellant's appeal.

Signed

Andrew Grubb

Judge of the Upper Tribunal

Date: 25 August 2020

APPENDIX 1

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A. Dame Rosalind Marsden DCMG

A2. Dame Rosalind Marsden was the first witness to give oral evidence. She served as British Ambassador to Sudan from 2007 until 2010 and she was the EU Special Representative for Sudan from October 2010 until October 2013. From 2014 to 2018, she was the Senior Advisor to the Centre for Humanitarian Dialogue, a US-funded Sudanese programme and she advised the US government on the Sudanese peace process. She is currently an Associate Fellow at Chatham House where she is a political analyst advising on Sudan and South Sudan issues. She has first-hand experience of Sudan. In July 2019, she attended a 3-day meeting with 30 Sudanese civil society representatives in Nairobi. Between 28 September and 9 October 2019, she visited Khartoum to help organise and chair a Chatham House conference during which time she met with a number of local individuals.

1. Report, "The Nuba Community in Sudan: why they are at risk" (March 2018)

A3. In her oral evidence in May/June 2018, Dame Rosalind adopted her March 2018 report. In that report, she described the cultural and religious diversity of the tribes from the Nuba Mountains and the background to the displacement of "hundreds of thousands" of Nuba to Khartoum in the course of the long-standing conflict in South Kordofan.

A4. In her report, Dame Rosalind stated that ethnicity in Sudan was "highly politicised" and that members of the Nuba Community were suspected by the authorities of supporting the SPLM-N. That was part of a wider rebel alliance called the Sudan Revolutionary Front ("SRF") which also included the armed movements from Darfur.

A5. Dame Rosalind stated that the al-Bashir regime was opposed to the Nuba tribes. This was because many Nuba fought with the SPLM on the side of the South Sudanese in the civil war. This led to the Khartoum regime in the 1990s declaring a jihad against the Nuba and the subsequent policy of using starvation as a weapon of persecution against Nuba in government control areas. She said that young men of military age were forcibly recruited and made to fight against their own people. Additionally, large numbers of Nuba girls and women were raped by government soldiers. She stated that the April 2013 rebel advance towards Khartoum was seen as a major humiliation for the Sudanese government and resulted in round-ups and arrests of the Nuba.

A6. In her report, Dame Rosalind stated that the declared universal cessation of hostilities in South Kordofan has yet to lead to a negotiated monitored cessation of hostilities or consent to humanitarian access to the SPLM-N controlled areas of the Nuba Mountains. She said that:

"As long as there is no comprehensive peace settlement that addresses the root causes of Sudan's internal conflicts, the Nuba will continue to be regarded with suspicion by the authorities as likely political opponents and will remain at risk of arbitrary arrest and detention by Sudan's powerful National Intelligence and Security Service (NISS), particularly at times of heightened political tension."

A7. She stated that Sudan's National Security Act allowed the NISS to detain people for up to four and a half months without charge, in violation of international law. There were numerous reports of torture and ill-treatment in NISS detention centres.

A8. Foreseeing, in effect, the political developments in 2019, Dame Rosalind added:

"In addition to the risks already facing the Nuba community because of the association with the conflicting Southern Kordofan in the Blue Nile, Sudan is currently going through a period of heightened political tension because of widespread protests over the government's austerity measures and a sharp increase in the price of food and necessities since early January 2018. The government has responded to the protest by arresting hundreds of opposition politicians, activists and ordinary civilians, including some of the Nuba community. These protests are expected to continue as there are no signs of any solutions of Sudan's economic crisis."

A9. In her report, Dame Rosalind stated that a number of forms of discrimination are suffered by the Nuba in Sudan including racial, linguistic, cultural, social and economic, and religious discrimination. As regards the so-called 'Black Belt' in Greater Khartoum where most of the Nuba live in impoverished conditions, she stated that was

"kept under close surveillance by Sudanese National Security and Intelligence Services (NISS) because the communities who live there are considered to pose a potential security threat on political grounds".

A10. In the final paragraph of her report, Dame Rosalind dealt with the forced return of Nuba asylum seekers. She referred to what was said by a Nuba organisation in the UK. She said this:

"[m]embers of the Nuba Solidarity Committee in the UK say that, if failed Nuba asylum seekers were to be returned to Sudan, they may not face problems immediately on their return as the Government knows that their treatment is likely to be monitored. But over time there is a significant risk that they and their families will be harassed by the security service, including being interrogated by NISS about the diaspora in the UK, detailed or even targeted in a 'traffic accident'."

2. Oral Evidence (31 May 2018)

A11. In her oral evidence at the first hearing on 31 May/1 June 2018, Dame Rosalind stated that dark-skin colour could lead to an assumption that a person is Nuba, Darfuri or from the Blue Nile and failing that, an identity card would record information as to the tribal origin. She said that the Nuba tribes had faced a history of discrimination and marginalisation. In particular, the Nuba had been involved in the civil war and also in the conflict in South Kordofan since June 2011. She said that not all Nuba would be suspected of supporting the SPLM-N but there might be an assumption that an educated Nuba would be sympathetic to its cause. There would be a greater problem at times of conflict and tension.

A12. Dame Rosalind said that there was a similarity between Darfuris and Nuba in that both groups are perceived to be sympathisers of armed movements.

A13. Dame Rosalind said that the 2011 attacks in the Nuba areas were triggered by the election and could be compared to the earlier violence against Darfuris in that they amounted to

deliberate attacks on civilians. The current cessation of hostilities was holding but had not held entirely. Whilst there were no longer aerial bombardments in Nuba areas, pro-government militia remained active and it was considered hostilities could be renewed at any time. Indeed, the government had withheld humanitarian aid from the Nuba Mountains as a means of waging war in the area. She said that the government considered the advances made on Khartoum in 2013 by the JEM and the SPLM-N as humiliations to the regime and they had led to a wave of arrests.

- A14. Dame Rosalind stated that there was currently (May/June 2018) a state of political tension in Sudan and the lack of any comprehensive peace agreement had created a background of suspicion. Whilst there remained no peace agreement, Nuba ethnicity constituted a high-risk factor. Furthermore, the economy had declined and there had been protests in January 2018.
- A15. Dame Rosalind stated that the Nuba in Khartoum live in shanty towns in an area called 'Black Belt' which she had visited during the elections in 2010. She stated that there were no services in this area which comprised mud huts and had no fences. She said there was a very serious humanitarian situation for the Nuba in their home area and there was a continuing flow of Nuba to refugee camps.
- A16. Dame Rosalind stated that Nuba as a group might join protests and are kept under surveillance. Nuba returning from overseas may not face difficulty at the airport but the government are aware of the potential for monitoring on return. She stated that the security services might let the "dust settle" and detain individuals once they had passed from the airport into the city.
- A17. Dame Rosalind expressed the view that the appellant's risk on return would not be reduced by the fact that he lived in Omdurman prior to leaving Sudan. He would be seen primarily as Nuba and as a member of a group which is perceived as hostile to the regime. She stated that the NISS paid close attention to this group. The NISS are powerful within Sudan and there were numerous reports of abuse. She said that the NISS was active throughout the country and acted with impunity.
- A18. In cross-examination, Dame Rosalind stated that the cease-fire in South Kordofan in 2016 was agreed with (then) President Obama and that US sanctions were lifted thereafter. She said that the area bombardment in South Kordofan had stopped but that there remained attacks on civilians. It was a unilateral cessation of hostilities which was renewed every few months.
- A19. Dame Rosalind stated that the lifting of economic sanctions was an incentive to maintain cessation of hostilities, as was it important to be removed from the US list of state sponsors of terror. However, the political situation was more precarious than it had been because when sanctions were lifted; the off-and-on situation in Sudan, in fact, in October 2017 deteriorated with high inflation. The economic situation was extremely serious. She pointed out that it was unclear whether the Sudanese government would be prepared to accept any conditions from the international community and that President al-Bashir had asked the Russian government for protection from the effects of the US sanctions.
- A20. Dame Rosalind said that the Nuba population in Greater Khartoum must be in the 100,000s. She accepted that it would not be feasible for the NISS to monitor the whole of the population. She accepted that monitoring would be targeting particular Nuba leaders and that a returned asylum seeker would not, without more, be on a list of those of interest. She accepted that the focus would be on those with a profile and that those returned asylum

seekers might fall into that category. She noted that the NISS focused upon those who were more highly educated and activists.

- A21. Whilst Dame Rosalind said that Sudanese law prohibited discrimination on grounds of ethnicity, she also said that the application of the law in practice was different. Educational opportunities were poor and educational provision was low and privatisation of health provision had made access to health services more difficult particularly for those living in the 'Black Belt'. She said that in principle an ID card would be available whatever an individual's ethnic background but stated that the problem was that those from the peripheral areas did not have a birth certificate and could not obtain the documentation from a tribal area if they were from conflict areas to obtain an ID card. It was more likely that an individual would not have the necessary documents if they were displaced.
- A22. In relation to South Kordofan, Dame Rosalind said that education in the Nuba Mountains was extremely poor. The level of education was low. She was unaware of a university in South Kordofan. She accepted that education was more broadly available in Khartoum. She was unaware whether there were Nuba students in the university in Khartoum but she was aware of a Nuba students' association but she could not comment on the number of students. She said that there was no formal bar to Nuba students going to university.
- A23. As regard Christian worship in Khartoum, she said that there had been a decrease since the creation of South Sudan and many Christians had left. She was unaware of the numbers of Christian schools in Khartoum.
- A24. As regards the perception of Darfuri and Nuba students, Dame Rosalind stated that students as a group were vulnerable to detention but the Darfuri students seemed to be more subject to arrest and ill-treatment. They were more politicised and there was stronger support among Darfuri students in Khartoum.
- A25. As regard recent (i.e. up to May/June 2018) unrest in Khartoum, Dame Rosalind had no specific knowledge that Nuba were targeted. She was unable to comment on individual incidences of alleged arrest on return. She was unaware of precisely how many individuals had been detained. Those detained in January and February – some 200 or so activists and others – had all been released. It had been reported, she said, that several hundreds of Darfuris were arrested during that period. She observed that some may not have been detained but may have been required to report to the NISS. The numbers who were detained were "not huge". She said that a returning Nuba asylum seeker would come under "suspicion on return".

3. *"Comments on the Home Office Fact-finding Mission Report" (28 January 2019)*

- A26. Following the publication of the F-FR 2018 in November 2018, Dame Rosalind produced a response in writing to that report. The report was mainly concerned with the position of non-Arab Darfuris. However, Dame Rosalind commented in her evidence that the report, in her view, acknowledged the similarity in perception of the two groups by the authorities, in their respective perceived allegiances with rebel groups. At para 5 of her response, Dame Rosalind said this:

"Although the FFM report is focused on the circumstances of non-Arab Darfuris and does not specifically address those of the Nuba, several sources quoted in the report draw attention to the strong read across between the situation of Sudanese of Nuba and Darfuri ethnicity because both are presumed by the Government of

Sudan to be supporters or sympathisers of the armed movements in their respective conflict zones – Nuba Mountains/Southern Kordofan and Blue Nile States (also known as the Two Areas) and Darfur (3.2.6; 3.2.10), In the case of the Nuba, they are presumed to be supportive of the Sudan People’s Liberation Movement/North (SPLM/N). As long as the conflict in the Two Areas is not resolved and the SPLM/N is seen to pose a political and security threat to the regime, this perception is likely to continue in the minds of the Sudanese authorities.”

A27. In her response, Dame Rosalind commented on the eight-year conflict in South Kordofan and the progress in peace talks, in particular in the light of the demands of the SPLM-N faction led by al Hilu. At para 8 she said this:

“There has been no significant progress in the African Union-mediated peace talks between the Government of Sudan and the SPLM/N to end the conflict. The SPLM/N suffered a leadership split in 2017 and divided into two factions, the larger one led by Abdul Aziz Al Hilu which controls the Nuba Mountains and the southern part of Blue Nile state and the smaller faction led by Malik Agar which controls the Ingessena Hills in Blue Nile. Abdel Aziz has adopted a harder negotiating position than Malik Agar and his demands for self-determination, retention of his army for 20 years and the creation of a secular Sudan with the abolition of sharia law have proved unacceptable to the Government. Talks over humanitarian access to the SPLM/N-controlled areas, remain stalled over Abdel Aziz’s insistence on cross-border, not just cross-line, access.”

A28. Dame Rosalind acknowledged that the F-FR 2018 had been written prior to the political development beginning in December 2018. At paras 10-11, Dame Rosalind said that the protests had begun in mid-December and the government had responded to them with “predictable brutality”:

“10. Though initially sparked by spiralling food prices and fuel shortages, the protests were not “bread riots” but the culmination of three decades of repression, poverty, unemployment, institutionalised corruption and atrocity crimes in Darfur, the Nuba Mountains/Southern Kordofan and Blue Nile. They quickly assumed a strong political dimension with protestors calling for the end of Bashir and his regime. The protests have been led by a coalition of young people, professionals, civil society and opposition political parties. All segments of society are involved but young people are the most visible out on the streets. They feel a sense of hopelessness because of lack of employment opportunities and the erosion of living standards caused by hyper-inflation. Women, who have also been at the forefront of the protests, are angry about decades of harassment and humiliation by the public order police. Even sons and daughters of the ruling party have joined the demonstrations. While no single political organisation dominates the protests, the Sudanese Professionals Association, and particularly the independent doctors syndicate, have been prominent in coordinating the protests. Opposition parties and coalitions, which have a long history of internal divisions, have finally managed to pull together and coordinate with other social forces. The protests have now entered their second month and are steadily gaining momentum with increasing numbers and geographical spread. Given the scale and breadth of the protests, which started in mid-December, these constitute the most sustained popular challenge faced by the Bashir regime since it came to power in 1989.

11. The Government has responded to the protests with predictable brutality, using beatings, tear-gas, large-scale arbitrary arrests, torture, extra-judicial killings and the use of live ammunition against unarmed protestors. Over 50 protestors are reported to have been killed and hundreds injured. A number of victims have been shot in the head or chest by government snipers or have died from torture in NISS detention. There has also been a campaign of mass arrests with thousands detained. Journalists, activists and especially doctors have been targeted. Hundreds of videos and photographs showing the injuries of the victims and the brutality of government security forces are circulating on social media.”

A29. At paras 13-14, Dame Rosalind commented on the impact of the political turmoil for those of Nuba ethnicity, including the “increased suspicion by the government” that those of Nuba ethnicity are presumed supporters of the SPLM-N insurgency in the Nuba Mountains. At paras 13-14 she said this:

- “13. All Sudan’s opposition groups have come out in support of the protests, including the two SPLM/N factions led respectively by Abdul Aziz Al Hilu and Malik Agar, who have both publicly encouraged their supporters to join the protests across Sudan. There have been a number of protests in the poorer neighbourhoods of Khartoum where Sudanese of both Nuba and Darfuri ethnicity tend to be concentrated. There have also been solidarity protests in Kauda, the SPLM-N stronghold in the Nuba Mountains. SPLM/N supporters and activists have also been arrested in the government-controlled area of Nuba Mountains/Southern Kordofan, including pre-emptive arrests prior to a visit by President Bashir to the area on 28 January 2019.
14. This means that failed asylum seekers of Nuba ethnicity are likely to be viewed with increased suspicion by the Government of Sudan not only as presumed supporters of the SPLM/N insurgency in the Nuba Mountains but also as potential participants in country-wide protests to topple the regime.”

A30. At paras 15-21, Dame Rosalind dealt with the position of Nuba in Greater Khartoum:

“The Nuba living in the shanty towns of Khartoum suffer the same hardships as Darfuris, plus additional discrimination on religious grounds”.

A31. She continued:

- “15. The FFM report mentions the presence of Nuba alongside Darfuris in the shanty towns around the Khartoum metropolitan area (which includes the three towns of Khartoum, Khartoum North and Omdurman). The authors of the FFM report conducted all their interviews inside the British Embassy in Khartoum and did not visit the “Black Belt” areas to see for themselves the conditions in which most Darfuris and Nuba live. But some of their interviewees noted that the various kinds of social and economic discrimination suffered by Darfuris living in the so-called “Black Belt”, particularly lack of basic rights, including access to water, education and health facilities, apply equally to the Nuba. Saleh Mahmoud, the human rights defender, noted that Darfuris and Nuba living in the shanty towns were often forcibly evicted (3.5.8). The political scientist observed that government security agencies regarded these areas as sleeping cells for rebels and that there was a large NISS presence in these areas (3.2.7). Some of the

interviewees thought that the Nuba suffered worse discrimination than the Darfuris. The Second Secretary Political at the British Embassy said that that “Arabs look down upon the Nuba and people from South Sudan” (3.2.11). The civil society activist thought that Darfuris did better than the Nuba in terms of socio-economics. “Nuba IDP families rely on income generated by their children collecting recyclable items to sell from rubbish dumps” (3.5.5).

16. Unlike Darfuris, who are nearly all Muslims, many Nuba suffer further discrimination as a result of being Christian. The Government continues to restrict religious freedom and belief by demolishing churches, interfering in internal Church affairs and making Christian schools open on Sundays. Sudan has been identified as a “Country of Particular Concern” in the US State Department’s latest report to Religious Freedom.
17. As is the case with Darfuris, there are some Nuba who hold government or military positions in Khartoum. But the Nuba who occupy these positions are either associated with the National Congress Party or have been deliberately co-opted by the Government with jobs, privileges and money and are despised by their own community.”

A32. Dame Rosalind said that, in her view, the F-FR 2018 understated the gravity of the situation in Sudan. She stated that there was insufficient appreciation of the heavy presence of the NISS at the airport and the fact

“that failed asylum-seekers, who are returned with escorts, are effectively handed over to NISS, a body with an extremely poor human rights **record**”.

A33. She did, however, accept the proposition put forward by one of the respondent’s interlocutors in the report that the human rights environment in Khartoum was more benign than in the past and that people could talk openly about politics.

A34. At paras 22-25, Dame Rosalind set out what she called the “risk categories” in relation to failed asylum seekers and Nuba on return and expressed the view that, as of January 2019, a failed asylum seeker of Nuba ethnicity would be at risk of ill-treatment because of imputed political opinion. She relied, in part, on what she had been told by others:

“Risk categories

22. I have been told by an eminent Sudanese human rights lawyer to whom I spoke in the context of the Darfur Country Guidance Case that the fact of being a failed Sudanese asylum seeker in itself creates a negative profile in the eyes of the Government because seeking asylum is regarded as a hostile political act. This view was also expressed by several Sudanese interviewees quoted in the FFM report including Saleh Osman from the Darfur Bar Association and the civil society activist (6.3.4 and 6.3.6). Western Embassy officials and the IOM representative, on the other hand, generally agreed with the assessment of risk in the Home Office’s Sudan: Country Policy Information Note, Unsuccessful Asylum Seekers, July 2018. The possible reasons for this divergence of opinion is addressed in para 28 below.
23. In my view, it is likely that a failed asylum seeker from the UK would be regarded with greater suspicion than a returnee from a neighbouring country because the Sudanese diaspora in the UK are heavily engaged in

opposition activity, as evidenced by the large number of anti-government demonstrations held in cities across the UK in the last five weeks in support of the popular uprising in Sudan.

24. If a failed asylum seeker is also of Nuba ethnicity, this is sufficient to create a significant risk of ill-treatment because of presumed association with the SPLM/N, regardless of whether this is true or not. Other factors that may add further to the risk include:
- evidence of actual opposition activity either in-country or sur place. NISS officers in the Sudanese Embassy in the UK go to great lengths to monitor the political activities of the diaspora through a network of informers;
 - membership of the professional classes. Members of the professional classes played a major role in the 1964 and 1985 uprisings and are doing so again in the current uprising
 - a profile as a human rights defender of activist
 - a profile as a blogger/social media activist. NISS have a special unit which monitors social media closely for any sign of political dissent. Khartoum has now extended its reach by asking the security services in neighbouring countries to deport Sudanese activists, who have then been detained on their return to Sudan.
 - a young male of military age
 - a student. The “jihadi” student brigades of the ruling National Congress Party target Nuba as well as Darfuri students in the universities because of presumed affiliation with the opposition and suspicion that those with an education could become activists and community leaders.

The criteria mentioned above are additional risk factors but the way in which NISS operates is arbitrary and it is therefore difficult to predict precisely who they will target.

25. Once in detention, detainees with a media or political profile or who come from well-known families are likely to be treated more favourably than lower profile individuals who are more likely to be abused or tortured in prison. For example, Saleh Mahmoud, the well-known human rights defender, recounted that when he was detained in February-April 2018, he was not physically tortured but he was forced to witness the beating of other young detainees (3.3.1). The civil society activist also noted that, if he was arrested, he would be probably not be mistreated because he was a high-profile human rights activist and his case would attract media attention from the international human rights community which was unwanted by the Sudanese authorities. “But for other Darfuris, when arrested, there is no press release, no one to make a noise and intervene” (6.3.6). This distinction would also apply to Nuba detainees.”

A35. In relation to the monitoring of failed asylum seekers, she disagreed (at paras 26-27) with the F-FR 2018's view that failed asylum seekers were not likely to face ill-treatment on return in the following terms:

"Monitoring of failed asylum-seekers after their return

26. There is a marked contrast between the views express by the majority of Sudanese civil society representatives interviewed by the FFM team and those of Western Embassies and the IOM representative on the other as to whether failed asylum seekers were likely to face ill-treatment on return. Most of the Sudanese civil society representatives said they had heard about problems for individuals returned to Sudan, including arrest, detention and ill-treatment or considered it likely that returnees might experience difficulties (6.3.4-6.3.9). Amjed Farid al Tayeb said that he had personally met returnees who had been ill-treated, namely two from Jordan in 2015 and one from Belgium in April 2018. Dr Ahmed Eltoum Salim drew attention to an article in the New York Times on 22 April 2018 by Patrick Kingsley (6.3.22), who said he had interviewed seven recently returned asylum seekers, four of whom claimed to have been tortured. The article documented the case of a Darfuri political dissident returned from France in late 2017, who said he had been detained by NISS on arrival at Khartoum airport and tortured with beatings and electric shocks over ten days and had had to be hospitalised. However, Western Embassy officials and the IOM representative all said that they were not aware of verified cases of ill-treatment of returnees.
27. The methodology adopted by the FFM report is to quote excerpts from the interviews and correspondence conducted with the 20 sources listed in Annex C of the report. The report relies solely on these 20 sources and does not draw on any other material. Where the opinions expressed by interviewees are contradictory, the report does not attempt to explain or reconcile the differences. Nor does it express any judgment as to which opinions are well-founded or attempt to draw any final conclusions.
28. Nevertheless, it is clear from the interviews that certain caveats should be applied in assessing the opinions expressed by some interviewees. There appears to be no systematic mechanism in place for monitoring the treatment of failed asylum seekers after their return. This applies to Western Embassies and the IOM as well as to Sudanese civil society organisations...."

A36. Dame Rosalind went on in para 28 to state that the UNHCR, IOC and Western Embassies did not monitor or follow-up returned asylum seekers to Sudan. Further, at para 29, Dame Rosalind said that the authors of the F-FR 208 had not consulted Amnesty International who had been able to follow up on the treatment of some failed asylum seekers and:

"have found evidence of ill-treatment in some cases, although they told me that its is a mixed picture and that it is often difficult to track down failed asylum seekers to monitor their post-deportation experience because they are so traumatised and paranoid that they do not want to speak to anyone."

A37. At paras 30-32 of her report, Dame Rosalind set out her conclusions in the light of the F-FR 2018 including her view that the Nuba were likely to be targeted in Khartoum because of their perceived political affiliation with armed rebel movements and that failed asylum

seekers of Nuba ethnicity, on return were likely to be at risk of ill-treatment because of their ethnicity and, again, their perceived affiliation with armed rebel movements. The suspicion which fell upon them was, in her view, likely to continue as long as the internal conflicts in Darfur and in the Two Areas were not resolved. She also identified a “significant additional risk” as being a “potential participant in country-wide protests at the top of a regime”. At paras 30-32 Dame Rosalind said this:

“Conclusion

30. Although the FFM report is focused on gathering information about the circumstances of non-Arab Darfuris in Sudan, interviewees quoted in the report draw many parallels with the circumstances of the Nuba, who have also suffered extreme violence at the hands of government forces and militias in their home areas and are targeted by the Sudanese authorities in Khartoum because of their perceived political affiliation with armed rebel movements. Indeed, several interviewees say that discrimination against the Nuba is worse than that against Darfuris. However, those who researched the report conducted all their interviews in the British Embassy in Khartoum and did not visit the “Black Belt” to collect first-hand evidence of the living conditions of many Darfuris and Nuba in Khartoum. The report also downplays the gravity of the human rights situation in Sudan and particularly the role of NISS in this regard.
31. The other aim of the FFM report was to gather information about the treatment of returnees generally. It quotes various sources in Western Embassies and IOM who say that they are not aware of information indicating that failed asylum seekers have been ill-treated after their return but, in the absence of any systematic monitoring mechanism, this does not necessarily prove that no such incidents take place. Nor did the authors of the report appear to have interviewed Amnesty whose reports do contain evidence of ill-treatment of returnees.
32. Like non-Arab Darfuris, failed Sudanese asylum seekers of Nuba ethnicity are likely to be at risk of ill-treatment on the grounds of their ethnicity if they are returned to Sudan because of the associated presumption in the Government of Sudan’s mind of political affiliation to armed rebel movements. This suspicion is likely to continue as long as Sudan’s internal conflicts in Darfur and the Two Areas are not resolved. If a failed asylum-seeker falls into one or other risk categories, the risk is increased, irrespective of their tribal origin. However, the way in which NISS operates is arbitrary. There is now a significant additional risk of being viewed as a potential participant in country-wide protests to topple the regime. Given the current government crackdown and the prospect of continued political instability, it would not be appropriate to return failed Sudanese asylum seekers of Nuba ethnicity to Khartoum in a situation of heightened political tension.”

4. *“Report on the current political situation in Sudan and the risks involved in returning failed Nuba asylum seekers to Sudan” (27 August 2019)*

A38. Dame Rosalind produced two written reports for the October 2019 hearing dated 27 August and 17 October 2019 in which she commented upon the situation in Sudan. These are important as they provide up-to-date evidence about the situation in Sudan following the fall of al-Bashir and the political developments that have followed. At para 5 of her report dated

27 August 2019, Dame Rosalind set out the post-April 2019 situation following the overthrow of the regime of al-Bashir as follows:

“On 11 April 2019 - after four months of nation-wide pro-democracy peaceful protests - Sudan’s former President, Omar al Bashir, was overthrown by a group of senior military and security officers from his own Security Committee, who formed a Transitional Military Council (TMC). The TMC embarked on negotiations with Forces for Freedom and Change (FFC), a pro-democracy coalition of opposition political forces, professionals and other civil society actors, but conducted a brutal crackdown on protesters in Khartoum on 3 June, followed by other incidents of violence. Nevertheless, under intense external pressure, the TMC signed a power-sharing agreement with the FFC on 17 August to form a transitional government with an independent civilian Prime Minister.”

A39. Annexed to her report is the political agreement of 17 July 2019 and the constitutional declaration of 4 August 2019 setting out the arrangements for the transitional government.

A40. At para 6 of her report Dame Rosalind set out the potential dangers for the future noting the “fragility of the situation” and that it was too early to predict where Sudan was heading and whether it was safe to return asylum seekers of Nuba ethnic origin. At para 7-9 Dame Rosalind said this about the nature of the power sharing agreement and new transitional government:

“The power-sharing agreement and the new transitional government

7. Mediated by the African Union and Ethiopia, the deal provides for a transitional period of three years and three months to prepare for national elections in 2022. During this period, the government will be composed of three transitional bodies: a joint military/civilian Sovereign Council acting as a collective Head of State, with six civilian and five military members, to be chaired for the first 21 months by a military representative and for the last 18 months by a civilian; a civilian Prime Minister and Cabinet largely composed of technocrats;; and a Legislative Council, responsible for legislation and oversight of the executive, to be formed within 90 days. The Members of the Sovereign Council and the Cabinet in the transitional government will not be eligible to stand in the 2022 elections but this bar does not apply to members of the Legislative Council.
8. The powers and responsibilities of the three bodies are set out in a political agreement (initialled on 17 July) and a constitutional declaration (initialled on 4 August) which were formally signed in Khartoum on 17 August in the presence of international and regional dignitaries. The TMC was dissolved and the Sovereign Council appointed on 21 August, with General Abdel Fatah Burhan, an army officer and the former head of the TMC, as chair. Abdallah Hamdok, an experienced and respected economist, who served until last year as Deputy Executive Secretary of the UN Economic Commission for Africa, has also been sworn in as Prime Minister and his new Cabinet is expected to be announced on 28 August.
9. The next steps in forming the transitional government will be the appointment of 11 Independent Commissions (responsible for Peace, Elections, Borders, Constitutional Drafting, Legal Reform. Anti-Corruption and Public Funds Recovery, Human Rights, Civil Service Reform, Land, Transitional Justice and Women and Gender Equality); and the formation of the Legislative Council by mid-November. “

A41. At paras 10-11, Dame Rosalind set out the background to how the agreement was reached between the TMC and the FFC following the violent crackdown on 3 June 2019:

“How was the agreement reached?”

10. The TMC realised the limits of its power when its attempt to halt the revolution by forcibly dismantling the protest site in Khartoum on 3 June backfired, sparking international outrage (see below). Defiant protestors turned out in large numbers on 3 June to demonstrate their determination to sustain the revolution and the FFC’s ability to mobilise mass support. Strong international pressure for the rapid formation of a civilian-led transitional authority, US/UK diplomatic intervention with the TMC’s backers, Saudi Arabia, the UAE and Egypt, and a coup attempt by counter-revolutionary Islamist forces may all have persuaded the TMC that they had to strike a deal with the pro-democracy movement.
11. In the opposition camp, the FFC concluded that, given the power imbalance between the military and unarmed civilians, a compromise was needed in order to establish a transitional government, however imperfect, so that civilians could push their reform agenda from inside government and avoid a political vacuum, which could leave room for counter-revolutionary coups or escalating violence by Sudan’s many security forces.”

A42. At para 12, Dame Rosalind sets out the “balance” between civil and military on the SC:

- “12. The agreement is a step forward but still leaves considerable power in the hands of the military. Some opposition forces have criticised the agreement for being too weak, particularly as the military will chair the Sovereign Council for the first 21 months and will be able to veto its decisions, since, in the absence of consensus, decisions will require a two thirds majority. They will also be able to nominate the Ministers of Interior and Defence. On the other hand, FFC negotiators point to gains made during negotiations on the constitutional declaration such as confirmation that the FFC will have 67 per cent of the seats in the Legislative Council, the paramilitary Rapid Support Forces (RSF) will come under at least nominal army control and government officials will not enjoy blanket immunity from prosecution.”

A43. At paras 13-15, Dame Rosalind commented on the challenges facing the FFC and their future impact on political developments:

“Divisions within the FFC

13. But political dynamics will matter more than pieces of paper. The unity of FFC forces has been strained by the negotiation process, continuing street violence and internal bickering. The Sudanese Communist Party, which is a member of the FFC, has been particularly critical of the power-sharing agreement. If civilian authority is to prevail, it will be important for the FFC to maintain a united political front to ensure that the new government delivers on its reform programme. Most of the civilians in the new government are likely to be politically inexperienced technocrats. Reports of divisions within the FFC risk fracturing the protest movement, providing an opportunity for the military to exploit the situation and scuttle a transition to democracy.

14. While civilian rule and civic rights are the main demands of protestors in urban areas, Sudanese living in conflict zones attach more importance to achieving peace and ending the marginalisation of Sudan's peripheries. The armed movements in the Sudan Revolutionary Front (SRF), which fought for years against Bashir's regime, have stressed that peace and democratisation must go hand in hand if the revolution is to enable people in the peripheries to become equal citizens and take full part in national elections – putting an end to long-established forms of governance which favoured a privileged political elite in Khartoum. The TMC and FFC have agreed that achieving a comprehensive peace settlement should be the priority for the first six months of the transitional period. The constitutional declaration includes a peace agenda drawn from a roadmap for peace agreed by the SRF and some FFC elements in Addis Ababa in late July, although the SRF are angry that other key sections of the Addis agreement were omitted and have complained that the interests of the marginalised areas have been side-lined by the allegedly Khartoum-centric approach of the FFC negotiators. Nevertheless, the SRF are preparing to start negotiations as soon as the Peace Commission is formed. It is less clear when the other armed movements – the SPLM/North faction led by Abdel Aziz al Hilu and the Sudan Liberation Movement led by Abdel Wahid Nour – will be ready to negotiate.
15. Another challenge will be to ensure proper representation of youth and women in the new governance structures. These groups were the driving force of the revolution but have been largely excluded from FFC decision-making bodies. Including these new social forces and other marginalised groups in the new governance structures will be crucial if Sudan is to transform established patterns of power and privilege and the new government is to retain the support of the streets."

A44. At paras 16-27, Dame Rosalind deals with a number of features of the current position relevant to whether real change has taken place, and will continue, in Sudan dealing with "potential spoilers" and the challenge of dismantling the Islamic "deep state" and the continuing role of the NISS, now re-named the GIS:

"Potential spoilers

16. There is concern among some activists that the TMC might be reluctant to hand over the chairmanship of the Sovereign Council after 21 months and could be tempted to engineer a crisis that would provide a pretext for claiming that the military need to take over the government in order to prevent chaos. Alternatively, they might simply "let the government fail" i.e. wait until popular discontent grows because there is no immediate improvement in basic services and living standards and then use this as an excuse to take control.
17. Insecurity could also arise from divisions amongst the security forces. While the opposition may struggle to maintain its unity, the military also face divisions. Among the Sudanese Armed Forces (SAF), there is reportedly widespread resentment of the RSF as an ill-disciplined militia who are paid far more generously than their SAF counterparts. There is also resentment among SAF officers that the RSF commander, General Mohamed Hamdan Dagalo (widely known as Hemeti) enjoys such a senior position despite never having graduated from the military academy (or indeed even from primary school). Hemeti, a 45-year-old camel trader turned militia commander, has emerged as the most powerful man in

Sudan, even more than General Burhan, who actually chairs the Sovereign Council.

18. Many in the protest movement are afraid that Hemeti might make a move to take over the country. He controls tens of thousands of paramilitary forces, who were originally recruited from the Janjaweed nomadic Arab tribes mobilised by the Bashir regime to put down rebellion in Darfur in 2003-4 and were subsequently rebranded in 2013 as the Rapid Support Forces. Rights groups say that his forces burned villages and systematically raped and killed civilians during a series of counter-insurgency campaigns in Darfur, the Nuba Mountains and Blue Nile over many years. While his forces continue to attack civilians in Darfur, Hemeti has now brought violence to the streets of the national capital.
19. One of the main reasons for Hemeti's rapid ascendancy is that he has been contracted by Saudi Arabia and the United Arab Emirates to provide ground troops to fight on their behalf in the Yemen war against the Houthis and now in Libya in support of General Haftar. With Gulf money, he is reported to be recruiting heavily from Arab tribes in Chad and Niger as well as other parts of Sudan. Consequently, the RSF has become a transboundary militia, which could destabilise the wider region as well as bringing chaos to Sudan. Hemeti can draw on his family's vast gold mining and livestock operations in Darfur, as well as Gulf money, to buy the support of tribal leaders and local elites. Much will depend on whether it is possible to control the RSF by reducing its funding from Gulf states and limiting Hemeti's political ambitions. But many are sceptical about how quickly that could happen, given the strength of Hemeti's military and economic base and the continued interest of the Gulf states in renting his fighters for Yemen and Libya. For now, Burhan and Hemeti are tied together by their mutual commercial and political interests but in the longer run, the SAF's disdain for Hemeti could unpick the alliance.
20. Another risk to the country's stability is that members of the former ruling party (the National Congress Party) and the Islamic Movement, who still occupy many key posts in state institutions and numerous businesses, could try to sabotage the economy to undermine the transitional government or mount a counter-revolutionary coup with support from Islamist elements within the security forces and the Islamist shadow militias (Popular Defence Forces, Popular Security, Popular Police, student jihadist units) created by the previous regime. There already appears to have been at least once such coup attempt, which led to the arrest of several senior army officers, including the Chief of Staff, and some veteran Islamist politicians.

The extent to which elements of the Bashir regime remain in positions of power

21. The overthrow of Bashir after 30 years in power was a major turning point in Sudanese politics but many elements of his repressive regime are still in place. The biggest challenge facing the government will be dismantling the Islamist "deep state" or "parallel state" created over thirty years by the former regime, which took control of all security organs, state institutions and key sectors of the economy, including hundreds of businesses owned by the NCP and the military-security apparatus. Key to dismantling the deep state will be the implementation of a comprehensive programme of security sector reform aimed at establishing a professional and inclusive

national army, reducing the disproportionately high percentage of the national budget devoted to the military and security services (estimated to be about 70%) and restructuring the intelligence service. Because state capture by the Bashir regime was so far-reaching, dismantling the deep state is expected to take several years.

22. The TMC itself is regarded by many in the protest movement as a mere extension of the Bashir regime because it was formed from members of Bashir's Security Committee. There is considerable scepticism that they will be willing to give up their power and financial privileges.
23. A number of Islamist officers from SAF and NISS have been seconded to the RSF in the last couple of years. Hemeti has claimed that members of Islamist shadow militias also infiltrated the RSF during the operation to clear the sit-in area on 3 June and were responsible for deliberately escalating the violence, while trying to put all the blame on him. These shadow militias appear to have access to army, police and other uniforms.
24. Bashir and some senior members of the former regime are under arrest and are allegedly being detained in Kober prison, Khartoum's top security prison. Bashir was brought to trial in Khartoum on 19 August on charges of corruption based on money found in his house when he was arrested (although the real extent of his corruption is infinitely greater than this). But most Sudanese are more concerned that he should face justice for the heinous crimes he is alleged to have committed in Darfur, including war crimes, crimes against humanity and genocide. It is not yet clear whether Bashir will be sent to the Hague but one of the mandated tasks of the transitional government is to hold accountable all members of the previous regime for all crimes committed against the Sudanese people since 30 June 1989.

To what extent does the National Intelligence and Security Service (NISS) still retain power?

25. An early demand of the protesters was the disbanding of the powerful NISS, which was used to protect the Bashir regime, among other things by arresting, detaining and often torturing its opponents and by rigging elections. The Special Operations Department of NISS also has a substantial military capability, including armoured personnel carriers and attack helicopters as well as an extensive covert business network.
26. So far there have been two signs of possible reform: General Burhan's decision on 29 July to change the organisation's name to the General Intelligence Service (GIS); and the stipulation in the Constitutional Declaration (Article 36) that the duties of GIS should be limited to gathering and analysing information and providing advice to the relevant authorities. However, the Constitutional Declaration (Article 2a) also stipulates that all existing laws shall remain in force unless they are repealed or amended. This means that the National Security Act, which provides for the intelligence service to exercise powers of arrest and detention and grants immunity to its officers for all acts committed in the course of their duties, will remain in force until such time as it is amended or repealed by the Transitional Legislative Council. As the all-powerful intelligence and security service is at the heart of Sudan's deep state and the military have a veto in the Sovereign Council, few expect the new government to make many inroads into it anytime soon. One possible option that has been mooted is for the Special Operations Department of

GIS to be transferred to the Rapid Support Forces. But this would still be problematic if they did not change their modus operandi.

27. GIS is still staffed by the same officers who ran NISS, most of whom are Islamists. They are therefore likely to operate in much the same way as they did before, particularly while they still enjoy impunity. Although the former head of NISS, Salah Gosh, is in exile in Egypt, where he is said to be an adviser to Egyptian intelligence, the most powerful figure in GIS is now thought to be Abdul Ghaffar Sharif, the former Head of Political Security in NISS, who was notorious for his brutality.”

A45. Subsequently in her report (paras 30-36), Dame Rosalind commented on violence against protestors in Khartoum in beginning in December 2018 as follows:

“RECENT VIOLENCE AGAINST CIVILIANS

30. When protests started in December 2018, the government’s security forces and militias responded in a heavy-handed way, using whips, tear gas, rubber bullets and often live ammunition against peaceful protesters. Many injuries were caused by tear gas canisters thrown directly at people’s heads. Doctors were particularly targeted and tear gas was used inside hospitals where the wounded were being treated. The main perpetrators of the violence were reported to be NISS officers, possibly reinforced by members of the Islamist shadow militias. According to a Human Rights Watch Report issued two days before Bashir was overthrown, credible monitors estimated that over 70 protesters had been killed since the protests started in December.
31. On 6 April, tens of thousands of protesters started a sit-in outside the army HQ in central Khartoum. When NISS tried to disperse the protesters by force, some junior army officers sought to protect the sit-in and fraternised with the protesters, even returning fire to repel the NISS attack. The fact that the protestors had for the first time managed to reach the army HQ and that some army elements had come out in their support was a significant development. On 9 August, I was quoted in *the Times* as saying that Sudan “can never go back to how things were before. The momentum is growing and growing, things are moving quickly on the ground”. On 11 April, Bashir was overthrown.
32. After the TMC took over, there was a temporary lull in violence in Khartoum while negotiations started with the FFC. However, on 13 and 16 May there were two incidents when men wearing RSF uniforms were reported to have attacked protesters in the sit-in area in Khartoum, using live ammunition, batons and whips. Four protestors and an army major were reported to have been killed on 13 May. A further fourteen were injured in Khartoum on 16 May and on the same day, men wearing RSF uniforms were also reported to have attacked youths with whips and rifle butts in El Gedaref in East Sudan.
33. The turning point was 3 June, the last day of Ramadan, when the TMC launched a large-scale operation to disperse the protestors from the sit-in area in Khartoum by force using live ammunition. Some 130 people were shot and hundreds injured by the RSF and other security forces. There were also 70 reported cases of rape, including of female medical staff. An attempt was made to conceal some of the bodies by throwing them into the Nile, weighted down by stones tied to their legs. At least 40 of these bodies were recovered from the river over the following days. The tents in the sit-in area

were all burnt and the sit-in area, which was seen by the young revolutionaries as a microcosm of the New Sudan of which they dreamed, was reduced to ashes. The RSF also attacked the University of Khartoum, which was within the sit-in area, destroying and looting much of the university property and killing several protesters within the university campus.

34. Those who survived the attack on the sit-in area on 3 June fled back to their homes and erected barricades in the streets to try to protect their local neighbourhoods. Over the next few days, the RSF roamed the streets, attacking anyone who ventured outside. Some activists and those involved in civil disobedience were deliberately targeted.
35. If the TMC had hoped to crush the revolution through this brutal crackdown, their tactics badly backfired. The June 3 massacre created huge public anger and there is now strong public pressure for justice and accountability.
36. Since June there have been several further incidents in areas of Central Sudan involving violent attacks against civilians by people wearing RSF uniforms, including the killing of 6 peaceful protesters, including 5 school children, at a rally in El Obeid on 29 July to protest bread and fuel shortages. Four more protesters were killed by government security forces using live ammunition and several wounded in a protest march in Omdurman on 1 August to show solidarity with the victims in El Obeid."

A46. In the remainder of her report (paras 38-46), Dame Rosalind dealt with "Nuba - specific issues" including the threat of the RSF and any evidence of recent targeting of Nuba in Khartoum and the Nuba Mountains as follows:

"Is the RSF a threat to Nuba? The influence of Arabisation on those in power

38. The RSF were originally drawn from the former Janjaweed, Arab nomadic tribes who were used by the Bashir regime to conduct a counter-insurgency campaign against the armed movements in Darfur through a policy of collective punishment and sexual violence against civilians. RSF forces are now also being recruited from the Rashaida, an Arab tribe in Eastern Sudan, and from Arab nomadic tribes in Chad and Niger. The RSF have been deployed in the counter-insurgency campaign against the SPLM/North in the Nuba Mountains and Blue Nile as well as in Darfur. Hemeti, the RSF commander, comes from the camel-herding Abbala branch of the Rizeigat tribe in North Darfur, a large Arab tribe which spans Darfur and Chad. He receives advice from a group of Rizeigat politicians, who share an Arab supremacist ideology, which was initially linked to the Arab Gathering, a pan-Arabist organisation created in Darfur in the 1980s. Some of them were involved in recruiting Janjaweed and more recently for the RSF. Others have helped in settling Arab tribesmen on land previously inhabited by non-Arab tribesmen who have been driven off their lands following conflict with Arab militias or the RSF.
40. Hemeti's original goal was to use the RSF to increase his tribe's political and military power in Darfur and, if possible, at national level. But after overthrowing Bashir and receiving strong support from Saudi Arabia and the UAE, his political ambitions grew. Hemeti is not an Islamist but, in May, he accepted support from a wealthy Darfuri businessman and a veteran Islamist politician, who offered to help him to bring large numbers of tribal chiefs to Khartoum with the aim of co-opting them and expanding his

political base to weaken the FFC. But this gathering dispersed after three weeks, allegedly because of disputes over payment. Hemeti then appears to have fallen out with the Islamists whom he accused of infiltrating his RSF forces, escalating violence at the 3 June break-up of the sit-in and trying to frame him for what happened. After the massive turn-out by pro-democracy protesters on 30 June, Hemeti seems to have concluded that he would have to accept a deal with the FFC.

41. For the time being the military and civilian members of the transitional government will have a common enemy (the Islamists). But if the Islamists are neutralised, it is possible that the military, and Hemeti in particular, might try to regain control. Given the ethnic composition and track record of the RSF and the ideology of Hemeti's Rizeigat advisers, this could pose a threat to the Nuba and non-Arab Darfuris.

Is there recent evidence of targeting of Nuba?

(a) In Khartoum

42. I have been told by two civil society contacts that Nuba and Darfuris, who had their own tents in the sit-in area in Khartoum, were targeted more aggressively during the forcible dispersal of protesters on 3 June.
43. "Tea sellers", including Nuba women, were amongst those attacked on 3 June both in the sit-in area and near Comboni College, some distance away from the sit-in area. There are thousands of poor women who sell tea from street stalls in Khartoum. Most of them come from the marginalised areas of Darfur and the Nuba Mountains and have always been one of the most vulnerable groups in the city. They are often harassed and punished by the public order police, even though they only earn two or three dollars a day for brewing glasses of sweet tea. When the sit-in started outside the army HQ, the tea sellers set up a volunteer kitchen to prepare tea, coffee and food for thousands of the protesters. On 3 June, many of these women were beaten and sexually assaulted. At least 6 are reported to have been killed.
44. Two days after the 3 June crackdown, the RSF arrested Yasir Arman, the Deputy Chair of the SPLM/North (Agar faction) who had returned to Khartoum with a small SPLM/North delegation to support the revolution and to try to initiate peace talks. A few days later, the RSF also arrested two of his SPLM/North colleagues - Ismail Jalab and Mubarak Ardol, both of whom are Nuba. All three were subsequently deported to Juba. Whereas the SPLM/North delegation was targeted, none of the other FFC political leaders were arrested.

(b) In the Nuba Mountains

45. Although the level of violence against civilians in the SPLM-North controlled areas of the Nuba Mountains is substantially lower than it was prior to June 2016 when aerial bombing stopped, attacks on civilians by government security forces have continued since the TMC took over in April 2019. Human rights monitors report that there have been a number of cattle-raiding attacks against civilians, particularly in Dalami, Heiban and Thobo counties, which are said to have been committed by men in SAF uniform.
46. According to the South Kordofan and Blue Nile Coordination Unit, the humanitarian situation in the Nuba Mountains continues to be serious. Food stocks are reported to be depleted and the food security outlook uncertain. Essential medicines are in short supply and there is limited access to health clinics."

A47. At paras 47-55, Dame Rosalind commented on historical parallels between the Nuba and Darfuris and the current perception of Nuba:

“Historical parallels between Nuba and Darfuris in relation to opposition to the Bashir regime

47. There is a close parallel between the former regime’s perception of non-Arab Darfuris and Nuba because members of both groups were suspected of being sympathetic to the rebel armed movements in Darfur, the Nuba Mountains or Blue Nile.
48. The armed movements from Darfur, the Nuba Mountains and Blue Nile are closely inter-related and have formed joint alliances. For example, the Sudan Revolutionary Front, which is a member of the Sudan Call opposition alliance and the FFC, includes two armed movements from Darfur (the Justice and Equality Movement and the Sudan Liberation Movement/Minni Minawi and one from the Nuba Mountains and Blue Nile (the Malik Agar faction of the Sudan People’s Liberation Movement/North. The largest armed movement in the Nuba Mountains and Blue Nile (the Abdel Aziz faction of the Sudan People’s Liberation Movement/North) has also formed an alliance with one of the Darfuri armed movements.

Has the perception of Darfuris changed?

49. In the early phase of the revolution, there were signs of a new solidarity with Darfuris. When Bashir and Salah Gosh initially tried to blame the protests on members of one of the Darfuri armed movements and NISS arrested over 30 Darfuri students who were falsely accused of being “saboteurs”, the young protestors on the streets in Central Sudan started to chant “We are all Darfur”. In April, however, some of the protestors in the sit-in area in Khartoum started to praise Hemeti because they thought the RSF had initially protected them from attacks by NISS. This attitude, albeit short-lived, was regarded as insensitive by Darfuris and Nuba because of the widespread and grave human rights violations that the RSF were still committing against civilians in Darfur and the Nuba Mountains.

Has the perception of Nuba changed? Are there parallels between current perceptions of Nuba and Darfuris?

50. Individuals of non-Arab Darfuri or Nuba ethnic origin are both identifiable because of their darker skin colour and have historically been looked down upon by lighter-skinned Sudanese from tribes in central Sudan and referred to by insulting terms such as “Abid” (the Arabic term for slave). Civilians in the new transitional government are likely to try to take a more progressive approach to dealing with ethnic stereotypes but this racist prejudice is deep-seated in Sudanese society and is unlikely to disappear overnight.
51. Indeed, many Sudanese living in the marginalised areas feel aggrieved that they are under-represented in the transitional government. If it had not been for the Sudan Revolutionary Front, which initiated a meeting with other FFC members in Addis Ababa in late July, there would have been no substantive chapter in the Constitutional Declaration dealing with the peace agenda and the issues of the marginalised, IDPs and refugees. The armed movements have complained that this as a sign that Sudanese living in central Sudan still want to monopolise power at their expense and complain

that their mindset has not yet changed. It remains to be seen whether the Sovereign Council, and particularly the military who are responsible for the security sector, will be ready to make concessions in the peace talks that will give the armed movements and their constituencies appropriate political representation in the transitional institutions.

Are Nuba likely to be targeted today on account of ethnicity and perceived involvement with rebel groups?

52. As one reason for targeting Nuba is their perceived involvement with rebel groups, the situation for Nuba (and Darfuris) is likely to improve if it is possible to reach a comprehensive agreement with the armed movements. This is supposed to be a top priority for the transitional government. The Constitutional Declaration stipulates that a peace agreement should be concluded within six months from the signing of the agreement (ie by February 2020). The new Prime Minister also vowed to prioritise peace at his inaugural press conference on 21 August. However, it is uncertain if the February 2020 target will be met, given that Abdel Aziz al Hilu, the leader of the largest SPLM/N faction in the Nuba Mountains, is calling for the right to self-determination and two armies and Abdel Wahid Nour, whose Sudan Liberation Movement still has a significant military presence in the Jebel Marra area of Darfur, has denounced the power-sharing deal as a “betrayal of the revolution”.
53. It is too early to say how the security organs such as NISS and the RSF will treat marginalised groups such as Nuba and Darfuris until we know whether civilians in the transitional government will be able to exercise effective control over their behaviour and progress can be made in implementing security sector reform.

Does the position of Nuba differ from likely targeting of Darfuris? What conclusions can be drawn from the outcome of the recent Darfur Country Guidance case in relation to Nuba?

54. The outcome of the Darfur Country Guidance Case promulgated on 7 August 2019 is relevant to the position of the Nuba. The Upper Tribunal (Immigration and Asylum Chamber) concluded that “the situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris – relocation) Sudan CG (2009) UKAIT 00056 and MM (Darfuris) Sudan CG (2015) UKUT 00010 (IAC) requires revision. Those cases should still be followed”.
55. As the position of the Nuba in regard to likely targeting on account of ethnicity and perceived involvement with rebel groups is the same as that of Darfuris, the same conclusion should be drawn in relation to Nuba-related asylum cases.”

A48. Dame Rosalind also addressed (paras 56-58) the issue whether a Nuba failed asylum seeker with no political profile would be at risk on return to Khartoum:

“Would membership of the UK diaspora place a Nuba failed asylum seeker (with no personal political profile) at risk on return? Would a Nuba failed asylum seeker (with no personal political profile) be at risk of ill treatment in Khartoum in the event of return today? Would a Nuba failed asylum seeker (with no personal political profile) be at risk of ill treatment in the Nuba Mountains in the event of return today? Would Nuba with a political (anti-Bashir) profile be at risk if returned from the UK?

56. Civilians in the new transitional government would not regard membership of the UK diaspora or an anti-Bashir political profile as a negative factor. Indeed, those who supported the revolution and opposed the previous regime would be welcomed. However, it is not yet clear to what extent the civilians will be able to exercise authority over GIS and other parts of the military-security apparatus given that security sector reform is to be left in the hands of the military institutions and the Ministers of Defence and Interior in the Cabinet will be chosen by the TMC.
57. Nuba failed asylum-seekers could still be at risk of ill-treatment in Khartoum today as long as members of the former regime continue to control NISS and other security organs; the National Security Act has not been amended to remove NISS's powers of arrest and detention; and the RSF still has a presence in urban areas. They would also be at risk in the Nuba Mountains until such time as a peace agreement is in place.
58. There is still the danger of another military take-over or of a counter-revolutionary coup by the Islamists. Either scenario could create a hostile environment for Nuba failed asylum seekers."

A49. At paras 59 and 60, Dame Rosalind set out her conclusions identifying that the political situation remains "volatile" and she identified a number of indicators that would assist to clarify the political situation for the future:

"CONCLUSION: IS THE CURRENT SITUATION IN SUDAN ONE IN WHICH IT IS SAFE TO RETURN NUBA? HOW LONG WILL IT TAKE FOR THE POLITICAL SITUATION TO CLARIFY?"

59. The power-sharing agreement is an important step towards democratic transition. But the political situation in Sudan remains volatile and it is too soon to predict where Sudan is heading. We are still in uncharted territory and it is premature to say with confidence that it would be safe to send Nuba back.
60. It is difficult to tell how long it will take for the political situation to clarify but the most relevant indicators would include:
 - signature of a comprehensive peace agreement with the armed movements, particularly with Abdel Aziz Al Hilu's faction of the SPLM/North, which has the largest presence in the Nuba Mountains (according to the Constitutional Declaration, a comprehensive peace agreement is supposed to be completed within 6 months - by February 2020)
 - evidence that civilians are no longer being attacked by government security forces in the Nuba Mountains and that humanitarian assistance is being provided to SPLM/North controlled areas
 - the start of security sector reform, including amendment of the National Security Act (in accordance with the Constitutional Declaration) to remove GIS powers of arrest and detention, plus evidence that this is being implemented in practice
 - the withdrawal of the RSF from the streets of Khartoum and other cities and from any law enforcement activities
 - evidence of progress in restoring the rule of law and respect for human rights and establishing an independent judiciary
 - General Burhan hands over the chairmanship of the Sovereign Council to one of its civilian members in 21 months' time (June 2021). This would be a significant milestone.

- holding of free and fair elections in three years and three months (2022)”

5. Addendum Report “On the current political situation in Sudan and the risks involved in returning failed Nuba asylum seekers to Sudan” (17 October 2019)

A50. In her final written report, Dame Rosalind dealt with the current situation following a visit by her to Khartoum between 28 September and 9 October 2019. She identified a number of positive developments including the appointment of the new prime minister, Abdalla Hamdok (para 3). She noted that those to whom she had spoken – both Sudanese and international – agreed that the political situation was still very fragile (para 2). She noted that the government’s “biggest immediate challenge is economic” (para 4). At paras 4-5 Dame Rosalind said this:

- “4. But one of the Government’s biggest immediate challenges is economic. After 30 years of the Bashir regime, the country is bankrupt, with no foreign reserves, high inflation, a sharply devalued currency, pervasive corruption and key sectors of the economy controlled by the deep state. Although the new government has only been in office for six weeks, there are signs that its honeymoon period at home could prove short-lived if it is not able to deliver early and tangible improvements in people’s lives, particularly in relation to food, fuel, water, electricity and transport. The Government is already being criticised for moving too slowly. Hamdok has had to do a lot of international travel to New York and Sudan’s neighbouring countries in his first six weeks in office but people are complaining that, when he is away, the Government is paralysed.
5. International goodwill is yet to be translated into practical economic assistance, apart from some wheat and fuel that is being supplied by Saudi Arabia and the UAE. Sudan’s debt arrears and the US designation of Sudan as a State Sponsor of Terrorism will have to be addressed before the new Government can access financial assistance from the IMF and World Bank. The US have indicated that they will not be able to provide any economic assistance in the short-term are looking to the Europeans and the Gulf states to help in the meantime. But the Sudanese people are impatient to see immediate improvements in their lives. The Government is trying to manage expectations and plead for patience. But it will need to demonstrate that it is doing something to deliver an improvement in basic services and living standards. Otherwise it could face renewed street protests, which could, in turn, open the door to renewed violence on the streets by the security forces and the ill-disciplined paramilitary Rapid Support Forces (RSF).”

A51. At para 6, Dame Rosalind said:

- “6. There is very strong public pressure for justice and accountability for the human rights abuses committed during the December revolution, particularly in the 3 June massacre when the demonstrators in the sit-in area outside the military headquarters were forcibly dispersed. The Government has set up an investigation committee but the power-sharing deal between the military and civilians is likely to be a constraint if, as expected, the finger is pointed at some of the military members of the Sovereign Council.”

A52. At para 7, Dame Rosalind stated that the peace talks may remain tough particularly given that al Hilu is seeking

“substantial devolution of power to the regions, the need for a secular state and comprehensive security sector reform.”

A53. At para 9, Dame Rosalind said that the military members of the SC still wield “considerable power”. She also said that Hemeti “is now regarded as the most powerful man in Sudan”. She went on to state that:

“He is using his immense wealth from these mercenary activities and from his large and expanding business empire, including gold mines in Darfur and elsewhere, to build his political constituency among tribal chiefs and Arab tribes. His RSF officers are reported to have been doing a lot of community work in provincial areas around Sudan, which is widely interpreted as a sign that Hemeti is already on an unofficial election campaign trail. He is also trying to polish his image (further tarnished by the RSF’s involvement in the 3 June massacre in Khartoum) by leading the government negotiating delegation in the peace talks in Juba with the armed movements. But many Sudanese worry it may only be a matter of time before Hemeti’s mask slips.”

A54. At para 10, Dame Rosalind said that the threat to the “transitional government is that of a counter-revolutionary coup by Islamic hard-liners from the Bashir regime”. She said that the concern was that Islamists may try to “stoke violence” during a demonstration planned for 21 October.

A55. At para 11, Dame Rosalind said that if Hemeti or the hard-line Islamists were to overthrow the current government this would pose a threat to all Sudanese democratic forces and that Sudanese of Nuba or non-Arab Darfuri origin could be particularly at risk.

A56. Nevertheless, at paras 12-13, Dame Rosalind set out a number of positive changes that have taken place as follows:

“12. For the Sudanese middle class living in central Khartoum and foreign visitors such as myself, there have been several tangible signs of positive change:

- It is much easier for foreigners from Western countries to get a Sudanese visa
- The atmosphere in the city felt much freer than under the Bashir regime. I was not conscious of being followed by national security.
- Central Khartoum looks peaceful and seems to have returned to normal after the violence used by security forces against peaceful protestors from December 2018-June 2019.
- The national security presence at Khartoum airport seems to be much lighter than before

13. The transitional government has started to take some reform measures. For example, it has:

- launched peace talks with the armed movements and released some POWs
- dismissed all the Vice-Chancellors of Sudanese universities

- dismissed most Under-secretaries who were affiliated to the former ruling party and appointed new ones
- dismissed the former Chief Justice and Attorney-General and appointed new ones nominated by the FFC
- dismissed the head of Sudanese state radio and television who defended the RSF's role in the 3 June massacre
- signed an agreement to allow the UN Office of the High Commissioner for Human Rights to set up a fully mandated office in Sudan
- promoted women to top posts (Chief Justice, Foreign Minister, Vice Chancellor of Khartoum University)
- announced that journalists will no longer be arrested
- acknowledged the existence of cholera in Sudan, allowing the country to access vaccines from the WHO (something the previous regime had refused to do)."

A57. At para 14, Dame Rosalind stated that a number of elements of the "old regime" are still in place:

"14. However, the process of change has only just started and many elements of the old regime are still in place. For example:

- Apart from the removal of Under-Secretaries, the entire civil service is still controlled by the deep state.
- The same applies to the judiciary, apart from the Chief Justice and Attorney General
- The army, police and security apparatus from the old regime are still in place.
- The presence of the RSF in the centre of Khartoum is much smaller and less visible than before but they are still deployed around strategic and military installations and resentment about their role in the 3 June massacre continues to simmer. Many Sudanese are worried that they could be reactivated at any time.
- The Islamist shadow militias have not been disbanded.
- The Defence and Interior Ministers are generals who were appointed by the Transitional Military Council.
- The impact of the revolution has not yet been felt at all outside Khartoum. The people running the state governments are still the senior army officers appointed several months ago by General Burhan."

A58. In relation to the position of the Nuba living in Khartoum, Dame Rosalind reported on a meeting that she had with six young Nubian men in Omdurman on 7 October at paras 15-25 as follows:

"Has there been any change for Nuba living in Khartoum?"

15. I spoke to a group of six young Nuba men, all of whom were lawyers or teachers, at the office of Justice Africa (Sudan) in Omdurman on 7 October. I asked them whether the position of Nuba had changed since the new transitional government took over in early September.

16. They all said that, as far as they were concerned, nothing had changed. "We don't think change has taken place in Sudan yet". They described Hamdok as a man from the centre, not a leader of the revolution, adding that all his advisers were from the centre.
17. They said they had all supported the December revolution and had taken part in the sit-in. At that time, everyone had mixed in together. But after the political agreement and constitutional declaration were signed, they felt they had been excluded again by the Forces for Freedom and Change, and the Sudanese Professionals Association. They regarded these as elitist groups representing the interests of the centre who did not consult the marginalised groups on an equal footing and wanted to keep the status quo so that they could continue to run things. Sudan needed radical structural changes and a change in mentality if there was to be a genuine "New Sudan" built on equal citizenship.
18. They complained that there were very few Nuba in the new Government. The only Nuba in the Cabinet was the Minister of Agriculture. One of the five military members of the Sovereign Council, Shamseddin Kabbashi, was also a Nuba but he had been a collaborator with the Bashir regime. "We can't live together unless everyone accepts diversity". There was still insecurity in the marginalised areas. "We can't talk about peace until there is a peace agreement and people can return to their homes. Wars could restart at any time".
19. The same policies existed and no one in the new government was speaking up for the interests of the Nuba and other marginalised people. Most of the Nuba were still living in the slums in the outskirts of Khartoum and other big towns or in refugee camps in South Sudan, Kenya and Uganda. Some have been there for a long time. There were no services in the areas where the Nuba lived in Khartoum and Omdurman. No one in the new government seemed to care about this.
20. The Sudanese media was still biased to Arab culture and was still portraying Sudan as a Muslim state. Female TV presenters still all had pale skins and wore the hijab. The school curriculum was still biased towards Arab culture. No one in the new government was talking about changing this to reflect the diverse cultures of the country. People from the marginalised areas still had limited promotion opportunities in most sectors and professions. Nor was the Government pursuing the issue of justice for ethnic cleansing in the Nuba Mountains. Issues of identity, social justice and recognition of diverse cultures had not yet been addressed by the new government. If not addressed, the Nuba would press for self-determination.

Are Nuba still being targeted in Khartoum?

21. I asked the six young Nuba men whether they thought that Nuba were still being targeted in Khartoum since the new transitional government had taken over or whether their lives had improved. They said that, since the revolution, the Public Order Law was no longer being enforced in central Khartoum but it was still being applied in Nuba-majority areas in the outskirts of Khartoum and Omdurman. For example, the Public Order

Police were still harassing tea sellers and food sellers (many of them Nuba women) in Dar es Salaam, Umbadda, Haj Yousif and El Fatih 1 and 2 (relocation areas for displaced people on the very edge of Omdurman). They were still being taken to summary courts and lashed or fined. The police, the judge and the prosecutor would then share out the proceeds of the fines between them. Because these women were poor, they could not afford lawyers and did not know their rights.

22. Two of the young Nuba men in the group recounted that, two weeks before our meeting, they had been sitting drinking tea on the pavement at a tea seller's stall in one of the Nuba majority areas of Omdurman when a police lorry came along, stopped and searched them. They had been taken to a police station for no apparent reason and subsequently released without charge. They said that this kind of harassment was still continuing in parts of the capital because police officers from the previous regime were still in place.
23. One of the young Nuba men in the group raised the treatment of Christians. He said that, although the new Minister of Guidance and Religious Endowments had affirmed the country's religious diversity and talked about giving more freedom to non-Muslims, this had not materialised yet. The Ministry was still entirely controlled by Muslim officials from the old regime and the judiciary was still unreformed. When Abdel Aziz al Hilu, the leader of the SPLM/N - Al Hilu faction had met Hamdok in Juba, he had told him that one of his movement's key demands in the peace talks was that Sudan should become a secular state and that President Nimeiri's decision in 1983 to impose Sharia Law throughout the country should be reversed. But Hamdok had insisted that this was a national decision that could only be taken in the national constitutional conference.
24. The point made by my Nuba interlocutor about the continuing harassment of Christians is borne out by a decision taken by the Supreme Court on 7 October to confirm criminal charges against the executive committee of the Sudanese Church of Christ, a predominantly Nuba denomination, who were accused of refusing to hand over Church property to an unelected church committee appointed by the Bashir regime.
- [24]. I have heard from a different source that Nuba youths in the poor areas in the outskirts of Khartoum and Omdurman are also being targeted for recruitment into the RSF. The tribal leaders who have been paid generously by Himiti to recruit for the RSF are doing so both among people in their home areas in Southern Kordofan and among their own tribe in Khartoum.
25. The report by the Home Office entitled "Sudan: Political Situation Update" (October 2019) states in paragraph 31 that the Country Policy and Information Team (CPIT) was not able to identify information of targeting of Nuba by the state in Khartoum or surrounding cities in the sources consulted, which are listed in the bibliography. However, none of the sources in the bibliography directly address the situation of Nuba in Khartoum and the CPIT does not appear to have spoken to any Nuba either

in Sudan or in the diaspora to ask them about their views and their experience in recent months.”

A59. As regards the position of Nuba in the Nuba Mountains, Dame Rosalind dealt with this at paras 26-32 referring to a number of incidents in 2019 involving the RSF:

“Targeting of Nuba in the Nuba Mountains

26. A unilateral ceasefire by both parties to the conflict has been in place in the Nuba Mountains since 2016. Following the formation of the transitional government, Abdel Aziz al Hilu, the leader of the largest SLM/N faction, signed an agreement with the new government on 11 September 2019 declaring his readiness to take part in peace talks in Juba starting in mid-October.
27. However, not much has changed on the ground until now. Southern Kordofan is still under a state of emergency. The military Governor is still in place, the Popular Defence Force (an Islamist militia created by the National Congress Party) is still operational and the police are still the same.
28. There are still reports of continuing insecurity. For example, on 4 October, RSF forces recruited from the Hawazma and Salamat (Arab nomadic tribes), attacked the Nuba village of Tongal in Habila locality, using 25 pick-up trucks with mounted machine guns. General Himiti, the Deputy Chair of the Sovereign Council and RSF Commander, and Shamseddin Kabbashi, a military member of the Sovereign Council (who is himself a Nuba from the Gulfan tribe) have been busy since May recruiting youth from both Arab tribes and Nuba tribes in government-controlled areas to join the RSF. Kabbashi and Yasir Al Atta, another military member of the Sovereign Council, have also been trying to encourage the nomadic Arab Dar Naele (a branch of the Hawazma tribe) to change their migration path southwards during the dry season from their traditional route through government-controlled areas to a route through Habila, which is the territory of the Gulfan, a Nuba tribe, and which is very close to the SPLM/N front line. Kabbashi is also reported to have tried to bring in SAF soldiers to accompany the Arab pastoralists on their migration route. SPLM/N sources thought that this looked like a ploy to provoke a conflict and give SAF a pretext to capture some of their territory ahead of the peace talks starting in Juba. On 5 October, Kabbashi is reported to have met with Chiefs from both the Gulfan and Dar Naele and given each of them SDG 500,000 to unite against the SPLM/N.
29. On 16 October Abdel Aziz al Hilu’s spokesman announced that RSF soldiers in 25 Landcruisers had ambushed civilians inside SPLM/N-controlled territory near Khor Waral in Habila locality, abducting 13 people, and killing two, including a local Sheikh who had objected to the local nomads passing through farmland. Abdel Aziz accused the government of supporting the Hawazma against other tribes in the region and violating the ceasefire and announced that he was therefore suspending negotiations until there was an immediate ceasefire, a full investigation and detainees were released. General Burhan responded immediately by announcing a ceasefire throughout the country. Mohamed

el Taishi, a civilian member of the Sovereign Council and spokesman for the government's negotiating team in Juba, strongly condemning the incident, pledging to investigate and hold the perpetrators accountable. This incident shows that the security situation on the ground is still extremely volatile.

30. In a separate incident on 7 October, the RSF mounted an attack on people living near the gold mines at Talodi, using 27 armed pick-up trucks. They beat and arrested civilians, injuring ten people, and looted their property. Demonstrations by local residents had been going on for months over the use of mercury and cyanide by gold-mining companies which they said had caused serious health and environmental problems. Most of these companies are owned by the RSF and the security apparatus. Under pressure from these protests, the Governor of Southern Kordofan had ordered the companies to close their factories but when they refused to do, angry protestors stormed the gold mining plants and burnt down four of the factories and the vehicles of the companies operating them. On 4 October, the spokesman of the Sovereign Council condemned the environmental protestors as "armed groups of saboteurs". Residents of Talodi staged a big march on 7 October to denounce the statement by the Sovereign Council on the grounds that it had not acknowledged the justice of their cause and had falsely accused them of being armed. The six young Nuba men I interviewed in Omdurman were particularly angry about this statement because they thought it showed that the Sovereign Council were ignoring the grievances of the Nuba and defending the vested interests of their own members.
31. Tom Catena, the well-known American doctor who has worked in a hospital in the Nuba Mountains for the last decade, said in an interview in September 2019 that "the region remains a war zone". There are several reports from the HUDO Centre, that, because of the state of emergency in Southern Kordofan/Nuba Mountains, Sudanese security forces and militias have been carrying out arrests at will even since the formation of the new government.
32. If the RSF and other security forces are still attacking civilians in the Nuba Mountains, it is difficult to be confident that they could be relied upon to protect the rights of Nuba failed asylum seekers in Khartoum."

A60. At paras 33-35, Dame Rosalind reiterated her view that Nuba were particularly targeted under the al-Bashir regime like the non-Arab Darfuris. Noting the ongoing peace talks, at para 35 Dame Rosalind commented on the effect those peace talks might have on social attitudes as follows:

- "35. The peace talks between the armed movements and the new government that have just started in Juba are designed to produce a comprehensive peace agreement with four tracks covering Darfur, the Two Areas, Eastern Sudan and the North but starting with thematic issues in recognition of the fact that many of the issues facing the Nuba Mountains are common to all the marginalised areas. It is too soon to tell how the peace talks will go. But even if the talks succeed, signing a piece of paper is unlikely to change social attitudes and mindsets overnight. Problems related to ethnic,

religious, cultural and social discrimination may continue for some time and will require further reconciliation efforts.”

A61. At paras 36-37, Dame Rosalind reached her conclusion that the new transitional government is an important step but the political situation was still “very fragile and volatile”. Based on what she had set out concerning continued attacks on civilians in South Kordofan and what she was told by the six young Nubian men about the situation in Khartoum, she concluded that:

“It would be too early to conclude that it is now safe to start returning Sudanese failed asylum-seekers of Nuba origin to Sudan”.

A62. For Dame Rosalind (para 37), the position of Nuba is the same as that of non-Arab Darfuris as determined in the UT’s CG decisions.

6. Oral evidence (24/25 October 2019)

A63. In her oral evidence at the October hearing, Dame Rosalind stated that the military retains effective power of veto in the SC as any decisions could only pass with a majority of two thirds of the members. She said that two members of the cabinet had been nominated by the military, namely the Minister of Defence and the Minister of the Interior. She said that Hemeti was the most powerful man in Sudan and that his RSF forces were active in the Nuba Mountains including the recent incident she had identified in her report where civilians in a gold mine in South Kordofan, which was owned by Hemeti and by members of the NISS, were attacked. She said that the powers of the NISS (or GIS) remained under the National Security Act which had not yet been amended to remove powers of arrest and detention because the Legislative Council had not been formed.

A64. Dame Rosalind stated that the “deep state” had not been dismantled and that Islamists remained in control of the main businesses and companies. Dame Rosalind said that the threat of an Islamic counter revolutionary coup was a real one. She highlighted the failed coup attempt in July 2019 and that the Nuba could be at risk were a coup to materialise.

A65. In relation to the demonstration on 21 October 2019, she said that the Islamists had not taken part although there had been reports of incidents of Islamic activity in the days leading up to those protests. She said that the Islamists and NCP (the previous ruling party) may seek to stand in the next elections in three years’ time and there is concern that the “deep state” machinery might be able to rig those elections.

A66. Dame Rosalind said that the economic future of Sudan posed a “serious threat” to the administration. If the economic situation was unresolved, in her view, this posed a threat of growing discontent with the new government and if there was no tangible change there was a risk that the government would fall. If this were to happen, her view was that the Nuba would be targeted again by those who supported the policies of al-Bashir and by the RSF. She said that a further threat to stability was the position taken by al Hilu, the predominant group within the SPLM-N, in making demands for self-determination and a secular state. She stated that al Hilu had signed a preliminary document in Juba on 21 October which was a road map for negotiations and a preliminary agreement on how to handle the agenda. It was not, however, a peace agreement and the talks were to resume on 21 November 2019. She said that the likelihood of a peace agreement depended on how the transitional government, including the civilians and military, were willing to compromise for peace.

- A67. Dame Rosalind said that the RSF had signed an agreement for the forthcoming peace talks and a joint cessation of hostilities in the South Kordofan region. This would allow humanitarian access to areas under their control. The government had agreed that that assistance could come from outside Sudan as well as internally.
- A68. Dame Rosalind commented on a Home Office document, CPIT "Response to an information request" dated 23 October 2019 ("CPIT 1" below), where the comments of an official of the British Embassy in Khartoum were reported that contacts had expressed surprise at the suggestion that Nuba people were subject to systematic discrimination in Khartoum. She noted that the document did not state whether the Embassy had spoken to any Nuba people.
- A69. Dame Rosalind said that the tea sellers, whom it had been reported were harassed, were all Darfuri or Nuba women displaced from their home areas. She said that the Public Order law was applied with a wide discretion to detain, for example against women wearing inappropriate clothing. She said that those Nuba men to whom she had spoken, one of whom was a lawyer and another a teacher, had given examples of day-to-day harassment in the shanty towns which was a Nuba majority area. She also said that there was recruitment by the RSF of individuals who were forced to fight against their own communities.
- A70. Dame Rosalind stated that there were "close parallels" between the Nuba and Darfuris. First, both had been victims of historical marginalisation dating back to British rule which had been continued and magnified by their treatment by the al-Bashir regime. Secondly, they had suffered at the hands of the government having been targeted in Khartoum because of perceived association with rebel forces. Thirdly, they were both exposed to social and economic discrimination in the shanty towns and were often forcibly evicted by the government who wanted to redevelop land. Both Nuba and Darfuris felt under-represented in the transitional government. She said that although General Kabbashi was a member of the SC and a Nuba, he had been a member of the former al-Bashir regime and so did not provide a good example of how Nuba were represented.
- A71. When asked about the return of Nuba now, Dame Rosalind said that it was too soon safely to return failed asylum seekers of Nuba origin because of the continuing fluidity of the situation and what might happen over the transitional period. There were a number of threats to the current government and if the military took over there would be a more hostile environment for the Nuba.
- A72. In cross-examination, Dame Rosalind stated that there were no accurate figures of the number of Nuba in Khartoum but said that it could be as many as 1.5 million. Not all lived in the 'Black Belt'. Those shanty towns traditionally had particularly intensive security presence and informers to keep an eye on what was going on.
- A73. Dame Rosalind said that the political threat in 2019 was different from previously. She stated that there had been a change in 2019 and what was crucial was when Hemeti stopped supporting al-Bashir and arrested him in April. She said that the crackdown in June 2019 was very significant because the military came to realise that the revolution could not be crushed and that they had to do a deal with the FFC. She said that the potency of the military intervention in Darfur and South Kordofan had "significantly declined". She said that the threat in 2008/2009 was primarily military but the current fear was economic and a takeover by Hemeti and the Islamists.
- A74. With regards to the position of the Nuba in Khartoum, she said that some had managed to go to university but the majority lived in shanty towns and an underprivileged existence.

She stated that a significant number of Nuba were Christian and that that could affect the risk to them. She said that Darfuri students were targeted because of their association with rebel groups. She stated that Darfuri students were seen as politically active. The Nuba, she said, were associated with the SPLM-N. She said that there was no evidence that in early 2019 the Nuba had been specifically targeted prior to the fall of the al-Bashir regime. There was also no evidence of Nuba randomly being arrested.

- A75. When asked about the position of failed asylum seekers on return, Dame Rosalind said it was not clear whether there was any systematic procedure in place to monitor failed asylum-seekers on return. She said that she was unclear what efforts were being made to monitor failed asylum seekers and she expressed the view that the Sudanese might also want to keep any such monitoring from the authorities. She said that it might be expected that mistreatment, if it occurred today, would come up on social media. She said there was no evidence that the British Embassy has checked or monitored any impact on failed asylum seekers on return. Dame Rosalind also said that there was still a NISS (GIS) desk at the airport but that checks were more cursory than before.
- A76. Dame Rosalind said that at the time of al-Bashir's overthrow in April 2019, the NISS mindset was to suspect failed asylum seekers of Nuba ethnicity with involvement with SPLM-N. She said that there was a concern that the remaining NISS members at airports would not have changed their mindset and there remained a risk that Nuba failed asylum seekers would be subject to ill-treatment.
- A77. Turning to the events of early 2019, Dame Rosalind stated that there appeared to be little focus upon ethnic background. She said that there had been a degree of opening up of democratic space and a strengthening of civil forces by the appointment of independently-minded persons and a commitment by the civilian Prime Minister and his cabinet to put in place a radical set of reforms and dismantling of the 'deep state' as set out in the Constitutional Declaration.
- A78. Dame Rosalind said that following the 3 June 2019 protests, in which large numbers had been involved, the authorities had realised that strong armed tactics no longer worked. There were external pressures, economic and otherwise on the authorities. She referred to the developments by the current authorities including the announcement of an independent inquiry into the 3 June events. The civilian Prime Minister had appointed a prominent human rights lawyer with power to prosecute as the head of the committee. She said that eight senior military officers had been charged with crimes against humanity following a military inquiry.
- A79. Dame Rosalind stated that the civilian Prime Minister had "done a good job" and that there were fine people in the Cabinet. Dame Rosalind also said there had been the appointment of a new Chief Justice and Attorney General nominated by the civilian government. She said that the Attorney General and the Ministry of Justice were discussing more far-reaching legal reforms in Sudan.
- A80. Dame Rosalind said that the combination of vested interests of powerful groups (in particular the military), economic challenges and uncertainty and the risk of a lost credibility on the part of the civilian government in the absence of future economic stability, made the transition process uncertain.
- A81. When asked about the threat from Hemeti and the Islamists, Dame Rosalind said that that the Islamists posed no immediate threat. It looked, she said, from a political point of view as if their strategy was to prepare for the elections in three years' time. Dame Rosalind said that

the most likely scenario was that Prime Minister Hamdok would not survive the three-year period until the elections and that the military may withdraw their co-operation because of their own interests. Nevertheless, she said that the Prime Minister and civilian cabinet were committed to economic and security reform and to dismantling the 'deep state'.

- A82. Dame Rosalind said that the present government, following a speech in September 2019 in Geneva, had indicated that a new UNOHCR office would open in Sudan and that this was a quite different view than previously taken by the Sudanese authorities.
- A83. In re-examination, Dame Rosalind was asked whether Nuba ethnicity and the fact that having claimed asylum overseas would create a risk. She responded that this was a difficult question to answer, except that the security apparatus was still in place and that returning asylum seekers might be in a different category. It would depend on how the NISS (GIS) at the airport behaved. They might well be constrained by the new government which has a different approach. She said that she did not have any information. She said that under the old regime a returning Nuba might have been at risk as suspected of being involved with the SPLM-N and might have been detained. She said the same people (the NISS) were involved today but that she did not have any evidence as to how they were treating failed asylum seekers.
- A84. In relation to very recent events on 21 October 2019, Dame Rosalind said that the reformers were going to protest and the Islamists too and a clash was feared. However, the Islamists failed to get, as she put it, "their people out on the street". A factor may have been that the military made it clear to the Islamists they would not be able to approach anywhere near military headquarters. They had not sided with the Islamists on 21 October.
- A85. In relation to the Nuba men that she met in Khartoum on her October visit, Dame Rosalind stated that there were six Nuba men whom, she thought, were activists in the community. Some of these individuals had spoken of a personal experience of harassment within the two weeks prior to the meeting.

B. Madeline Crowther

A86. We also heard, and read, evidence from Madeline Crowther who is an Executive Director and Head of Communications, Research and Asylum at Waging Peace, an organisation which campaigns against human rights abuses in Sudan. She gave oral evidence before us at both the 31 May/1 June 2018 and 24/25 October 2019 hearings. She also produced for the initial hearing a document entitled "Risks to Individuals from Nuba Mountains in Sudan" (March 2018) prepared under the auspices of Waging Peace. She also produced three additional written reports: dated January 2019 in relation to the F-FR 2018; and dated 27 August and 17 October 2019 dealing with the developments in Sudan following the fall of the al-Bashir regime.

1. *"Risks to individuals from Nuba Mountains in Sudan" (March 2018)*

A87. In her oral evidence Madeline Crowther adopted as her statement the Waging Peace report, "Risks to Individuals from Nuba Mountains in Sudan (March 2018)". She stated that in compiling this report she had consulted a number of organisations such as Oxfam and Amnesty International and also Dr Tom Catena who worked in the Nuba Mountains region together with members of the Sudanese diaspora community. She said that Waging Peace did not pursue a political agenda other than peace in Sudan.

A88. The Waging Peace report is a detailed one. The “Executive Summary” sets out the position recognising that individuals of Nuba ethnicity are at risk in Sudan as targets of the war efforts in the Nuba Mountains, the regime’s campaign of ‘Arabisation’ and the association of the Nuba with rebel groups. The summary also notes the return of a number of individuals as failed asylum seekers who alleged that they were subsequently detained, interrogated, ill-treated and tortured. The summary is as follows:

“Individuals of Nuba ethnicity are at risk in Sudan, both as targets of a war effort in the region itself, and of the regime’s campaign of ‘Arabisation’ and association of ‘being Nuba’ with rebel loyalties, that makes them ready targets of persecution, ill-treatment, torture, or worse, and particularly so in Khartoum, where security, military, and police officials are headquartered. This, as well more systemic forms of discrimination - limiting Nuba individuals’ access to equal citizenship, employment, religious freedom, education, healthcare, and housing - present intolerable obstacles when trying to relocate internally to the capital.

This risk is increased at times of political upheaval, because of the perception that all Nuba are associated with, or at least sympathetic to, rebel and opposition activity. Given the wide-scale protests in early 2018, which were marked by the arrest and ill-treatment of hundreds of opposition figures, this is a particularly inopportune and dangerous moment to arrange removals, and will likely remain so for the foreseeable future.

Nuba individuals will also be at high risk due to their profile as rejected asylum-seekers. The recent normalisation of relations between Sudan and various EU Member States has led to the return of many individuals that allege they were subsequently detained, interrogated, ill-treated, and tortured, whereas others have simply disappeared on arrival. This testimony supports the conclusions of our work on the issue of post-deportation risk over more than six years.”

A89. The report sets out the background to the war in the Nuba Mountains which has its roots in the Sudanese civil war that ended in 2005 with a Comprehensive Peace Agreement and the cessation of South Sudan as an independent country in 2011. The report notes that the war resumed in the Nuba Mountains in June 2011. The report comments on the nature of the conflict as follows:

“...it was noted that the Sudanese government placed even more of an emphasis on disrupting civilian lives there. Attacks focused particularly on civilians, disrupting farming schedules, and using indiscriminate and targeted bombing of civilian targets like schools and hospitals. We asked Dr Tom Catena, currently the only surgeon present in the Nuba Mountains, to comment on the bombing. He responded in an email dated 07.02.18:

‘... the areas bombed were not military barracks or even places which had any strategic importance. They were random market places, schools, hospitals (ours included twice) and farming areas. Many casualties of the aerial bombardments were civilians who were far from the front lines. We also had many civilians wounded as a result of indiscriminate artillery shelling.’

The government has also blocked the delivery of humanitarian aid to the region for years, but as this issue has now been subsumed within wider political negotiations, it remains deadlocked.

The situation on the ground has largely played itself out away from public attention. International NGOs and humanitarian agencies were already largely absent in the Nuba Mountains, and in 2011 were in any case still reeling following their 2009 *en masse* expulsion after the indictment of President Omar Al-Bashir by the International Criminal Court. Press coverage of events in the Nuba Mountains is almost non-existent, following the regime's deliberate obstruction of media freedom. Covering the conflict in South Kordofan has become a 'red line' issue for NISS, who are tasked with keeping the press in check. In its 2013 Freedom on the Net report, Freedom House commented on the prosecution of a number of activists for their coverage of the conflict areas in Southern Kordofan.

In fact, one of our interviewees for this report whom we spoke to on 16.11.2018 (Ms B, an interview conducted with her in 2014 is also included in Annex I) was a former journalist in Sudan. She was tasked with covering South Kordofan, or the Two Areas (this term is used to refer to both South Kordofan and the Blue Nile). She described intimidation tactics including an unwarranted search of her family home, being barred from relevant press conferences, or having an invitation revoked at the last minute, and causing financial hardship. For instance, she was removed from a flight to attend an event, questioned by security officials, and not allowed to board. More seriously, she was also sometimes dragged to the police station when interviewing witnesses, and even held overnight on occasion. She says her only course of action was to self-censor to avoid harassment. The paper for which she worked was also harassed due to the issues it covered. Its editor had to flee abroad, sending money to his team via couriers on cross-border flights, and paying a security guard as they were regular victims of 'random' crime like knife attacks."

A90. The report then turns to consider the current (March 2018) situation and conditions in the Nuba Mountains:

"The Nuba Mountains intermittently suffer from famine conditions because their farms have been repeatedly targeted by the regime's campaign of aerial bombardment. The most reliable information about food security comes in the form of humanitarian updates from the South Kordofan and Blue Nile Coordination Unit, which are shared privately with agencies and NGO partners. The latest of these, released in January 2018, stated that although January and February are historically the least lean months in the year because of harvest times: "Based on key informant interviews performed by the CU [Coordination Unit], it is likely the current harvest's food stocks will not last beyond April. With the following early harvest beginning in August, this will create at least a 3 month food gap." Furthermore, The Famine Early Warning Systems Network reported that the rate of chronic malnutrition in SPLM-N-controlled areas in South Kordofan was estimated at 38.3% due to long-term food deprivation and recurrent illness. Dr Tom Catena commented on 07.02.18:

"Food security in our area is poor again this year. The rains were not very good and we had one major flood which damaged the sorghum crops of many. There are still many internally displaced people who are

unable to cultivate to any large extent. Insecurity prevents farmers from cultivating in areas with good farmland as they fear attack by Arab nomads and cattle raiders.”

There has been no aerial bombing activity in 2017 because the government of Sudan has been on its best behaviour, negotiating a normalisation of relations with the United States, culminating in the partial lifting of sanctions on the country in October 2017. Although the cessation of offensive military activity should be celebrated, it is not indicative of a change in approach or policy towards the region by the Sudanese government, and was driven by political expediency. It remains to be seen how the government will respond once the next stage of the normalisation of US-Sudan relations, the lifting of Sudan from the State Sponsors of Terrorism list, is concluded.

The media black-out on events in the region continues. For example in May 2017, the Press and Publications Court in Khartoum convicted Madiha Abdala, former Editor of Sudanese Communist Party newspaper *Al-Midan*, of “dissemination of false information”. She was fined her 10,000 Sudanese pounds (around \$1,497), for publishing an article on the conflict in South Kordofan in 2015. It would be wrong to conclude that the lack of information coming from the Nuba Mountains suggests there is no news, an argument sometimes cited in Home Office refusals of which we have had sight.

Meanwhile, a fresh leadership dispute within the Sudan People’s Liberation Movement-North (SPLM-N) since March 2017 has seen the movement split into two rival factions, triggering wider conflict and displacement, though primarily centred in nearby Blue Nile state. The dispute also places at risk the political negotiations with Sudan’s government, in addition to discussions about humanitarian aid delivery.

Particularly precarious is the fate of mothers in the Nuba Mountains. According to a 2017 Human Rights Watch report, women and girls living in rebel-held areas of the Nuba Mountains “have little or no access to contraception, adequate antenatal care, or emergency obstetric care—leaving them unable to control the number and spacing of their children, and exposing them to serious health complications and sometimes death.” Moreover, the latest South Kordofan and Blue Nile Coordination Unit report in January 2018 mentioned that: “Pediatric care in particular is substantially lacking throughout the region. As reported in August of 2017, access to basic pediatric medicines or nutritional commodity was only 22% for the Central Region and 0% for the Western Jebels. The CU is not aware of any changes to these metrics over the last 6 months and anticipates the child population still faces substantial disadvantages in their access to health care.”

Students from South Kordofan also suffer routine harassment. For instance, as recently as January 2018, there were mass arrests of protestors at Aldalang University in the area. Students there were demonstrating after an officer of the Sudan Armed Forces (SAF) indiscriminately shot and killed two students on the university campus. Joint security forces (including NISS, Military Intelligence, SAF and police) raided the university in response, detaining at least 49 students.”

A91. The position of Nuba “as a risk category” is dealt with under a number of headings: political profile; current political contexts; treatment by NISS of rejected asylum seekers; and recent cases of post-deportation risk.

A92. As regards whether Nuba are at risk because of an actual or perceived political profile, the report states as follows:

“Political profile

It should be clear that Nuba individuals are persecuted in a direct and sustained fashion as part of the regime’s war in South Kordofan. It is of particular relevance that it is this context of conflict that provides the basis for the persecution of Nuba as an ethnicity in Sudan. Nuba individuals are by their nature assumed to be either an active part of, or sympathetic to, the SPLM-N, and this then often forms the basis of their targeting and ill-treatment. It is important to note that actual membership or allegiance to the SPLM-N is not required for this to be the case. It is sufficient for such qualities to be imputed, although of course an active political profile would significantly increase an individual’s risk profile. And besides, most Nuba individuals are in some manner connected to the SPLM-N through large family networks.

Moreover, the number of people assumed to have a political profile varies according to how vulnerable the Sudanese government believes it is at a given moment. Its perception of risk is due to how it assesses external circumstances, in particular when the threat being posed originates with the SPLM-N. The testimony of Mr C, sourced from one of our earlier reports and included in full in Annex II (we interviewed him separately for this report, however), describes his poor treatment at the time of the elections for the governor of the Nuba Mountains region, saying “tensions were high”. Accordingly, in late 2012 and early 2013 there were many arrests of Nuba due to their supposed, and sometimes actual, involvement in a coup attempt by Brigadier-General Mohamed Ibrahim Abdel-Galil, better known as ‘Wad Ibrahim’. Most notably, crackdowns followed an April 2013 attack by joint forces including the SPLM-N, named the Sudan Revolutionary Forces (SRF), in the towns of Um Rawaba in North Kordofan state, and Abu Kershola, in South Kordofan state. The attack represented the high watermark of the rebel military advance. In response to their humiliation, the Sudanese government arrested and detained a wide variety of Nuba individuals accused of supporting this coalition.

We have spoken to several individuals who were targeted during this particularly restive period. One gentleman was detained for several days and then released, only to be re-detained for sixteen days and tortured in a manner that included sensory deprivation and solitary confinement, as well as beatings to the head later requiring stitches. While detained he also saw several other Nuba individuals being tortured. He eventually collapsed and had to be put on a drip. He still suffers from post-traumatic stress disorder, and a fear of the dark.

It is therefore clear that at times of political upheaval, when the regime feels its survival is threatened, the first targets of the security services and other actors are marginalised groups that are assumed to be from conflict areas, and so sympathetic to the aims of rebel groups. Nuba individuals, identifiable by their skin tone and other factors, are presumed to be associated either formally or informally with the SPLM-N, and so often bear the brunt of these attacks.”

A93. Under the heading “Current Political Context” the report turns to the impact, if any, upon Nuba at times when the regime is threatened:

“There is an established pattern to the crackdowns and arrests following a perceived threat to the regime’s survival. Thus it can be predicted that a Nuba individual returned to Sudan at this juncture would readily be assumed to have a prior political profile on their arrival. Hence, they would be more likely to suffer arrest, detention, ill-treatment, torture, or worse. This period of heightened risk will continue for the foreseeable future.”

A94. The report then returns to the treatment of failed asylum seekers, in particular by the security services, the NISS:

“Treatment by NISS of rejected asylum-seekers

It is also important to understand how the very act of claiming asylum is viewed as a political act in Sudan. The government sees Sudanese who have travelled abroad as more easily connected to opposition and rebel activity, as is evident from the lines of questioning outlined in the testimonies compiled in our reports on post-deportation risk: ‘The Danger of Returning Home’ (2012) ‘The Long Arm of the Sudanese Regime’ (2014) and ‘Recent cases of post-deportation risk’ (2017). Individuals are routinely questioned about their political activities and connections in the country that have travelled from.

During our interviews for this report, this fact was corroborated. One interviewee (Ms A) mentioned a Nuba individual who was questioned for hours on his arrival into Khartoum about his political activities and support for the rebels, despite having a French passport. Another interviewee (Mr C) talked about a human rights activist who returned to Sudan in 2014 with a British passport, but was nonetheless interrogated for one hour about the activities of the UK community group, NMSA. They believed the security officers limited themselves to one hour because he owned a British passport. Two of those whom we interviewed, Ms B and Mr C, had their own stories of harassment on arrival, as included in the Annexes. The testimony of those who have returned may explain why we were told that even those people with British documentation are fearful of returning to Sudan because of their treatment on arrival. As a consequence, they may fear returning to Sudan even to attend the funerals of close family members, including their parents, as recently described by Mr C. Ms A also said that she was advised by family members never to leave her British passport at home when travelling around, for fear she would be arrested and detained without paperwork.

This fear is also owing to the fact the NISS continue to enjoy complete discretion as to who it targets and what techniques it employs, as per the conditions of the 2010 National Security Act – judicial oversight is not stipulated. This means the NISS makes arbitrary judgments about whom they believe has a sufficient political profile to warrant their interest – there is no checklist they consult – and that following this judgment, they can detain someone for up to four and a half months without independent oversight. They are also granted complete immunity for any actions they take.

This arbitrary targeting, in addition to NISS’s immunity, are the sources of the fear felt by Nuba individuals living in Khartoum. Ms A commented as per our notes:

“Every day we heard of someone kidnapped, detained, disappeared from Nuba. We felt we had to leave, people we knew were being detained, even killed. Normally because of political values, but government can always level bogus charges - arrest first, ask later.”

More often, individuals are detained for only a few days if NISS cannot immediately prove wrongdoing. In these cases, NISS’s tactics change; they will release the individual, intending to collect information from them later, at a given date, or when they re-detain them in a ‘cat and mouse’ pattern.²⁹ They will usually force a person to sign a document that releases them on family guarantee or personal security, which obliges them not to engage in any political activities, or possibly leave the country, and gives the police the right to detain them at any time. Several of our interviewees mentioned this tactic. Mr C commented, “If you give information you’re fine, but if you resist you face difficulties.”

A95. The report deals with a number of recent cases of claimed ill-treatment of returnees to Sudan from Belgium, Italy and France. The report begins by identifying the claimed risk of ill-treatment, though not uniquely to Nuba, as follows:

“The risk faced by returnees into Sudan has become particularly evident recently because of reported cases of ill-treatment following forcible repatriation over the past couple of years. This risk is not unique to Nuba individuals, but shared by all rejected asylum-seekers, including those from other marginalised groups, such as non-Arab Darfuris. Therefore some of the cases outlined below do not strictly fit the profile under consideration for this report, but they do demonstrate the risks facing those returned. It is clear that Nuba individuals returned to Sudan face a range of responses by security officials on arrival, routinely involving arrest, detention, interrogation, and intimidation, but also regularly ill-treatment, torture, and even death.”

A96. The report goes on to note that they are “unable to advise the returnee be met at the airport, as this itself could put them at risk, as it would show engagement with local human rights defenders or groups, and it would in turn put those human rights defenders or groups at increased risk”. The report then turns to returnees from Belgium as follows:

“Belgium

In December 2017 it was reported that several individuals deported to Sudan from Belgium alleged they had been tortured. The decision to deport them was made by the Federal Secretary of State responsible for Asylum and Migration, Theo Francken. This followed Francken inviting Sudanese officials on an identification mission to assess Sudanese migrants, some of whom had been arrested in a raid on a makeshift camp in Brussels’ Maximilian Park. The delegation was widely believed to have been from Sudan’s NISS, and they were allowed to question Sudanese without Belgian officials present. The episode eventually threatened the survival of the coalition government in Belgium, as tensions mounted between Francken, a Flemish nationalist, and Prime Minister Charles Michel from the other Francophone liberal party, over a charter flight scheduled after the allegations came to light.

In total, the testimonies refer to nine Sudanese who were sent home, including one gentleman from the Nuba Mountains. We are in touch with the organisation that compiled this evidence, the Tahrir Institute for Middle East Policy. Hence we have seen the original testimonies, most of which were obtained over the

messaging service WhatsApp. All describe a period of detention on arrival at the airport and interrogation lasting several days, then being released on family guarantee/personal security. A few describe physical torture (being beaten with a stick) or emotional torture. One testimony is from a gentleman from the north of Sudan. He credits the fact that he is not from one of the more marginalised areas (Darfur or the Nuba Mountains) with his relatively benign treatment.

As it stands, the Belgian Commission which independently handles asylum claims, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), reported that it did not find the testimonies credible. Hence, Sudanese identification missions will continue, though with more oversight by Belgian officials."

A97. Then, in relation to Italy the report continues:

"Italy

Italy was one of the first European governments to put in place a formal bilateral agreement on returns and readmission. It signed a Memorandum of Understanding in August 2016 aimed at increasing police cooperation in the fight against transnational organised criminality, and especially irregular immigration. Like the Belgian arrangement, it included provisions for missions of officials from the respective territories to help investigate details to facilitate returns, as well as of training and equipment for the Sudanese police.

This led to the forcible return of around 40 individuals on a charter flight to Sudan in August 2016. Again, testimonies received by NGOs confirm accounts of detention and interrogation on arrival, with some individuals witnessing beatings, as documented by Amnesty International. The human rights monitoring group Huqooq also provided the testimony of a gentleman nicknamed 'Barakat'. 'Barakat' claims he was beaten by NISS during the period the group was detained, and he has since gone into hiding. Other testimonies seen by us also suggest that the deportees now live in fear for their physical security, as well as that of their families, and that they believe they are being monitored by NISS, including via their mobile phones.

Just recently, these returnees received permission to appeal their cases before the European Court of Human Rights for violating the principle of *non-refoulement*."

A98. Then, in relation to France the report states:

"France

There are rumours that bilateral discussions have been held between the French and Sudanese governments to arrange for the return and repatriation of Sudanese living in France. Documents produced by Sudan's Foreign Ministry have come to light that mention Sudanese concerns about a particular community in a Paris suburb that Sudanese authorities wanted to see returned to Sudan, and a request for France to share a contact database (this document can be provided on request). This letter indicates Sudan's clear interest in the behaviour and members of its diaspora, particularly insofar as they may be loyal or merely sympathetic to rebel and opposition activity.

A French journalist, Tomas Stadius, has also recently started documenting cases where it seems individuals slated for return to Sudan were interviewed by a

Sudanese delegation, in a manner that resembles the approach taken in Belgium. The mission delegates seemed to show particular interest in those individuals who had been formerly imprisoned in Sudan. Mr Staius suggests this may be because the security services are able to verify their presence and activity in the country through fingerprint technology implemented in 2012. Mr Staius has identified four people deported to Sudan following a Sudanese delegation visit. However, he encountered the same difficulties as we have when trying to monitor those returnees and report on their well-being post-return."

A99. The evidence concerning the Belgian returns featured significantly in the evidence before us both in cross-examination of Ms Crowther and also in relation to the report of the Office of the Commissioner General for Refugees and Stateless Persons in Belgium (February 2018) which we set out below.

A100. Finally, the report deals with internal relocation to Khartoum. The report first deals with an individual returning to Khartoum by air and the likelihood of them being detained, interrogated and released only on condition that they either do not leave the country or that they gather information on rebel and opposition activities for the government. The report's author states:

"The experiences of those returned to the Sudanese capital via the airport highlight the first difficulty in relocating internally to Khartoum. It is likely that individuals returned will be detained, and interrogated upon stepping off the plane, and released only on the condition that they do not leave the country, or worse, that they gather information on rebel and opposition activities to prepare for a future period of questioning. The concentration of NISS, police, and other military or security activities in the capital means returnees will have fewer opportunities to escape the attentions of these bodies. It is highly likely that they will be re-detained at a later stage, particularly if they have signed a document on release for family guarantee/personal security, which enables the police to arrest and detain them at any stage. This type of process will be considerably easier if plans to digitise citizenship records under the aegis of the EU-Horn of Africa Migration Route Initiative, in particular the Better Migration Management project run by Germany's development body, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), are carried out."

A101. The report then goes on to identify what it describes as "systematic discrimination" faced by Nuba in Khartoum:

"By far the biggest obstacle to Nuba individuals relocating to Khartoum are the systemic forms of discrimination individuals face there. The routine denial of these rights and opportunities, and the underlying racism of the Arab elite that brings Nuba individuals more readily to the adverse attention of police and security officials, amounts to a high degree of persecution."

A102. The report identifies areas of discrimination: citizenship, education, housing, healthcare, employment and religion. However, before doing so, the report identifies that racial animus, linked to the regime's stated aim to 'Arabise' the country, affects and impacts upon the Nuba:

"Racial animus/'Arabisation'

That race plays a role is clear from the language used towards Nuba individuals, both in everyday life, and more specifically when being held by NISS or other military and security bodies. This is also the primary factor that would easily distinguish an individual as being of Nuban heritage – their ‘blackness’ is what would easily differentiate them from others in Khartoum. Mr C mentions this factor in his full testimony, included in Annex II, saying he was verbally abused because of his heritage, and we regularly hear similar scenarios in the testimony of other Nuba asylum-seekers we support. The language of slavery is often employed, with the word ‘*abid*’, meaning ‘slave’, being used. This reflects the Nuba legacy of slavery, described above.

This residual racism also helps explain why the use of skin whitening creams is so popular among Nuba women. Having lighter skin, or “trying to look Arab” in the words of Ms A, is seen as a gateway to success. All our interviewees mentioned this – “everybody’s whitening their skin” commented Ms A. What is more, because these creams only work temporarily, they are a purchase individuals need to repeat in order to see the benefits, a cost few can bear. There are also a multitude of medical side-effects that will disproportionately affect those with Nuba heritage.

The context to this is the Sudanese regime’s stated aim to ‘Arabise’ the country. This has historically involved the suppression of the black, African, and animist (or other religious) expressions of Sudanese culture, in favour of those that are Arab and Muslim. All of our interviewees mentioned attempts to erase Nuban culture in the capital, either by omission (there is “nothing non-Arab on TV” said Ms A, or “very rare to see black faces on TV”, said Mr C, except when the African Union is in town), or by deliberate cultural destruction. For instance, we hosted an All Sudan Cultural Day in March 2017, and there was a performance of Nuba dancing. Many non-Nuban Sudanese in attendance approached us afterwards and said that they had never seen this type of dancing in their own country because of the media black-out.

Additionally, we know some people by certain names. Yet, during our interviews, these individuals disclosed that these names are not their original or family names. Mr C said that his name, which is Arabic-sounding, originated because a school teacher declared that his Nuban name was hard to pronounce. The teacher announced that the Arabic-sounding name was Mr C’s new name. It thereby appears on school leaving certificates and official documents. Most people we spoke to expressed outrage at this now that they are safe in the UK. Many are currently in the process of changing their names back to what they would have been originally, and so reclaiming their Nuban identity.”

A103. As regards discrimination in the context of Sudanese citizenship, the report highlights problems faced by Nuba as follows:

“Citizenship

Often the suppression of Nuba identity is total. Hence, individuals may find deliberate or practical barriers to obtaining a national identity card entitling them to state services and entrenching their rights, (for instance shielding them from undue attention at road check-points). Ms B said that in order to obtain an ID card, or a ‘national number’, one needs a birth certificate. Yet, in a May 2013 report on marginalisation in Khartoum, the organisation International Refugee

Rights Initiative (IRRI) found that people may further be required to provide “a residency certificate; a nationality by birth certificate, ID, or passport; a certificate of blood type or group and an employment letter. Nuba communities do not customarily own these, and where they might be acquired by travelling to their home regions, it is to be noted that the costs of travel may be prohibitive for some. The IRRI report further adds that some individuals are refused even where they do possess these documents because they possess a ‘Southern’ name. Ms B said that her parents were denied citizenship on that basis.

This denial of citizenship is crucial, because an ID card is required for access to most opportunities and services, such as employment, housing, and education.”

A104. The report then turns to the availability and discrimination directed against the Nuba in the context of education, housing, healthcare and employment as follows:

Education

An ID card is required in order to sit the exams to leave secondary school, as was confirmed by Ms B. By not taking this exam, Nuba students are then also prevented from attending university. This of course presumes they received primary and secondary-level education. Schooling is not free, so many are unable to afford it, or if they can, it will only be for one child out of a family of many more children. In addition, there are often few, or no, schools in the areas in which most Nuba communities live (the so-called ‘Black Belt’, discussed below). This effectively bars the Nuba youth from educational opportunities.

Where individuals do get to university, their achievements may be disparaged. For instance, one Nuba gentleman we support faced severe discrimination while at university: he had to repeat a year, and was only given a pass grade, despite the fact that his peers, whom he had tutored, received high marks.

The suppression of the Nuban identity is also evident in attempts to eradicate languages other than Arabic in schooling. Ms A described that during her schooling she would have her hands “beaten raw” for using her mother tongue, rather than Arabic, in class. She lamented the fact that traditional Nuba languages are becoming lost, as newer generations speak only Arabic. Nuba individuals are also not represented in school textbooks or study problems. For instance, exam questions will say ‘*Mohammed* has 5 pieces of fruit’, or so on.

Housing

As mentioned, most of the Nuba live in certain peripheral areas of Khartoum, nicknamed the ‘Black Belt’. Ms A called the conditions “heart-breaking”, describing a situation where individuals were living in slums without permanent structures, electricity, government service provision, or even food in some cases. She described how the slums had become ‘no go’ areas for other Khartoum residents. Slum dwellers are also demonised by the public and politicians, often in ways that associate them with rebel activity.

Healthcare

There is no access to the admittedly inadequate healthcare accessible to Khartoum’s other residents, because there are no facilities in the ‘Black Belt’. Article 46 of Sudan’s constitution determines that emergency and primary healthcare should be free, but, in practice, it is not. Hence the majority of doctors

refuse to work with the Ministry of Health (a figure as high as 70% according to a conversation in February 2018 with someone in the sector). There have been widespread strikes among the medical profession (as in December 2016) in recognition of the fact that the system was near collapse.

Even were adequate healthcare on offer, Nubans would struggle to access it, because they lack an ID card, or their ID card identifies them as a Nuba. This means they cannot access the limited health insurance schemes on offer, and one-off payments can push poor families into 'catastrophic health expenditure', where the sum paid would seriously disrupt household living standards.

Employment

All our interviewees mentioned the difficulties in gaining employment, even though those who spoke to were from wealthier backgrounds and had relevant qualifications. For instance, Ms B said she had to recite verses from the Quran in interviews, and was asked questions such as, "Where are you really from?" because of the colour of her skin. As a result, she ended up performing outsourcing roles for a computer company or a teaching association, where she would be paid, but her name or identity would not be recorded. This adversely affected her ability to prove her employment history and skills to future employers.

Ms A also described the difficulties her husband faced. From his home in Khartoum, he started an organisation focused on development, and particularly water security, in the Nuba Mountains. However, the government effectively barred him from work on local development projects. Mr C also said that although there is a government-run microfinance scheme for small businesses, aimed at graduates, and theoretically accessible to individuals from the Nuba Mountains, a successful application requires a guarantor from the government or ruling NCP, something unlikely for Nuba to receive.

Nuba individuals sometimes limit their horizons as a result. But unfortunately, even some of the lower-skilled work available to Nuba individuals is the target of police action, as it forms part of Sudan's informal economy. For instance, many Nuba women in the capital work as tea-sellers, while also selling a lightly alcoholic drink called *marissa*. Some Nuba families even give it to children before school. There have been numerous cases of these women being arrested or submitted to degrading punishments as a result, under the aegis of the Public Order Laws."

A105. Finally, in relation to religion, and the fact that many Nuba are Christian, the report says this:

Religion

Another aspect of the 'Arabisation' programme is religious. The Nuba Mountains is a fairly equal and harmonious mix of Christian, Muslim, and animist believers. However, in Khartoum there is a sustained assault on the right of worship and belief as a Christian, or simply as a non-Muslim. This is problematic, because as Mr C noted, Nuba individuals often gather, or build additional infrastructure, around churches as a place of sanctuary.

Faith-based discrimination has a long history in Sudan, and some of our interviewees described the process by which young men in the Nuba used to

have to pay a *dignia*, or tax, when they reached a certain age, as they were presumed to be non-Muslim. Ms B claimed this sometimes happens even today.

The non-profit group, Open Doors, ranked Sudan the fifth-worst country in the world for Christian persecution in 2017, ranked just above Syria. The US State Department's 2016 International Religious Freedom report said of Sudan, "The government arrests, detains, and intimidates clergy and church members. It denies permits for the construction of new churches and is closing or demolishing existing ones." The report details egregious violations of freedom of religion or belief in Sudan during 2016 and comprehensively details a pattern of discrimination, harassment, and persecution of religious minorities in Sudan that has worsened since the independence of South Sudan in 2011. A letter from the United States Commission of International Religious Freedom (USCIRF) adds further detail, saying that since 2011, the government of Sudan has arrested nearly 200 Christians, including 14 religious leaders; prosecuted three religious leaders on spurious national security charges; demolished or partially demolished 20 churches and threatened at least 10 others; and refused to issue permits for church construction, arguing that no new churches are needed due to the secession of South Sudan and the presumed exodus of ethnic Southerners, who were predominantly Christian. The government has also failed to make necessary amendments to the 1991 Criminal Code which criminalises and permits death sentences for apostasy and prison sentences, lashing, or fines for blasphemy.

In Khartoum specifically, there is a battle between the Khartoum State Ministry of Education, and Christian faith leaders. On 26 July 2017, the Khartoum State Ministry of Education issued a directive requiring Christian schools to open on a Sunday, taking Friday and Saturday as the weekend break. The Coptic Church of Sudan was the first denomination to speak out against the order and noted that Christian schools have been permitted to take Sunday as a holiday for religious observance since the creation of Sudan. The matter remains unsolved at present."

2. Oral Evidence (May/June 2018)

- A106. Madeline Crowther's oral evidence, given at the hearing in May/June 2018, was wide-ranging. She said that she was in regular contact with Nuba groups and her contact assessed that there were around 2,000 Nuba in the United Kingdom.
- A107. She said that the Sudanese government had blocked humanitarian aid to the South Kordofan region and the Nuba Mountains for many years and that press coverage of events there was non-existent.
- A108. She said that students from the Nuba tribes were seen as being anti-government. A further problem was that Nuba were being perceived as being sympathetic to the SPLM-N. She said that "most Nuba individuals are in some manner connected to the SPLM-N to large family networks" and that this gave rise to the individuals being perceived as having a political profile.
- A109. She stated that there was continuing discrimination against Nuba. They were readily identifiable from their skin and were subject to racial slurs such as "slave", "black", and the word "*abid*" was used in a derogatory way. The Nuba were identifiable by their dialect

and customs and that religion was part of it, they did not all follow a strict Muslim code. She said that Nuba face discrimination on the same basis as do non-Arab Darfuris.

- A110. Ms Crowther said being Nuba and a returned failed asylum seeker was a combination which put an individual at heightened risk of ill-treatment on return.
- A111. As regards the passages in the Waging Peace report concerned with returned failed asylum seekers, Ms Crowther said that she had seen the original testimony the Belgian returnees compiled by the Tahrir Institute for Middle East Policy. She said that, despite the view of the Belgian Commissioner, she believed the accounts were credible because she had compared them with other cases and there were also secret communications through WhatsApp.
- A112. In relation to the returnees from Italy, Ms Crowther said that they had been in touch with human rights groups in Sudan and they were in touch with some of those who had been detained. Forty individuals had been returned on a charter flight in August 2016 and testimonies had been received by NGOs confirming accounts of detention, and interrogation on arrival and some beatings. In response to a question from the Tribunal, when asked why she had said in her report that the returnees from Italy had been granted permission to appeal to the ECtHR which was not the process of that court, Ms Crowther said she had obtained that information from an article.
- A113. In relation to the returnees from France, Ms Crowther also said a journalist had seen documents in relation to the returnees from France.
- A114. Ms Crowther said that the NISS had complete immunity. She was not aware of any NISS officers being reprimanded. She was not sure whether NISS had a formal policy on the Nuba. The NISS headquarters was in Khartoum. They could be seen present at demonstrations and also family events, for example, funerals. Their presence in Khartoum is heightened.
- A115. Ms Crowther said there was a risk of interrogation and detention at the airport of up to one day. There was a risk of re-detention later. Whether individuals would be ill-treated would depend upon what the NISS found out. If it was discovered that they had links to the opposition they would be ill-treated but not if they did not. If re-detained, it was likely would be asking the individual to gather information on the community and return to them. Less likely to be ill-treated if that was the case. Individuals were likely never to return once released as not in their interest.
- A116. In cross-examination, Ms Crowther said that not all Nuba living in Khartoum were at risk. When asked whether the incidents were random or targeted, she said that she could not comment. She stated that many incidents were the targeting of activists referred to in the AIR Report for 2017/18. However, she also said that she had evidence of random targeting of apolitical Nuba. She was asked about evidence concerning 200 arrests following the January 2018 protests. She did not agree that most had been released: she said 292 were left in detention.
- A117. Ms Crowther said that Waging Peace had interviewed a detainee who had witnessed a Nuba individual being questioned for hours on arrival at Khartoum airport about his political activities and support for the rebels. She said that the act of claiming asylum overseas is seen by the NISS as a political act. The NISS is not subject to judicial oversight and enjoys complete impunity. There are no accounts of disciplinary action having been

taken against NISS officers and its headquarters and presence is greatest in Khartoum and there is a greater likelihood of a Nuba individual being targeted in or around the capital.

- A118. Ms Crowther said that the Waging Peace report referred to a journalist in Khartoum who had been subject to ill-treatment and that she was at heightened risk as she was trying to report on the 'Two Areas' for her newspaper. She did not agree that the journalist had passed through the airport without any physical ill-treatment. She said she had been pulled aside and asked difficult questions. A friend had advocated on her behalf and she had not been detained. She said that the journalist had not been pulled aside because of her Nuba ethnicity.
- A119. In relation to another individual referred to in the report – who was from the Nuba Mountains – Ms Crowther stated that he had been studying in the United Kingdom and had been funded by the Government Arab Company. She said that, despite his Nuba ethnicity, he had been able to obtain government funding to study overseas. She said that his arrest was not random but because he had been attending meetings in the UK Parliament about his home area. She said that his arrest fitted the pattern of when the Embassy takes interest in the diaspora in the United Kingdom. She said that these were only two examples and there were dozens of others referred to in footnotes. She said that if a person was detained they were likely to be treated more harshly if they were from one of the 'Two Areas'.
- A120. Ms Crowther was, again, asked a number of questions about the sections of the report dealing with the return of failed asylum seekers from Belgium, Italy and France. Specifically, she was asked about the fact that the Belgian Commissioner had found the testimonies not to be credible. She did not accept that the testimonies were not credible in relation to the Belgian returnees. She said that the inconsistencies in the testimonies arose from the Arab language used and/or the "fraught period" experienced by the speakers. However, in her evidence subsequently, in her answers to questions from the Tribunal, she accepted that she had never been to Sudan and that she did not speak Sudanese Arabic.
- A121. In relation to the Italian returns, she said that one witness had observed a beating at the airport but had not himself been beaten and the second individual had been treated reasonably. She was asked whether she agreed that the Nuba background of the individuals had not led to their arrest or ill-treatment. She replied that one Nuba individual in a cohort considered he had been mistreated because he was Nuba but she stated that one man stated that he had not been ill-treated because he had said that he was not Nuba.
- A122. When asked why it was that there was no evidence concerning detention after individuals had passed through the airport, Ms Crowther said that no one was monitoring their immediate post-return treatment. Individuals were released on an undertaking which could result in them being re-detained.
- A123. Ms Crowther said that ethnic background was a gateway or indicator of political activity.
- A124. Ms Crowther was also asked about conditions and circumstances in Khartoum for the Nuba as set out in the report in relation to education, housing, citizenship and religion. She could not say how many Nuba live in the 'back belt'. She said that individuals of Nuba ethnicity had difficulties in obtaining ID documents and citizenship. It was harder for them to have the required documents to obtain ID. She stated that Nuba, particularly from South Kordofan, would be able to access education if they had primary level education but some

would not have that. In relation to housing, she did not accept the proposition that Nuba could live anywhere in Khartoum.

- A125. Ms Crowther said Christians were not able to take Sunday as a holiday and could not attend Sunday school. She said that she was not aware of any private Christian schools in Khartoum.
- A126. In re-examination, Ms Crowther said that given the limited number of forced returns it was difficult to make an assessment of risk on return as a failed asylum seeker. She said that she was aware of 143 returns to Sudan; 56 in 2007 but there were no figures specifically for returned Nuba.
- A127. Ms Crowther said that there was a two-stage process at the airport: (1) with an immigration officer; and (2) then with the NISS. The separation was not strict and there were conversations between colleagues. Her understanding was that they worked in concert.
- A128. Ms Crowther said that the Nuba were targeted because of their ethnicity. She gave an example of children detained for organising a football game. Ms Crowther said that a number of factors would give rise to specific concerns of risk on return for Nuba: students, those participating in demonstrations, those engaged in political activities, those educated above primary level, those who had travelled abroad, and those returning with documents which identified them as failed asylum seekers.
- A129. Ms Crowther said, in relation to the Belgium returns, that even though the Belgium Commissioner found the accounts not to be credible, she “would argue” that the instances tallied with dozens of accounts Waging Peace had collected

3. Response to the Home Office Fact-Finding Report 2018 (January 2019).

- A130. Ms Crowther produced a document in response to the F-FR 2018 in January 2019. When Ms Crowther came to give oral evidence before us in October 2019, Mr Jacobs indicated that he did not wish to rely on her January 2019 report and she was, as a result, not cross-examined upon it. Although, she did refresh her memory from it. In these circumstances, we do not consider that this document forms part of the evidence relied upon by the appellant despite Mr Jacobs’ reference to it in paras [120]–[123] of his final written submissions. Given his position at the hearing, and that Mr Thomann was as a result not required to cross-examine Ms Crowther on her January 2019 response to the F-FR 2018, we need say no more about it. Ms Crowther’s evidence is, in any event, fully detailed in her other evidence, including her more recent “Report on the risk to Nuba Individuals in Sudan” (27 August 2019) and “Addendum report – risk to Nuba individuals in Sudan” (17 October 2019).

4. “Report on the risk to Nuba Individuals in Sudan” (27 August 2019)

- A131. In this report prepared for the October 2019 hearing, Ms Crowther stated that the circumstances in Sudan have changed “quite dramatically” since the May/June 2018 hearing (para 18).
- A132. Mr Jacobs draws attention to seven aspects of her evidence which we can summarise as follows. First, the rising prominence of Hemeti who, as leader of the RSF, oversaw campaigns of violence in the Nuba Mountains (para 19). Secondly, Hemeti and other TMC activists were involved in acts of repression in Khartoum including the violence on 3 June 2019 in which RSF soldiers intent on committing rape and sexual violence used racist

language to women from Darfur and Nuba Mountains. Ms Crowther referred to an article which set out Hemeti's racist language towards those occupying the sit-in prior to the violence, referring to them as *zurgha* (meaning 'dirty black') (para 21). Thirdly, the killing of tea ladies during the violence on June 3 (paras 22 and 23). Fourthly, the targeting of a professional national football player of Nuba background following his participation during the June protests (para 24). Fifthly, the attacks which took place in the 'Black Belt' after 3 June 2019 (para 25). Sixthly, the failure of the TMC to release 25 individuals of Nuba and Darfuri ethnicity who were not included in the TMC's release pardon (para 26). Seventhly, the al-Hilu faction of the SPLM-N boycotted the signing of the agreement between the TMC and the FFC (para 30).

A133. To her report, Ms Crowther attached a number of written responses from individuals and organisations: including: (a) unnamed expert A (Annex II); (b) Koert Debeuf, Director of the Tahrir Institute for Middle East Policy Europe (Annex III); (c) Mohaned Elnour, human rights lawyer (Annex IV); (d) South Kordofan/Blue Nile Coordination unit (Annex V); (e) Sir Henry Bellingham MP, Chair of the All Party parliamentary Group on Sudan & South Sudan (Annex VI); (f) Hafiz Mohamed, activist (Annex VII).

A134. In para 31 of her report, Ms Crowther referred to parts of the annexed material as follows:

"Sudan expert A says 'the implications of the recent changes for Nuba specifically are not easy to measure'; and Koert Debeuf from the Tahrir Institute for Middle East Policy Europe says 'Everything is messy now. Therefore it is risky to make an assessment that can hold for more than one week.' The All-Party Parliamentary Group, in their submission at Annex V1 said, 'The APPG for Sudan and South Sudan has heard from senior officials in the British Government who believed that the situation in Sudan had drastically improved only to give a more cautious opinion within a matter of days after the situation deteriorated rapidly. Given that the situation is unstable, at this point it is inappropriate to consider South Kordofan safer under the current regime than it was under the old regime.'"

A135. Ms Crowther said, based upon their responses, that they were "unanimous in cautioning against hastily optimistic interpretations of the current situation" (at para 31).

A136. As regards the NISS (GIS) activities at the airport, Ms Crowther stated (at para 34):

"I also find it relevant that procedures for exiting and entering the country remain largely unchanged, even despite the limitation on NISS's role to simply information-gathering - activist [] confirmed to me that security officials maintain a desk at the airport at which they ask you about your planned activities out of or in the country. It is too early to say how, and if, this will change in coming months."

A137. In her concluding paragraph, she said this (at para 35):

"In conclusion, now is not the time to say whether attitudes towards Nuba individuals have improved, especially considering the very recent fall of the Bashir regime and its replacement by a new transitory system. The situation is simply too new to draw firm conclusions that would last more than the coming weeks or months, and many respondents to my request for input said they felt that even if better treatment were to hold for an initial period, the historically marginalised groups would be among the first to suffer should

there be a wider governmental crisis. There is ample evidence that attitudes among the TMC, chiefly originating in the RES and its leader Henetti, are anti-Nuba, both on ethnic/racial grounds, and because individuals are assumed to have existing anti-government opinion. It is therefore my opinion that someone returned to Sudan as a rejected asylum seeker could foreseeably face difficulty on arrival at the airport or otherwise, not least as their exposure to diaspora activities would single them out as being of further interest."

5. *"Addendum to Report on the risk to Nuba Individuals in Sudan" (17 October 2019)*

A138. This document was prepared following a visit in late November/early December 2018 to South Sudan, including a refugee settlement near the border with Sudan. Ms Crowther annexed three statements and emails from organisations: (a) the SPLM-N (Annex 1); (b) Dr Catena (Annex II) and; (c) the Nuba Solidarity Group Abroad (Annex III).

A139. Ms Crowther said (at paras 5-6) this about the continued role of Hemeti and the 'deep state' and Islamists and the treatment of the Nuba:

"5. Concerns continue to centre on the role taken by the military in the process, and particularly of individuals implicated in atrocity crimes under the previous administration. Mohamed Hamdan Dagalo, or 'Hemeti' - whose Rapid Support Forces (RSF) are the re-branded Janjaweed responsible for the worst abuses in Darfur at the height of the genocide there; whose forces have fought in South Kordofan; and who served on former President Omar Al-Bashir's security committee - maintains his position, as does Abdel Fattah al-Bourhan, who held a high rank in the Sudanese Armed Forces (SAF) under Bashir.

6. But more relevant still is the presence of hundreds and thousands of officials who served under Bashir in the transitional authorities. It remains an open source of tension of what to do with those individuals with affiliations to Bashir's political party, the National Congress Party (NCP), and who were on the government payroll. Short of a total purge, this administrative apparatus will be maintained. This apparatus was employed by Bashir during his rule to conduct a brutal policy of Arabisation, during which black, African, animist, or other religious expressions of Sudanese culture were suppressed in favour of Arab and Muslim identities. Many Nuba on the ground and within the diaspora see disparaging and racist ideologies as the most pernicious and persisting legacies of the Bashir era - it is still common for jokes to be made about an individual's blackness, using words like 'abid' which means slave. I expanded on this in my March 2018 report and wish to draw your attention to these remarks. It remains the case that an individual will be readily identified as Nuba because of their skin tone; that they will suffer discrimination in equal citizenship, employment, religious freedom, education, healthcare, and housing, especially because of inability to obtain official documentation that entitles them to government services; and that in addition they will be subject to the unchanged and hostile administrative apparatus of the state."

A140. At para 7, Ms Crowther stated that a clear example of the "the unchanged nature of the judicial system and its animus against Nuba Christians" was the confirmation of criminal charges against eight leaders of the Sudanese Church of Christ which is a primarily Nuban denomination.

A141. At paras 8-9, Ms Crowther stated that:

“no further proposals have been forwarded regarding justice and accountability for historic crimes, including those of war crimes, crimes against humanity, and genocide in Darfur, and the targeted and indiscriminate aerial bombardment of South Kordofan. Bashir still has a pending arrest warrant at the International criminal court, but is avoiding handover and is instead involved in a domestic court case relating to corruption...”

A142. Ms Crowther said (at para 10) “there was at least initially more hopeful progress on the peace file.” However, she then referred to the withdrawal of al-Hilu from that process as a result of further attacks in the Nuba Mountains (para 10). She also referred to the incidents of violence, curfew, arbitrary arrests, confiscation of goods and checkpoints near Dilling in South Kordofan (para 11). She also referred to incidents of a person tortured because of a personal dispute with a military official and the killing of two individuals following a “run-in with the Popular Defence Forces (PDF) involving cattle grazing” (para 11). She referred to the communication from Dr Catena (Annex II) that he had received patients from government-controlled areas in recent months (para 11). She also referred to the incidents in September and October 2019 involving local protests near Talodi over the use of dangerous chemicals in the gold mines and the raid by the RSF on the goldmines in Talodi to protect the mining operation by Hemeti (para 12). She stated that the response of the SC to these incidents was “muted” while “the cabinet took action to ban the use of toxic chemicals in the mining process.” (para 12)

A143. Ms Crowther stated that, despite the release of detained prisoners, 25 individuals – whom she stated were “Nuba political prisoners” – remained detained (at para 13)

A144. Ms Crowther stated that the Public Order law has been suspended in central Khartoum but it remains in force in the ‘Black Belt’ where most Nuba live. She said that she had heard reports that the police have been raiding houses accusing inhabitants of producing local alcohol called ‘Merisa’ and confiscating belongings but without initial oversight (see para 14).

A145. Ms Crowther said that “the political situation remains incredibly fragile” (para 15). At para 16, Ms Crowther referred to the continued existence of the NISS (rebrand the GIS) and that its powers have been “limited to intelligence-gathering”. But, she said that, as with other developments, the changes may not bring about change. At para 21, Ms Crowther referred to the (then) planned protest on 21 October to mark the date of the 1964 October revolution. She said (foreshadowing something that did not in fact occur) that this:

“has exposed fault lines between Islamists, former regime officials, and the regular demonstrators who all protest’s leadership and merit, and this may lead to an outbreak of further violence.” (para 20)

A146. Ms Crowther referred to violence “at recent marches” so that “the behaviour of police and other armed elements towards demonstrators is still of active concern” (para 20).

A147. Ms Crowther said this in her conclusion (at para 21):

“the recent change in government should not be exaggerated, it is simply too early to tell whether earlier stated commitments to peace and respect for diversity will be respected, and the initial progress is discouraging,

particularly as the administrative apparatus of the Bashir era remains mostly intact.”

A148. Ms Crowther went on to state (at para 21) that popular discontent is growing in the Nuba communities in Sudan and the diaspora with fears that

“the conflict, persecution, discrimination, and Arabisation of the Bashir era will continue whilst its administrative apparatus and racist ideology remains in force.”

6. Oral evidence (25 October 2019)

A149. At the 24/25 October 2019 hearing, Ms Crowther was tendered for cross-examination. She spoke of her visit to camps in South Sudan. She said that humanitarian aid could only return to the Nuba Mountains if the SPLM-N and al Hilu forces made an agreement. She said that the incidents of specific targeting were directed at high profile figures and those who were in and around protests. But, she stated that incidents were more general. She said that she had spoken to the director of the HUDO Centre who had told her that there was a crackdown in the ‘Black Belt’ on the day of the violence on 3 June 2019 followed by which there were days of harassment by the RSF which involved looting, arresting people and confiscating belongings.

A150. Ms Crowther was asked about the Home Office document CPIT, “Response to an Information Request” (23 October 2019) which referred at para 3.6 to prisoner releases, but, she said, this did not relate to the Nuba and Darfuri detainees whom she had said in her evidence continued to be detained.

A151. Ms Crowther said that releases were a confidence building measure in advance of the peace process. She said that the 25 still detained were Nuba or associated with the SPLM-N.

A152. Ms Crowther was asked about some of the material annexed to her 27 August 2019 report.

A153. First, she was asked about expert A’s view in Annex II. She accepted that expert A drew a distinction between Nuba present in Khartoum who were “pro-SPLM and anti-SPLM” and that expert A said that “the strong Nuba presence in Khartoum” were “both socially and economically marginalised, but not necessarily systematically persecuted”.

A154. Secondly, she was asked about the views of Koert Debuf of the Tahrir Institute in Annex III. There he said, in relation to South Kordofan, that:

“[i]t is very difficult, and even more so than in the past, to get an accurate picture of the situation in Sudan in general and in South Kordofan in particular. From the information I get, the situation is much better now as negotiations were concluded in a rather good way.”

A155. In relation to Khartoum, Koert Debuf said:

“Right now, it seems safe for Nuba individuals in Khartoum. However...the situation remains prematurely stable. Things can collapse quickly. If that happen, Nuba individuals, as well as Darfuri people, might become the first victims. Therefore, I would advise them to wait with relocations until the consensus become more stable.”

- A156. Ms Crowther said that that was his assessment and that she did not agree with everything he said.
- A157. Secondly, Ms Crowther was asked about Mohan Elnour's report (Annex IV) of when, in December 2016, she met a person (a non-Arab Darfuri) deported from Italy who had said that, on arrival, of the 40 deportees the NISS had allowed all but himself and 5 others (two from the Nuba Mountains and three non-Arab Darfuris) to leave. He had been detained for 35 days by the NISS and tortured before being released without charge. He had no idea what had happened to the others. Ms Crowther said that this concerned 2016 and not anything that related to 2019.
- A158. Thirdly, in respect of the material from the South Kordofan/Blue Nile Coordination Unit (Annex V), Ms Crowther agreed that the material described individual incidents of "cattle raids" in Dilling but there was no evidence of general round-ups in South Kordofan.
- A159. Fourthly, in relation to Sir Henry Bellingham MP's communication (Annex VI), Ms Crowther agreed that he had not given any examples. She said the Sudanese government made it difficult to obtain an accurate picture.
- A160. Fifthly, Ms Crowther was asked about the communication from Hafiz Mohamed (Annex VII). There he said that the "security and humanitarian situation" in South Kordofan had not changed and that the militias were still carrying out atrocities. Ms Crowther agreed that he had not given any specific examples because he was not asked to do so although he had given her examples in discussion. Ms Crowther was also asked about Hafiz Mohamed's comments that the procedure at Khartoum airport was "still the same" involving a second desk where the NISS checked passports and asked questions and that "they might move you to one of their centres, that also depends on your ethnic background, Darfuri and Nuba treated very harsh". Ms Crowther that the assessment by the NISS was intelligence gathering and she agreed that no specific examples were given. At para 26 of her report, where she said he had stated that Nuba and Darfuri individuals were treated "much more harshly", Ms Crowther said this was a reference to the 3 June events.
- A161. Ms Crowther said that there was a lack of widespread abuses or targeting but stated that this lack of evidence of targeting or rounding up of Nuba in Khartoum "doesn't mean that there isn't evidence". She said that the use of social media, in conjunction with the protests in 2019, had been "definitely helpful".
- A162. Ms Crowther said that the Nuba will continue to be associated with the SPLM-N and suspected of being opposition activists - even if they are not engaged in active fighting themselves. It was, she said, too soon to conclude that there would not be a return to general patterns of discrimination and mistreatment. She said that there was an increasing frustration with the lack of progress made by the interim government. She was also concerned that early progress with the peace process had stalled but she said that there had been a number of encouraging developments as regards the new government's progress.
- A163. Ms Crowther was critical of the methodology of the F-FR 2018 and that, unlike in the past, the British Embassy in Khartoum had not consulted widely and she referred to the view of the All Party Parliamentary Group that the Embassy had not penetrated sufficiently into the lives of everyday Nubas or Darfuris. She was critical of the failure of the Home Office source to go into the 'Black Belt'.

A164. Ms Crowther said that Salah Gosh, the former head of the NISS, had disappeared. He was, she said, part of the group who had ousted al-Bashir and it was not known to what extent he was continuing to be in contact with NISS units and that maybe he was positioning himself for a political career. She said it was positive that he was no longer head of the NISS/GIS as he was behind the most egregious abuses. Ms Crowther said that the majority of NISS staff remain in post and that their perceptions of the Nuba would persist. She said that the Nuba would be the first to suffer if the situation becomes politically charged again in Sudan. She said that this outcome is likely in light of the demands of the SPLM-N (al Hilu faction) on cessation and that, given there had already been 22 rounds of peace negotiations which had failed, any optimism should be cautious. In re-examination, she said that the NISS still constituted a threat to the Nuba as attitudes would remain and an assumption that they were sympathetic to the cause of the SPLM-N.

A165. Ms Crowther was asked about her “Addendum Report” and the communication from Dr Catena at Annex II of that report. She was asked whether incidents of violence etc were now widespread in South Kordofan. She said that Dr Catena reported that he had started to see casualties from government-controlled areas. She said that the state of emergency seemed to be having a disproportionate effect in Nuba areas through the RSF and security forces.

A166. In answer to questions from the Tribunal, Ms Crowther said that there were Nuba in the Government. The minister in charge of immigration and the minister for agriculture were both Nuba. She also said that there were two members of the SC who were Nuba, one a former military figure, and the other on the civilian side.

C. Dr Eric Reeves

A167. Dr Reeves is a Senior Fellow at Harvard University Centre for Health and Human Rights. He has not visited Sudan since 2003. He produced a report dated January 2018 and also gave oral evidence via Skype on 1 June 2018. We are grateful to Mr Jacobs and Mr Thomann for their joint (largely in agreement) note of Dr Reeves’ oral evidence which we have placed some reliance upon in what follows.

1. *“Risk to people from the Nuba Mountains Region on return to Sudan” (January 2018)*

A168. Dr Reeves set out the sum of his views in the “Executive Summary” of his January 2018 report. In preparing his report, Dr Reeves consulted a number of individuals, including academics, researchers, historians and a Sudanese Human Rights lawyer.

“Executive Summary

The evidence availability collectively strongly suggests that there are significant dangers for Nuba people forcibly repatriated to Sudan, including to the Khartoum urban area. By all expert accounts that I have solicited in preparing this report, Nuba people would face unacceptable risks, even those returned who have a very low profile. Indeed, a ‘profile’ can be created simply by virtue of seeking political asylum in a European country or re-entering Sudan (and thus inevitably the Khartoum airport) without proper papers or showing any signs of forced repatriation.

There is a long history of racial attitudes on the part of the ruling regime in Khartoum toward all non-Arab/African peoples. This is reflected in the language of denigration..., discrimination in employment (even if non-

Arab/African applicants have superior qualifications and educational attainments), harassment on the streets, arbitrary arrests, and a lack of access to real political power (they serve sometimes as figureheads but never with real power to direct the policies of the National Congress Party).

The current economic crisis continues to accelerate dramatically, and there are already signs of intensifying repression by the government. In the past, non-Arabs/Africans have often been made scapegoats at such threatening moments. But even before the crisis emerged fully with the government's promulgation of the 2018 budget[t], which has seen catastrophic price increases for basic commodities (e.g., 300% for bread, a staple food for most Sudanese), there were clear threats to any forcibly repatriated Nuba. The recent Belgian forcible repatriation of some 100 Sudanese, selected by representatives of the National Intelligence and Security Services (NISS), has provided graphic evidence of how badly such compulsion can be.

The experts I have consulted specifically vis-à-vis the Nuba have all concluded emphatically that forcible repatriation would present intolerable risks of harassment, discrimination, incarceration, torture, and/or murder. Forcible repatriation of Nuba people to Sudan is, I believe in the light of these experts views, a violation of international law."

- A169. Dr Reeves referred to the "continuing imposition of a humanitarian blockade over virtually all areas of the Nuba Mountains" (p.10). He stated that the SPLM-N in the Nuba mountains "remains the most serious threat" confronting Khartoum (p.10). He stated that the "continuing use of a humanitarian embargo" was deployed as a "basic counterinsurgency weapon" (p.10). He referred to "leaked minutes" from a meeting of senior military and security officials in August 2014 making "explicit the goal of destroying that year's abundant sorghum crop" (p.10).
- A170. Dr Reeves referred (p.11) to a person interviewed who had been a returnee from Belgium in 2017 who claimed to have been questioned by the NISS at Khartoum airport. It is reported that the interviewee said that the NISS held most of the group returned and he had not heard of the fate of the others.
- A171. Dr Reeves stated that, based upon what his respondents had replied, "the chances of arrest, torture, and/or murder are very significantly increased if the Nuba person repatriated has a 'political profile'." (p.12) Such a 'profile' may be created in a number of ways, including applying for asylum in a Western country (p.12). Dr Reeves states that judging whether a Nuba person is "political" was "entirely at the discretion of the NISS" which enjoys "total impunity" and he stated that he knows of no case where an NISS officer has been disciplined for human rights abuses (p.12). Dr Reeves stated (at p.12) that this "widespread impunity" makes
- "the fate of any Nuba person seeking political asylum in the UK entirely uncertain if forcibly repatriated to Sudan, even if the intention of the asylum seeker is to live 'non-politically' in the Khartoum urban area."
- A172. Dr Reeves referred to the concentration of the security services in Khartoum and stated that the "opportunities for repression in the still predominantly ethnically Arab capital are especially numerous."(p.12) By repression he stated that he meant: "job discrimination, harassment, street beatings, incarceration, torture and murder" (p.12). But, he went on to state that the "NISS is pervasive in Sudan" and that there are "no safe havens in the

country for forcibly repatriated non-Arab/African peoples". (p.12) Dr Reeves stated that as a result of the generalised hostility to non-Arab/African peoples from regions with continuing rebellions or strenuous political opposition:

"mistreatment of forcibly repatriated Sudanese fitting this ethnic/political profile are at acute danger." (p.12)

A173. Foreshadowing (then) future events, Dr Reeves stated that the economy was in "an irreversible decline and that civil unrest will grow far beyond what we have seen to date" (p.13). Dr Reeves stated that it was "quite likely" that "the historical scapegoating tendency" will be directed against non-Arab Sudanese including these from the Nuba Mountains and Blue Nile (p.13). He stated that, for many, there would be no escaping from the "violence that will be unleashed by a regime in its death throes" (p.13).

A174. Under the heading "Conclusion", Dr Reeves stated (p.14):

"the risk of being persecuted solely on the basis of being a non-Arab Nuba person in Sudan, particularly in the Khartoum area, is unacceptably high.

Nuba people cannot internally relocate to Khartoum to escape or avoid persecution; although those with a political profile are most likely to suffer persecution - including harassment, discrimination, illegal incarceration, torture, and even murder - *all* are at potential risk".

2. Oral Evidence (1 June 2018)

A175. Dr Reeves stated in his oral evidence that he was in regular contact with Dr Catena in the Nuba Mountains and, relying on an email dated 18 May 2018 from Dr Catena, Dr Reeves stated that notwithstanding the cease-fire there had been skirmishes in the region and there were rumours that militia would attack the goldmines in the area. Dr Reeves referred to the Sudanese bombing attacks on civilian targets up to July 2016 and the continuing humanitarian blockade imposed by the government in the Nuba Mountains. Dr Reeves referred to a leaked minute of a meeting of senior military and security officials in Khartoum on 31 August 2014 in which it was agreed that the Sorghum crop in the Nuba Mountains should be destroyed to use starvation as a method of war.

A176. Dr Reeves said that the Nuba were subject to severe discrimination and that they were viewed as African, ill-educated and inferior. He said that there was no feasible prospect of a Nuba living in Khartoum accessing education. Dr Reeves stated that the Sudanese government's view of non-Arab or African Sudanese is inherently racist. Their dark-skinned colour is referred to with offensive language "*abid*" meaning 'slave'. In his view, the Nuba were subject to greater discrimination than Darfuris. Whilst Darfur provided soldiers for the North in the civil war, the Nuba sided with the SPLA rebel army. There was residual anger against Nuba in respect of this.

A177. Dr Reeves said that there had been a media blackout in the Nuba Mountains and that no journalist had been permitted to report from the area since June 2011 when the fighting began. He said that the actions of the government towards the Nubas in the Nuba Mountains had amounted to genocide. In particular, in June 2011 in Kadougli there had been house to house killings and civilians were hunted down by helicopter gunships. Dr Reeves stated that the humanitarian blockade of the region was still in place.

- A178. Dr Reeves stated that, although the government had ceased military bombardment in the Nuba Mountains, the situation could easily change and that there was a likelihood that hostilities would resume. This was because the government was not able to tolerate large parts of the country that it could not control. Much of Darfur had been subdued by government forces but the same was not true in the Nuba Mountains. He said that the present risk was starvation, lack of education, availability of vaccinations and medicines.
- A179. As regards returnees, Dr Reeves stated that he considered that Nuba failed asylum seekers who returned on emergency travel documents were almost certain to be singled out for detention and the probability of torture was high. Dr Reeves said that the mere fact that a Nuba had travelled abroad would mark him out as suspicious on return and give rise to a real risk of mistreatment. The ability to have left the country showed resourcefulness and the fact of having applied for asylum overseas would lead to imputed political opinion. As fewer Nuba are returned than Darfuris, the Nuba returnees would, in his view, be more likely to be singled out.
- A180. In cross-examination, Dr Reeves was asked about the number of Nuba in Khartoum. He was uncertain of the number but finally stated that there were about 100,000 to 200,000 but that was a 'guesstimate'. When he was asked whether he agreed with Waging Peace's estimation of 2,000 Nuba in the UK, Dr Reeves said that he could not comment on the accuracy of that figure.
- A181. Dr Reeves stated, when asked about there being no evidence of Nuba students being targeted in Khartoum, that it was much less likely (compared to Darfuris) that they would be sufficiently educated to go to University.
- A182. Dr Reeves accepted that the basis of his report was his sources. He was asked about its reliance upon a 2003 Amnesty International Report as the one example of there being a general risk to Nuba and that no reference was made to the F-FR 2016. Dr Reeves said that 2003 report it showed the history. He was aware of the F-FR 2016 but it was flawed in so many ways and was not as valuable as his sources. He was asked about a response by Ted Dagne which was not included in his report. Dr Reeves said this was his mistake. Dr Reeves was asked about Ted Dagne's email which said that if an individual was not a known political activist, he would not be of significant interest. Dr Reeves said that his English was not good – he is Ethiopian – and there was no distinction between activists and others.
- A183. Dr Reeves did not accept the proposition that a 'low level' Nuba would not be subject to interrogation and ill-treatment upon return. He stated that in Sudan to be Nuba is to be both ethnically and politically identified and the Nuba are seen by the government as part of the opposition. Dr Reeves said he saw forced removal as an aggravating factor which would make it more difficult to avoid ill-treatment at the hands of the Sudanese authorities on return. He relied on the instances reported in the Belgian COI Focus report. In response to questions from the Tribunal, Dr Reeves said that he only knew of one returning Nuba who was detained. The number of returned was relatively small. Returnees were arrested at the airport because of political profile; it was relevant that they were being forcibly repatriated and had claimed political asylum.
- A184. Dr Reeves disagreed with Peter Verney's view expressed in evidence in AI and IM that black Africans are not at risk on that basis alone. Ethnicity was extremely important. Dr Reeves stated that it may be that a Nuba returnee would not be arrested but it increases the risk which is unacceptably high.

- A185. Dr Reeves said that returnees to Khartoum airport would be asked details of their ethnicity. He referred to a killing of a returnee in November and he stated that the NISS and other security services saw no distinction between non-Arabs from Darfur and those from the Nuba Mountains. The fact that fewer Nuba will return would lead to a greater risk attaching to a return-Nuba as a member of a politically active diaspora and a returned Darfuri.
- A186. Dr Reeves stated that the return to the NISS of Salah Gosh was a sign by the regime that it wished to adopt a more extreme line. Dr Reeves referred to the speech of al-Bashir in December 2016 in which he threatened protestors with “what we did before”. Dr Reeves stated that this indicated a return to a shoot to kill policy.
- A187. In re-examination, Dr Reeves said a returning failed asylum seeker would be identified if forcibly repatriated; that gave you a profile and the NISS has extensive surveillance presence in Europe especially in the UK. A returnee would be seen as part of the diaspora. The NISS would distinguish an ordinary Sudanese returnee - whom they would not care about - and a Nuba returnee. They would be subject to intense interrogation, almost certain detention and may, or may not, be tortured and tasked with reporting on release. Activists and those perceived as activists would be treated the same.

D. Country Background Evidence

- A188. The parties, over the course of the hearings before us, supplied us with some eight volumes of background material running into thousands of pages. Both Mr Jacobs and Mr Thomann, at our request, drew our attention in their written submissions specifically to the background material upon which they placed reliance. We have focussed on that material as relevant to our decision.

1. Joint Danish Immigration Service and Home Office Fact-finding Missions (4 August 2016) (“F-FR 2016”)

- A189. Both parties referred us to a Joint Report of the Danish Immigration Service and the Home Office in relation to fact-finding missions to Khartoum, Kampala and Nairobi (“Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum” (August 2016)). The F-FR 2016 relates to visits conducted between February and March 2016.
- A190. At para 1.1, the F-FR 2016 estimates the size of population from Darfur and the Two Areas living in Khartoum as “ranging from hundreds of thousands and up to a million or greater”. The report states that the highest figure estimated was 5 million and that two sources refer to the size of these communities as 60-70% of the total population of Khartoum. At para 1.2 the F-FR 2016 states that the two principal drivers why individuals have moved to Khartoum is the security situation in their home areas and socioeconomic factors.
- A191. Section 2 of the F-FR 2016 deals with the treatment on arrival at Khartoum airport of persons from Darfur and the Two Areas. Paragraph 2.1 sets out the security arrangements at the airport amounting to two types of control: an immigration desk where travel and residence documents would be checked and NISS security desk. The report continues:

“2.1. Western Embassy (A) noted that NISS officers checked passports against a database, which principally listed persons with links to international terrorist groups; Western embassy (C) confirmed the existence of a NISS security database.

Information provided by some sources indicated that the level of questioning by NISS officers at the security desk could vary. For example, whilst Western embassy (A) observed that this security check was usually undertaken without conversation, the two human rights lawyers from Khartoum advised that the purpose of security checks at the airport was to gather information about those arriving and so various questions would be asked such as where the returnee was coming from, what they had done abroad and why there were coming to Sudan."

A192. In para 2.2, the F-FR 2016 deals with returning failed asylum seekers and what evidence, if any, there was that returnees who were from Darfur or the Two Areas experienced difficulties:

"2.2. A number of sources stated that they had no information to indicate that failed asylum seekers / returnees from Darfur or the Two Areas would generally experience difficulties on return to Khartoum International Airport (KIA), or they did not consider that claiming asylum overseas would put such a person at risk per se. Western Embassy (C) noted that they had monitored the forced return of two persons from Europe in 2015 and had no reason to believe that they experienced any difficulties or mistreatment, although the source acknowledged that they were not present throughout the arrival procedure. The diplomatic source mentioned that they had experience of a very few rejected asylum seekers being deported from Switzerland and Norway. According to the source it was unclear whether these returnees could get support upon return to Sudan. However, the source added that those sent back from Norway had not faced any problems upon return.

Some sources noted:

- a lack of coordination in the return operations from departing countries to inform those concerned when precisely returnees would arrive at KIA
- a general absence of independent organisations at KIA, including UNHCR, when forcibly returned persons arrived in Sudan, although IOM was present for voluntary returns
- a limited number of enforced returns from Europe

EAC advised that at the security desk, officers asked a range of questions of failed asylum seekers returning to Sudan (for instance about how long they had stayed abroad; why they did not have a passport; or political affiliations and acquaintances abroad). ACPJS remarked that persons returning without travel documents or under escort would be subject to questioning.

Several sources noted that Israel and Jordan had deported a number of Sudanese nationals, including persons who had claimed asylum. Sources mentioned that the most recent incident was in December 2015 and involved the large-scale deportation of Sudanese nationals from Jordan, with some sources indicating the number of persons deported was over 1,000 persons.

Some sources noted that deportees from Israel and some of the deportees from Jordan were arrested on arrival and detained, some may have experienced prolonged detention or physical mistreatment and/or were placed on reporting arrangements or travel restrictions. Other sources noted that returnees from Jordan had been processed smoothly. There is however, lack of detailed,

accurate information regarding these events, including information on whether these deportees have been de facto refugees.

UNHCR was not able to verify whether any of the returnees had been detained. However, the source stated that if a person had a high political profile, one could not rule out the possibility that he could face difficulties with the authorities. Information from some other sources about the deportation of Sudanese nationals from Jordan and Israel also indicated that those returnees who were held in prolonged detention may have been detained because of their political profile.

Some sources highlighted that those returning from Israel were more at risk of being subjected to thorough questioning and/or arrested upon return than those returned from other countries.”

- A193. At paragraph 2.4 the F-FR 2016 deals with the impact of a “long-term stay abroad” stating that in itself it is not a risk factor but that those from Darfur or the Two Areas would be subject to extensive questioning about their political activities:

“2.4 A number of sources confirmed that in their view long-term residence abroad would not in itself be a risk factor. Some sources additionally observed that there were established Sudanese diaspora communities living overseas.

NHRMO considered that those from Darfur or the Two Areas, who had been outside Sudan for a considerable period, would be questioned extensively about their political activities and risked detention if they were suspected of activities against the government.”

- A194. At paragraph 2.5, the F-FR 2016 notes that several sources said that travelling on emergency travel documents would not in itself be a risk factor.

- A195. At paragraph 2.6, the F-FR 2016 deals with the “Impact of Political Profiling” as a relevant factor in whether a returnee would be subject to questioning and/or arrest at the airport:

“2.6. Several sources noted that those returnees who had a political profile may be thoroughly questioned and/or arrested at KIA.

For example, ACPJS was aware of cases in which political activists had been detained both when attempting to leave and on return to Sudan, mentioning the example of a lawyer and a political activist who were detained on return; DBA (Kampala) considered that activists from Darfur and the Two Areas would be at the greatest risk at Khartoum airport (KIA); the two human rights lawyers from Khartoum cited examples in which political activists had been detained at the airport and explained that treatment on arrival depended on a person’s political opposition activities and their affiliation with rebel groups; NHRMO referring to their own human rights monitoring work, considered that it would not be safe for NHRMO staff to visit Khartoum and referred to a specific case of detention at the airport involving a Nuba person who was detained for alleged political activity.

Two sources in Kampala noted that security protocols were often adopted when activists travelled into and out of Sudan, to avoid their country of departure being detected by the NISS (see 2.8 Impact of country of departure).

Some sources indicated that persons, who had a political profile from Darfur and the Two Areas, may be prevented from obtaining an exit stamp and leaving Sudan or replacing their passport from overseas missions.

Two sources observed that persons from Darfur and the Two Areas who held a political profile may not always be detained or targeted on arrival. Ahmed Eltoum Salim (EAC), referring both to his own experiences and other persons he knew, noted that high profile persons, including political activists who had been granted asylum abroad, had returned to Sudan and were now working with the government. The Khartoum based human rights organisation also noted that the authorities did not arrest returnees who had a political profile to the same extent as was the case before 2005 when signing of the Comprehensive Peace Agreement led to the return of many Sudanese opposition groups.

Referring to the detention of political persons at Khartoum International Airport (KIA), Ahmed Eltoum Salim (EAC), the Khartoum based human rights organisation and the two human rights lawyers from Khartoum indicated that the behaviour of the NISS at the airport was slightly improved and that the detention of political persons on arrival was less common now.

The two human rights lawyers from Khartoum noted that it was less likely now for persons to be arrested at the airport for political reasons, although sometimes this happened. The source explained that at the security desk it is now more common to obtain information about a person and for them to be picked up later if they are deemed of interest."

A196. Paragraph 2.7 deals with the "Impact of Ethnic Affiliation" noting that several sources did not consider that a person's ethnicity generally affected their treatment but also noting that some sources said that there would be more extensive questioning, for example, of ethnic Nuba who were "most likely to experience harassment":

"2.7. Several sources indicated that a person's ethnicity did not generally affect their treatment on arrival at Khartoum International Airport (KIA), or otherwise had no information to the contrary to contradict this assessment.

Western embassy (C) noted that upon arrival at KIA, Darfuris and persons from the Two Areas may be treated impolitely and probably asked to pay a bribe, but they would not face any difficulties if they already were not 'flagged' by the NISS. NHRMO observed that those from the Two Areas travelling through Khartoum International Airport (KIA) would be subject to more intensive questioning about their background and political involvement, with ethnic Nuba most likely to experience harassment.

EAC pointed out that there were officers from Darfur and the Two Areas working at the airport, for example Lieutenant General Awad El Dahiya, Head of Passports and Civil Registrations at the Ministry of Interior was from Southern Kordofan.

EHAHRDP considered that all asylum seekers from Darfur and the Two Areas would be at risk on return."

A197. At para 2.8 the F-FR 2016 states that those sources did not consider that in general travelling from overseas countries would result in persons being targeted or detained on arrival.

A198. Section 3 of the F-FR 2016 deals with the “treatment of persons from Darfur and the Two Areas by the authorities”. At para 3.1, the report states that the role of the NISS and the National Security Act in dealing with the monitoring arrests and detention of politically active persons including persons from Darfur and the Two Areas in Khartoum. The F-FR 2016 says this:

“3.1. Several sources cited cases in which the NISS were responsible for acts of harassment and intimidation as well as more serious human rights violations, including acts of torture. Cases of arbitrary arrest and use of incommunicado detention were also reported. Freedom House cited a report from the African Centre for Peace and Justice Studies (ACPJS), recording 169 unlawful killings during civil unrest in September 2013. According to the source, the report referred to NISS agents fraudulently changing post-mortem documentation to cover up the number of persons killed by the NISS. According to Freedom House only one security officer was ever convicted following the government’s investigation into the incident.

Several sources referred to the National Security Act 2010 as providing a broad remit for the NISS to operate with impunity. In particular sources highlighted that the 2010 Act permitted extended powers of detention and prevented NISS officers from facing prosecution for offenses committed in the course of their duties.

Several sources referred to the NISS conducting surveillance of persons in Khartoum and having a network of informants, including within the Darfuri and Two Area communities⁴⁴, for example DBA (Khartoum) noted that the NISS had informants in the Darfuri student population who had informed the NISS about who was active in demonstrations. One source referred to the NISS’ use of electronic surveillance, for example tapping phone calls or monitoring online social media.

However, Freedom House commented that the NISS was poorly organised and lacked up to date intelligence and that this could result in the NISS arbitrarily targeting a person. Western Embassy (A) noted that it was difficult to understand the reasons why the authorities targeted some individuals and provided an example in which a former member of an armed opposition group whose father had been interrogated even though the individual was no longer active in the group. Western Embassy (C) referred to a case in which a Sudanese national who worked at a school was harassed by the NISS for unknown reasons. He subsequently left the country and claimed asylum in a western country.”

A199. At para 3.2, the F-FR 2016 deals with “Profile of Persons Targeted” emphasising, in particular, targeting of those with political profiles such as students activists, including from Darfur and the Two Areas, along with others such as persons affiliated with rebel groups, journalists, human rights activists and the like:

“3.2. A majority of sources observed that those from Darfur or the Two Areas who were critical of the government and/or had apolitical profile may be

monitored and targeted by the NISS in Khartoum. This could include many different forms of activism.

Several sources identified student activists from Darfur and the Two Areas as being at risk of being targeted. Different sources provided examples demonstrating extra-judicial killings, mistreatment in detention as well as cases of harassment and intimidation by the NISS and their affiliated militias. Sources noted that one of the main reasons why the student population was targeted was because they were the most active politically and intent in voicing their criticism of the government. Such a trend had become more prevalent in recent years.

A number of sources noted that other groups targeted by the NISS included: persons affiliated with rebel groups; lawyers and journalists; civil society leaders; human rights activists, including women activists. From these groups, three sources highlighted those with an affiliation to rebel groups as being particularly at risk.

Political profile was also identified as a factor when considering risk on arrival at Khartoum International Airport (KIA)."

A200. Section 3.2.1 deals with "Trends and Changes in Treatment" noting that several sources observe that security operations including arrests and detentions (including by the NISS) "was not constant, but changed over time". The report states that the reporting of

"discriminatory practices suffered by Darfuris and persons from the Two Areas were systematic, but not constant, and that there were many periods where discriminatory practices were more intensely pursued and conversely times when discriminatory practices were less pronounced".

A201. The F-FR 2016 goes on to state:

"The SDFG advised that it was difficult to say what was happening in Khartoum today or the extent to which persons from Darfur or the Two Areas were targeted by the NISS now. According to the source, it was predominantly politically active persons who were targeted by the NISS."

A202. Section 3.3 deals with the "Impact of Ethnic and Tribal Affiliation" stating that a number of sources observed that those from Darfur or the Two Areas could be at risk of mistreatment by the NISS in Khartoum and that they might be targeted by the authorities due to their ethnicity alone. The report states that no specific information examples were given. The greater suspicion and risk of worse treatment in detention are for those from Darfur and the Two Areas "and in particular those of African ethnicity". The F-FR 2016 says this:

"3.3. Four sources observed that all communities from Darfur or the Two Areas in Khartoum could be at risk of mistreatment by the NISS or indicated that persons from these communities may be targeted by the authorities due to their ethnicity alone. However, none of the sources provided specific information indicating that persons from Darfur or the Two Areas were being subjected to mistreatment by the authorities exclusively due to their ethnic background.

Faisal Elbagir (JHR) noted that whilst there was no official report on ordinary civilians (that is persons who were not involved in political activities) from Darfur or the Two Areas being targeted by the authorities merely due to their

ethnic affiliation, such cases could be found on social media. However, the source could not give examples of such cases which had been verified. Elbagir also remarked that due to media restrictions in Sudan, it was often difficult to obtain accurate news reports about cases of detention.

Khartoum based journalist (1) noted that it was the type and level of political activity rather than one's ethnic background which was the determining factor behind who was monitored and targeted by the NISS. ACPJS explained that ethnicity was complicated and that ethnic disputes were often exploited by the government to pursue political goals. ACPJS highlighted that in general anyone who was suspected of political opposition against the government could be targeted, including persons from Arab tribes.

Some sources advised with regard to the arrest of Darfuris in Khartoum that there had been no largescale arbitrary arrest of Darfuris in Khartoum in recent years compared to that of 2008, following the JEM assault on Omdurman⁵⁵. Sources noted that at that time widespread security operations in Khartoum took place, which were often based on the skin colour and ethnicity of a person.

A number of sources, however, noted that those from Darfur and the Two Areas, and in particular those of African ethnicity, were more likely to be viewed with greater suspicion and treated worse in detention than other tribes from Darfur and the Two Areas if they did come to the attention of the NISS due to their political activity. Some sources also mentioned Ingessana from the Two Areas among the tribes being suspected by the authorities for political activity. Several sources noted that the Darfuri and the Two Area communities were perceived by the NISS to be 'rebel sympathisers' and consequently these communities would be more closely monitored by the NISS, for example through the use of informants. Khartoum based journalist (3) held the view that it was only those communities arriving in Khartoum post 2003 who would be monitored.

DBA (Kampala) and ACPJS observed that those from other Darfuri tribes (i.e. not the Fur, Masalit and Zaghawa), would not generally be perceived as opposed to the regime or commonly associated with rebel groups and hence not being monitored by the NISS. However, DBA (Khartoum) noted, in the context of how persons from Darfur and the Two Areas were treated on arrest, that other African Darfuri tribes, including the Tunjur, Meidob, Tama, Mima, Gimir and Dago tribes, were treated more harshly than Arab-origin tribes because the authorities assumed that these groups supported armed rebel groups. DBA (Kampala) also observed that activists of Arab origin may experience harsh treatment for advocating in favour of the rights of non-Arab tribes.

EHAHRDP commented that it was difficult to be prescriptive about which tribes would be at greater risk, although considered those from Arab Baggara tribes as less likely to experience mistreatment because these tribes were commonly associated with the pro-government Janjaweed militia.

UNHCR noted, however, that it was difficult in practice to treat persons differently on the basis of their tribal affiliation. The source explained that it was difficult to say which group would be targeted and which would not due to the sheer number of different tribes in Darfur (over 400), and the fact that mixed parentage occurred."

- A203. Section 3.4 deals with “Treatment upon Arrest” and the risk of ill-treatment, torture and extra-judicial killing, including by the NISS, of those in detention.
- A204. Section 4 of the F-FR 2016 deals with the “living conditions in Khartoum for persons from Darfur and the Two Areas”.
- A205. Section 4.1 deals with “Access to Documentation” and cites a number of sources as indicating that persons from Darfur and the Two Areas
- “would, in general, have access to civil documentation, including a National ID number... required to access services and to obtain other types of documents such as passport etc”.
- A206. Several sources are quoted, however, as indicating that persons from Darfur or the Two Areas may experience difficulty in reacquiring lost civil documentation “because of the need to obtain witnesses to prove their identity”. One source, however “noted that Sudanese from conflict areas living in Khartoum lacked access to basic services, and faced economic, social and political exclusion”.
- A207. Section 4.2 deals with “Access to Housing/Accommodation” referring to sources stating that there was “no systematic discrimination” against persons from Darfur and the Two Areas with regards to where they could live in Khartoum but that the “only real difficulty regarding access to housing” for persons from Darfur or the Two Areas was “whether a person had sufficient income or financial resources to live in a particular place”.
- A208. The report then refers, to what has been called before us the ‘Black Belt’ where persons from Darfur and the Two Areas usually lived as follows:
- “... Sources noted that usually persons from Darfur and the Two Areas had limited financial means and so were forced to live in the poorer slum communities on the outskirts of the city, where housing was generally of a poor standard. The districts of Mayo and Omdurman were mentioned as having sizeable populations from Darfur and the Two Areas. Several sources also noted numerous other areas in Khartoum where such communities lived.
- The Commissioner for Refugees, Ministry of Interior, noted that there were no areas in Khartoum exclusively inhabited by people from Darfur and the Two Areas. Both EAC and the Commissioner for Refugees remarked that persons from Darfur and the Two Areas often stayed with relatives in Khartoum, at least initially. Forced evictions occurred in these slum communities. Usually this resulted in communities being forced to live further outside Khartoum, where access to services was very limited.
- The international consultant observed that Darfuris tended to live in large enclaves in new conurbations in Khartoum with water, electricity etc., but observed that ‘people had to pay for it’. Some sources pointed out that there were economically better-off Darfuris and people from the Two Areas who lived in better parts of Khartoum including the centre of the city.”
- A209. Section 4.3 deals with “Access to Healthcare” referring to statements by sources that access to healthcare in some areas was “generally poor” and that there were fewer public hospitals in Khartoum. The report refers to sources stating that there was “no systematic discrimination” against persons from Darfur and the Two Areas in accessing healthcare in

Khartoum “providing they could pay for it”. It then reports a source recording that Sudanese from the conflict areas living in Khartoum “lacked access to basic services, although mentioned that general access to healthcare in Khartoum was better than in Darfur and the Two Areas”.

A210. Section 4.4 deals with “Access to Education”. Again, stating that it was “generally limited and the quality of education was poor” in the slum areas but that there is “no systematic discrimination against persons” from those Two Areas in accessing education “providing they could pay for it”. EHAHRD commented that those from the conflict areas living in Khartoum

“lacked access to basic services, although mentioned the general access to education in Khartoum was better than in Darfur and the Two Areas”.

A211. Section 4.6 deals with “Access to Employment”. It says that forces highlighted that:

“improved economic conditions, including access to employment, as one of the pull factors driving migration from Darfur and the Two Areas to Khartoum”.

A212. The F-FR 2016 then goes on to deal with employment in the “informal sector”, there being “some degree of discrimination” limiting access to certain types of jobs or sectors in the labour market for those from Darfur or the Two Areas. The report says this:

“4.6. Several sources indicated that persons from Darfur or the Two Areas experienced some degree of discrimination which was reflected in their limited access to certain types of jobs/sectors in the labour market in Khartoum. For instance, such persons would likely find it difficult to secure skilled employment; enter into certain qualified professions or sectors especially within the public sector. Several sources also pointed at the adverse economic conditions and the general shortage of jobs in Sudan as an additional factor, which made it difficult for Darfuris and persons from the Two Areas to access employment in the formal sector.⁹¹As a result those with an academic background tended to leave Sudan to work overseas, for example in the Gulf states or Europe.

The international consultant noted that those from Darfur or the Two Areas were broadly divided into two groups –those who were educated and who were professionally employed, e.g. as teachers or self-employed, and those who lacked a formal education and worked in the informal sector, such as agriculture or construction.

The Khartoum based human rights organisation noted that Darfuri African tribes, such as the Masalit, Fur and Tunjur or (African) tribes from the Nuba Mountains were more likely to experience employment discrimination. Western embassy (C) likened employment discrimination against African (non-Arabs) from Darfur and the Two Areas as similar to the difficulties faced by migrants/refugees seeking employment in Europe.

Some sources indicated that loyalty to the regime/NCP would influence the likelihood of employment in some sectors.

Other sources identified that Darfuris and persons from the Two Areas could be found employed in the armed forces, including the police. However, based on his experience, the international consultant considered it unlikely that the

provisions in the Doha Document for Peace in Darfur (DDPD), aimed at improving representation of Darfuris in government positions and the armed forces had been met.”

A213. Section 5 deals with social circumstances in Khartoum and racial discrimination:

“A number of sources observed that persons from Darfur and the Two Areas, and in particular those of African descent, experienced some level of discrimination or societal harassment. To illustrate this, five sources referred to the use of derogatory phrases such as ‘slave’, especially from those belonging to Riverine Arab tribes.

Crisis Group noted that despite ‘systematic’ discrimination restricting those from Darfur and the Two Areas in conducting political activities, such communities were able to live ‘day to day’ in Khartoum. The source also considered that the level of discrimination an individual may experience was linked to how politically involved a person was and how long they had lived in the city; according to the source those with established links over a longer period would likely experience less discrimination in Khartoum. Western embassy (A) remarked that there was no visible societal discrimination against the Darfuri and persons from the Two Areas, except within the student community.

DBA(Kampala)noted that discrimination tended to be from the authorities, rather than the civilian populace. The source referred to cases of discrimination involving the POP who targeted illegal tea sellers; in cases of recruitment into the civil service or in the over-taxation of Darfuri businesses. Three sources considered day to day discrimination from officials working in the Sudanese authorities to be reflective of a wider ‘racist narrative’ or supremacist ideology, which placed emphasis on a person’s skin colour and was prejudicial towards those of African/non-Arab descent.

Two sources considered societal discrimination and racism against persons from Darfur and the Two Areas as a major problem in Sudan.”

A214. There is one final section of the F-FR 2016 with which we should deal which concerns the “Public Order laws”. Section 4.7 refers to the wide deployment of the public order police (POP) in Khartoum who enforce the public order law. The report then goes on to record sources reporting the use of that law against women from Darfur and the Two Areas selling tea illegally and to enforce Islamic standards of dress against women. The report says this:

“4.7. A number of sources noted that women from Darfur and the Two Areas selling tea illegally (i.e. without required licence) or selling alcohol were at risk of being targeted by the POP for violating Public Order laws. ACPJS observed that the POP was more prevalent in the slum areas where persons from Darfur and the Two Areas more commonly lived. Freedom House advised that any person undertaking such activities could be targeted, not just those from Darfur or the Two Areas, but explained that the marginalisation of communities from Darfur and the Two Areas limited employment opportunities and so they were commonly found in such roles. Sources advised that there were reports of bribery, extortion and harassment committed by the POP.

....

Some sources noted that public order offences could also include matters such as not conforming to standards of Islamic dress (e.g. wearing trousers or not wearing a headscarf). Western embassy (B) explained that POP would harass Christian Nuba women if they did not observe Islamic dress, explaining that such a person would be treated differently, for example compared to Western women or Coptic Christian women who did not observe Islamic dress. When the FFM delegation advised Freedom House that they had seen a large number of women without a headscarf in the streets during their stay in Khartoum, Freedom House commented that such an indiscretion would be less problematic for those from wealthy families who were well connected, but it may give rise to difficulties for those from marginalised communities such as Darfur or the Two Areas. However, Freedom House also noted that small acts of political opposition, such as not wearing a headscarf, were increasingly tolerated and explained that Sudan was relatively more progressive in the implementation of such laws, then for example, countries like Iran.”

A215. The fact-finding missions, which provided the material for the report, as we noted, were conducted between February and March 2016. During the course of the hearing, a Home Office fact-finding mission to Khartoum took place between 10 and 17 August 2018 and resulted in a report in November 2018.

2. Report of a Fact-Finding Mission to Khartoum, Sudan (November 2018) (“the F-FR 2018”)

A216. The F-FR 2018 published in November 2018 is a detailed one and mainly deals with the treatment of non-Arab Darfuris. The parties, however, placed reliance upon some passages in the report which, in particular, referred to individuals from South Kordofan or the Nuba Mountains. We have already referred to this document as it was raised in the additional written reports of the experts, and in the oral evidence we heard, at 24/25 October 2019 hearing.

A217. In section 1 of the F-FR 2018, reference is made to the large population of Darfuris and also those from the Nuba Mountains in Greater Khartoum. Reference is made to the migration of different groups to Khartoum including Darfuris and that they, together with people from the Nuba Mountains, live in “shanty towns surrounding Khartoum” (see para 1.1.3). That is a reference to the ‘Black Belt’. At para 1.3.6, an activist is noted as saying that:

“[t]here are no IDP camps for Darfuris or those from South Kordofan in Khartoum but many live in shanty towns”.

A218. It is also reported (para 1.3.4) by one source from the British Embassy that it is:

“[mu]ch harder to get a sense of the [Darfuri] population in other groups because they are so well integrated... Nuba, Christian or South Sudanese who live in ‘ghettos’, and [are] poorer, are easy to identify, but cannot say this of Darfuris as they are so spread across society.”

A219. At para 1.3.13, a source is recorded as stating that in the shanty towns “Darfuris share the area with Nuba, but the majority are Darfuri.”

A220. One issue, raised in other evidence that we heard, concerns the ability to identify the Nuba in society. This is dealt with in paras 1.7.3–1.7.13. Again, in particular, in relation to identifying non-Arab Darfuris. Their particular physical features are relied upon by sources as a means to make them “easily identifiable”. At para 1.7.11 the source says: “the

features of NADs, Nuba and Arab Darfuris are different” (NAD = Non-Arab Darfuri). That source goes on to say:

“It is also possible to identify a Darfuri by the way they speak – anyone who speaks a local language most likely speak Arabic with an accent. This is the same for other groups too, such as Nuba.”

A221. The F-FR 2018 goes on to deal with the treatment of non-Arab Darfuri by the government but also refers to the position of individuals from the Nuba Mountains. At para 3.2.6, a university professor is reported as saying that:

“... the three groups that government has most suspicions are the Zaghawi, Massalit and Fur – most security sensitive as linked with rebel groups. People from South Kordofan face similar problem, as do peoples from Blue Nile and East Sudan.”

A222. Another source (Siddig Yousef) is reported as stating (para 3.2.10):

“... the Nuba are treated badly, but face less social discrimination than the Darfuris ... society generally does not treat the Darfuris and the people from South Kordofan differently from other groups. But the government and NISS treat them badly, considering them supporters of the armed groups.”

A223. At section 3.3 under the heading “Arrest and Detention – general” it is reported by an official at the British Embassy that the roundup of Darfuris was linked to the war in Darfur and now that that conflict has reduced in intensity, “there is no need to lock up Darfuris”. The individual is recorded as stating, however, that Darfuris do face issues with “poverty, marginalisation but they are not affected anymore than other groups”.

A224. A further source is recorded as saying that he is “not aware of wide-scale arrests of Darfuris”. At para 3.3.16, a number of sources are recorded as referring to protests in Khartoum during January 2018 during which

“a range of groups, including Darfuris, demonstrated against the deteriorating of the economic situation, fuel shortages and rises in prices. There were a large number of arrests, one source estimated 500 arrested, including some members of civil society interviewed by the FFT.”

A225. In section 3.4 under the heading “Profiles and specific groups” at paras 3.4.5–3.4.8 the F-FR 2018 refers to the targeting of Darfuris who took part in demonstrations and also, from one source, the association of the Nuba people like Darfuris, with rebel groups:

“3.4.5 Siddig Yousef thought that ‘Darfuris would be targeted if they took part in demonstrations’. He also observed, when asked who the state may have an interest: ‘Whole areas of South Kordofan are not under government control whereas all of Darfur is under government control. Nuba are ill-treated by the government [in South Kordofan], also in Khartoum... the government is facing opposition from everyone – because of the lack of fuel, increase in prices. There is a state of emergency in 9 out of 18 states / provinces, including 5 in Darfur, 3 in South Kordofan and one in Kassala... the public order laws are against women. If a woman is not covering her head, may be oppressed, arrested and lashed – only in Khartoum state... many women are affected every day – 1000s –all women of different groups.’

3.4.6 The official of Western Embassy A considered ‘... that any high-level opposition members would be at risk. However, reasons would be required to arrest someone with a high profile as it would be reported in the media. For someone with a low profile, no reasons would be required as there would be less interest [in the media].’ Similarly, the IOM official observed that while ‘[t]he nature of NISS’ likely priorities are not known... it is assumed to be in those who are suspected of being a threat to state security, but qualified this by noting that ‘IOM works closely with immigration, not NISS’

3.4.7 The civil society activist observed ‘[t]he Nuba people and Darfuris are often associated with the SPLM-N, SLM-AW and JEM – they are seen as rebels. Most cases that the organisation deals with [are] Darfuris and Nuba, to whom it provides legal aid. The organisation has a lot of contact with Darfuris in Khartoum, as well as those in Gezira, White Nile and Kordofan.’ However, the human rights defender considered that ‘... not all Darfuris are suspected of supporting rebels; just those that are suspected of opposing the government, it is a well-known fact that there are many Darfuris who are members of the ruling party and some assume high ranks within the party and the government.

3.4.8 In regard to state treatment/targeting, the activist thought it not possible to generalise and ‘could not say every Darfuri has a problem. If he is a politician, an activist... each case should be considered/dealt with on its merits.’ When asked what profiles of person would be of interest to the government the source ‘thought it would be any opposition, anyone not affiliated to the NCP... human rights defenders, politicians. They don’t want people to help the South Sudanese in IDP/refugee camps.”

A226. Then, at 3.4.9 the F-FR 2018 states that there are difficulties faced by non-Arab Darfuri students including arrest and detention:

“Sources generally agreed that non-Arab Darfuri students faced difficulties from the state, including arrest and detention, because of their perceived opposition to the government and (suspected) links to rebel groups. However, there was not consensus amongst sources on the nature and type of risks faced, and whether all students were at risk or only those who participated in activities that were, or were perceived, to oppose or criticise the government.”

A227. At para 3.4.10, the F-FR 2018 goes on to deal with the size of student population in Khartoum noting, from some sources,

‘a strong presence of’ and ‘many’ Darfuri students in Khartoum. The Second Secretary Political considered that Darfuri students ‘came to Khartoum/Omdurman for better quality education. Students are of mixed backgrounds, predominately Fur, then Massalit, Zaghawa, Berti.”

A228. At para 3.4.15 the F-FR 2018 refers to a report concerning problems faced by Darfuri students from the Sudanese state and reports incidents in 2012 when 70 students were arrested and only 66 released with 4 disappearances whose dead bodies were thrown into an irrigation canal. The report records a source as saying that “13 Darfuri students” were killed by government affiliated bodies between 2003 and 2016. The report continues:

“There are NISS agents (informants) and NISS offices on campus. When something happens, NISS arrest everyone... This happens to all students,

including non-Darfuris, especially if they are political activists. There are problems for students who join different student organisations... many Darfuri students are involved in activist groups due to the continuous conflict in Darfur, which makes them more politically aware. Also there are problems faced Darfuris who join other (i.e. not rebel) opposition groups. They are being more targeted by the security forces than others in the same opposition parties."

A229. At para 3.4.19 a university professor from Darfur is reported as stating that:

"All Sudanese opposition parties have their student activists, but the Darfuri students tend to be more agitative."

A230. At para 3.4.21 a civil society activist is reported as stating that students are:

"... labelled as trouble due to their perceived rebel support. There is a lot of violence, including people being shot dead, on campus at the Universities. The targets are mainly the Darfuri and the Nuba."

A231. The F-FR 2018 goes on to consider the economic and social circumstances, mainly for non-Arab Darfuris. However, some reference is made to the Nuba. At para 3.5.5 a civil society activist is quoted as saying: "Darfuris do better than the Nuba in terms of socio economics". He continues:

"In general Darfuris are better off than the Nuba people. Nuba IDP families rely on income generated by their children collecting re-cyclable items to sell from rubbish dumps."

A232. At para 3.5.9 under the heading "Employment", one source is recorded as saying:

"Other marginalised groups, for example the Nuba, are also denied high-ranking places."

A233. At section 3.6, the F-FR 2018 deals with "Access to ID numbers and cards". The report refers to the views of differing sources on whether Darfuris would be able to readily access an ID number which, a British Embassy source states, is needed by all Sudanese "to get a driving licence, a job, to go to university, etc." (para 3.6.2). The difficulty of obtaining a national ID number is noted at paras 3.6.3 – 3.6.14. At para 3.6.3 one source notes:

"The government makes it impossible to get a National ID number as verification from a male relative is required (and in many cases women do not have a surviving male relative) [however [the source] also noted that many Darfuris are at school and university which he acknowledged was likely to require having an ID number and card]."

A234. The same source then goes on to say:

"Other people, for example from the East, Blue Nile and the Nuba Mountains, are also discriminated against on these grounds (particularly in the respect of women that are not able to obtain verification as they do not have male relatives)."

A235. In section 5 under the heading "Government monitoring" it is stated that:

“Most sources who commented thought there was government monitoring of the Sudanese population, some suggesting there was a particular focus on non-Arab Darfuris because of their possible links with rebel groups. Sources expressed different views on the effectiveness of state monitoring.”

A236. An official at the British Embassy is reported as saying (para 5.1.5):

“There is general monitoring of all Sudanese by the government...[but] thought that it was not interested in Darfuris unless they were in some way politically active or having ties to rebel groups. The government does not like demonstrators. The government does not monitor Darfuris in particular ... did not consider that Darfuris were targeted for monitoring more so than other groups.”

A237. The F-FR 2018, nevertheless, goes on to refer to sources stating that informers and other means of monitoring are used by the NISS.

A238. In section 5.2 under the heading “Overseas – monitoring the diaspora”, an official at the British Embassy reported (at para 5.2.1):

“NISS do monitor the diaspora for rebel activities, many people in the UK report to the Sudanese. Sudan has a big monitoring/reporting culture – the regime is paranoid. However, as rebel influence diminishes, the government’s interest in them declines.”

A239. The monitoring of activists in Europe is also reported by another source (see para 5.2.2).

A240. Section 6 deals with “Returns” to Sudan. This section is focused upon the return of non-Arab Darfuris. At para 6.1.1 the report states as follows:

“Officials from 4 of the western Embassies interviewed (Norway, Switzerland, and Western Embassies A and B) confirmed that since 2017 these countries have returned voluntarily and by force a number of Sudanese nationals, including unsuccessful asylum seekers, to Sudan... the Home Office, as the UK government department responsible for managing migration and asylum cases, at the time of writing (November 2018) continues to remove Sudanese who have no right to remain in the UK voluntarily and, if necessary, by force on a case-by-case basis.”

A241. At para 6.2 the ethnic profile or place of origin of a returnee is discussed but only in the context of whether they were from Darfur. The evidence from the Western Embassies was mixed: some were not aware whether any returnees were from Darfur and others that some of the returnees were likely to be from Darfur. No reference is made to any of the returns relating to the Nuba; nor was that issue directly raised with the Western Embassy.

A242. Section 6.3 deals with the “Treatment of returnees”. At para 6.3.1 the Sudanese head of immigration is quoted as saying that returnees were supported and most were economic migrants and that:

“Unless there is a criminal case pending against a returnee they do not face any problems on return.... [he] was not aware of any arrests. Returnees are interviewed to establish nationality.”

A243. He goes on to say that “claiming asylum abroad is not seen a crime.”

A244. However, other sources stated that (para 6.3.2):

“They had heard about problems for individuals returning to Sudan, including arrest, detention and ill-treatment, or considered it likely that returnees may experience difficulties.”

A245. Another source, although he had no direct knowledge of returnees’ experiences, stated that he:

“had heard mixed accounts from his research assistant who had interviewed people who had returned.”

A246. The source goes on to say that some had not had their passports stamped, maybe some returning from Israel had been detained and then released whilst: “some others had been detained from the airport and kept longer.”

A247. Another source from the Darfur Bar Association is quoted as saying (para 6.3.4):

“Returnees will be treated severely simply by the fact of having claimed asylum. They will be treated as opponents of the government and accused of being rebels. Most people arrested at the airport are accused of being rebel sympathisers. There have been 100s of arrests of returnees from Jordan and Israel.”

A248. However, it is also reported (para 6.3.5) that when this source was asked to give examples he was:

unable to provide specific detail and had not investigated any cases of returns being arrested/detained on arrival. He knew of such arrests from relatives of returnees arrested.”

A249. Another source (Siddig Yousef) is quoted at para 6.3.7 as saying

“... any activist outside of Sudan, regardless of tribe, may face problems”.

A250. When he was asked whether a Darfuri, who had made an asylum claim which had been rejected and had then been returned to Sudan, would be of interest, this source said that he had no idea (para 6.3.7).

A251. At para 6.3.21, the report states that a number of sources, including the King of the Berti were not aware of specific problems of returnees including unsuccessful asylum seekers.

3. *Asylum Research Consultancy, “Situation in Khartoum and Omdurman” (9 September 2015)*

A252. Mr Jacobs referred us to three passages in this report. At para 1.1.2 under the heading “Violence against members of specific groups” and the sub-heading “Nuba”:

“The African Centre for Justice and Peace Studies (ACJPS) reports that “On the night of 22 June [2014] police in the Almolazmeen area of Khartoum’s twin city Omdurman arrested 40 individuals of Nuba ethnicity, beating those arrested and using racist and discriminatory language against them. According to eye-witness accounts, at least 40 police were deployed to the area and targeted people based

on their Nuba ethnicity in apparent retaliation for the beating of a police officer accused of raping a woman of Nuba ethnicity along with two other police officers earlier that night. The 40 detainees, including at least 14 children and the woman who was reportedly gang-raped by police officers prior to her arrest, were taken to Omdurman central police station”.

A253. In the same paragraph 1.1.2, the document continues:

“In the days building up to the April 2015 elections ACJPS reported that “Members of the Nuba ethnic group also appear to have been targeted, possibly on the grounds of their presumed political affiliations to armed movements. Four members of the Nuba ethnic group in Khartoum were arrested by the NISS and held for three days on suspicion of being members of the SPLM-N. They were released onto a street in Khartoum blindfolded. All four individuals reported being subjected to torture and ill-treatment, including being beaten with water pipes, whilst in NISS custody.”

A254. Finally, at para 1.3.2 under the heading “Prison conditions” and the sub-heading “Nuba”, the document says this:

“The African Centre for Justice and Peace Studies (ACJPS) further notes in a June 2015 report that “The use of torture across Sudan is endemic. Sudanese authorities use torture and other forms of ill treatment to intimidate and silence perceived political opposition to the policies of the ruling National Congress Party (NCP). Human rights defenders, political and other social activists, internally displaced persons (IDPs) and students are particularly vulnerable to torture and ill-treatment”.¹¹³ It further notes that “Members of ethnic minority groups, including Darfuris and people hailing from Sudan’s Blue Nile and South Kordofan states, are particularly vulnerable to torture and ill-treatment. ACJPS has documented threats of sexual violence against male and female detainees, as well as cases of rape against female detainees in state custody. Detainees have also reported the use of racist verbal abuse”.”

4. *Asylum Research Consultancy, “Sudan: Query Response” (13 September 2018)*

A255. This is a detailed document and Mr Jacobs placed reliance upon it as confirming the position as set out in the F-FR 2016. We confine ourselves to referring to the passages he relied on. The report draws heavily on the F-FR 2016 and other reports (and news items) such as the Waging Peace Report of March 2018. We did not understand Mr Jacobs to suggest that there was anything uniquely supportive of his case in this document.

A256. Mr Jacobs referred us to para 4.2 concerning the position of those from the Two Areas travelling through Khartoum International Airport:

“...persons from the Two Areas will be treated differently because of being perceived to be affiliated with the SPLM-N [Sudanese Peoples Liberation Movement- North] and they will be subject to more intensive questioning about their background and political involvement. Ethnic Nuba persons will be most likely to experience harassment and will be easily identifiable from the name.”

A257. At para 1.1.1, the ARC document cites the F-FR 2016:

“a person from Darfur or the Two Areas could also be targeted even if they were not politically active.”

A258. At para 1.1.3, the ARC document again quotes the F-FR 2016 that sources indicated that there was a risk of mistreatment by the NISS of communities from Darfur or the Two Areas in Khartoum and that

“persons from these communities may be targeted by the authorities due to their ethnicity alone. However, none of the sources provided specific information indicating that persons from Darfur or the Two Areas were being subject to mistreatment by the authorities exclusively due to their ethnic background”.

A259. At para 1.1.2 the ARC document refers to the F-FR 2016 report of targeted harassment of women including Darfuri and Nuba women and including tea-selling Nuba women in Khartoum.

A260. Mr Jacobs also referred us to sections in the ARC document dealing with “discrimination”, “access to documentation”, “living conditions in Khartoum”, “access to employment”, “access to housing”, “access to healthcare” and “access to education” at pages 61-67 of the report. He did so without specific reference to the detail. It is unnecessary for us to set it out as the document largely relies upon, and reflects, the F-FR 2016 which we have set out in detail earlier.

5. *“COI Focus, Sudan: Risk upon Return” (2018)*

A261. We were referred to a number of passages in the report “COI Focus, Sudan: Risk upon Return” (6 February 2018) produced by the Belgium Office of the Commissioner General for Refugees and Stateless Persons, which, Mr Jacobs submitted, confirmed the risk to Nuba upon return owing to reputed political opinion. The first passage at para 2.1.1 dealt with the treatment of returned Sudanese national and the procedure on arrival at Khartoum International airport:

“2.1.1. Immigration procedures and security check

According to a range of sources, there are two controls upon arrival at Khartoum International Airport (KIA): first by the immigration service and then by the National Intelligence and Security Service (NISS). Sources contacted by the CGRS indicated that travel and residence documents are checked first at the immigration desk and that this is followed by a security check at the NISS desk. This information confirms what the 2016 British-Danish was told by its sources (several western embassies, Sudanese human rights lawyers, regional NGOs, IOM)

According to the British embassy in Khartoum, there is a standard immigration procedure for every person identified as a rejected asylum applicant: their documents are temporarily withheld and they are detained for a maximum period of 24 hours for interrogation. If this interrogation does not yield any results, the returnee is released. If the investigation reveals criminal activity or other nefarious reasons for the original departure from Sudan, the returnee is blacklisted from leaving Sudan. If the crime is outstanding, the returnee will be arrested.

The IOM explained to the British-Danish fact-finding mission that there are two categories of voluntary returnees: those with an ordinary travel document (passport) and those with an emergency travel document (ETD), such as a laissez-passer, issued by a Sudanese embassy. Returnees with a passport do not encounter any problems. The IOM and some other sources (a western embassy; two NGOs in Khartoum) are of the opinion that a return with an ETD does not in itself entail a risk for the returnee. However, a returnee with an ETD can expect a more detailed interrogation by the intelligence service, according to some sources (IOM; Sudanese NGOs in Khartoum and Kampala). The IOM added that returnees with an ETD are questioned about the reasons for their earlier departure from Sudan at the immigration desk. This takes about fifteen to twenty minutes, and the person is then free to go. Not only rejected asylum seekers undergo such interrogations, but all persons who have lost their passport, according to the IOM.

According to some sources contacted by the CGRS (Waging Peace; ICG; Sudanese human rights activist in Khartoum (A); Baldo S.; DRDC) returnees with an ETD run a greater risk of being targeted by the authorities. According to Maddy Crowther of Waging Peace, this is because they are identified as rejected asylum applicants, which gives them a political profile.⁹² The Sudanese journalist and analyst Tajeldin Adam stated that returnees with an ETD are usually taken away by the NISS for further verification, during which they may be subjected to discrimination or persecution, especially political opponents or members of vulnerable groups.⁹³ DWAG stated that even when they have a valid passport, returnees face a high risk of detention, torture or even death. Waging Peace knows of several cases where a holder of a British passport faced problems.⁹⁵ Suliman Baldo referred to the recent arrest of a British journalist and an American activist of Sudanese origin.

Regarding verifications carried out by the NISS, the Australian Department of Foreign Affairs and Trade (DFAT) stated that the NISS is strongly present at the airport and checks all documents of departing and arriving passengers. The British embassy in Khartoum pointed out that the intelligence service only intervenes when the immigration procedure is completed and that returnees are not systematically subjected to further investigation. This only takes place when the NISS views a returnee as "a potential person of interest", for instance when their name appears on a travel watch list, or because they had contacts with the Sudanese opposition or were active in opposition groups abroad.

Two western embassies told the British-Danish fact-finding mission that the NISS checks passport numbers in their database. Two Sudanese human rights activists stated that the intelligence service also uses this security check to collect information about incoming passengers and to ask questions about their origin, their activities abroad and the reasons for their visit to Sudan. Rejected asylum applicants are moreover asked questions about the duration of their stay abroad, the lack of a passport and their political affiliations, according to the European and African Centre for Research, Training and Development (EAC), an NGO working in Khartoum on legal migration.

The British embassy stated that it is not entirely clear how the immigration service identifies a returnee as a rejected asylum applicant but that indicators such as the use of an ETD (e.g. a laissez-passer), the absence of a valid exit visa or the presence of an escort may draw the attention of the immigration service.

Waging Peace also pointed out that an incoming passenger escorted by British immigration agents to Khartoum airport can be identified as a rejected asylum applicant. Mukhtar Alqabir (KACE Sudan) explained in an e-mail to the CGRS that repatriated Sudanese are usually intercepted by the NISS on board or near the plane and taken by a separate route to the NISS office.

A Sudanese human rights lawyer stated in his e-mail to the CGRS that the authorities, when they have doubts about a person's nationality, ask the person to have a relative come to the airport. Niemat Ahmadi (DWAG) added that detainees often refuse to give the names of their relatives so as not to put them at risk.

A Sudanese human rights activist (C) in Khartoum told the CGRS in her e-mail that she travelled to Khartoum in February 2017 with an ETD because she had lost her passport in London. She was taken by the NISS to a separate office, where she was asked to fill in a "forced deportation form" with questions about her journey, her family and her ethnic origin. As she refused to answer this last question, she was taken to another building and was only released when the NISS was told her ethnic origin by a family member. The Sudanese activist wondered what would happen with an incoming passenger belonging to an ethnic group which the government views with hostility."

A262. Under the heading "Ethnic Profiles" the report (para 2.3.2), dealing largely with non-Arab-Darfuris but also those from the Nuba Mountains, states that the risk to them was "not assessed by all sources in the same way":

"The risk for persons from conflict areas, such as Darfur and South Kordofan (Nuba Mountains) and Blue Nile States, especially for non-Arab Darfuris, is not assessed by all sources in the same way.

The British Upper Tribunal considered in a decision of 2015 that the term "Darfuri" is to be understood as an ethnic term relating to origins, not as a geographical term. Accordingly, the risk is the same for all non-Arab Darfuris, whether they were born and lived in Darfur or not.

In their latest decisions regarding Darfuris, the Upper Tribunal and the ECtHR have ruled against repatriation of non-Arab Darfuri.

The Upper Tribunal quoted the UK Border Agency (UKBA) Operational Guidance Note on Sudan of 2 November 2009: "All non-Arab Darfuris, regardless of their political or other affiliations, are at real risk of persecution". In 2015, the ECtHR concluded again that the Sudanese government is extremely suspicious of Darfuris who travelled or lived abroad.

Both jurisdictions refer to a UNHCR report of 28 November 2008 stating that Darfuris in the Khartoum area are at heightened risk of being subjected to arbitrary arrests and that Darfuris travelling abroad may be viewed with suspicion by the security forces.

The British Sudan researcher Peter Verney considers that non-Arab Darfuris may also be arrested and detained for racist motives, as part of the "genocidal" and "ethnocidal" destruction of their societies, and not because of actual evidence of links with rebel groups. The Sudanese authorities attribute a political colour on

the basis of ethnicity, and not on the basis of a real political profile. According to Verney, hundreds of low profile non-Arab Darfuris are being arrested.

In a document released in October 2017, Waging Peace stated that non-Arab Darfuris still are at risk in Sudan, also when they are sent back to Khartoum. According to Waging Peace, ethnic Darfuris (or persons supposed to belong to this ethnic group) face more systematic forms of discrimination and persecution in the capital, which prevents their relocation.

In 2013, the British embassy in Khartoum was told by human rights organizations that returnees from Darfur and the Nuba Mountains run a higher risk of arrest upon arrival than other Sudanese returnees.

Amnesty International considered that Sudanese from conflict-affected areas such as Darfur and South Kordofan and Blue Nile States should not be sent back to Sudan, where they would be at real risk of serious human rights violations. A number of sources contacted by the CGRS (Amnesty International; Sudan expert for an international organization; Sudanese journalist; DWAG; Tajeldin Adam; ACJPS; DRDC; KACE Sudan) hold the same view. Suliman Baldo declared that the Sudanese security services are more prone to subject detainees from conflict areas to racist insults and ill-treatment, including torture, compared with detainees from north or central Sudan. Most youths leaving the country come from conflict areas, according to Baldo. Some sources (DWAG; DBA; human rights lawyer in Khartoum; ACJPS; DRDC) stated that the Fur, Massalit and Zaghawa are the ethnic groups which are most often targeted in Sudan.^{181A} A Sudanese professor of human rights law stated that not every returnee faces problems at KIA but perceived a risk for persons who combine a specific ethnic background with political activities, for instance a Darfuri suspected of involvement with a rebel group.

A number of sources contacted by the CGRS (Eric Reeves; Waging Peace; Sudanese human rights activist (A); Sudanese human rights activist in Khartoum (D)) were of the view that Darfuris are particularly under suspicion, all the more so, according to Tubiana, when they have requested asylum in the West or in Israel. Most sources also mentioned other Sub-Saharan ethnic groups such as the Nuba. Darfuris with "political profiles" (sometimes based on distant family ties with rebel groups or involvement in some form of political activity, according to Reeves) run a high risk of arrest, detention and torture. Waging Peace noted that many activities have a political side and that this could also be the case for the activities of journalists, teachers, human rights activists, humanitarian aid workers etc. Applying for asylum will also draw attention from the authorities, according to Waging Peace.

Abdelrahman Elgasim (DBA) stated that passports of Darfuris are usually confiscated and their holders are interrogated about every aspect of their life (place of birth, ethnic origin, parents, brothers and sisters, partners, political affiliation, occupation) and have to sign a written commitment not to leave the country. They are then blacklisted from leaving the country. Elgasim is aware that a number of Darfuris occupy senior government functions but most of them are members of the Islamic Movement, and are tied through their religion to the Islamic government.

Other sources stated that an ethnic profile entails in itself insufficient risk upon return and pleaded for a more individualized approach which would take into account the returnee's political profile.

Several sources (IOM; UNHCR; western embassies; Sudanese NGO) told the British-Danish fact-finding mission in early 2016 that a person's ethnicity did not generally affect their treatment on arrival at KIA. UNHCR explained that, due to ethnic diversity, especially in Darfur, and to mixed parentage, it is difficult in practice to treat persons differently on the basis of their tribal affiliation. A western embassy noted that upon arrival at KIA, Darfuris and persons from the Two Areas may be treated rudely and will probably be asked to pay a bribe, and according to a Kampala-based Sudanese NGO, the National Human Rights Monitors Organization (NHRMO), they would be subjected to more intensive questioning and if they are suspected of anti-government activities, they could face detention.

In May 2013, the Swiss Federal Administrative Court (FAC) considered that, although still unstable, the situation in Darfur was improving and that attacks against non-Arab Darfuris had decreased. The FAC concluded that Darfuris had to adduce additional distinguishing features, such as political or other affiliations, to substantiate their fear of persecution.

The British embassy in Khartoum stated in 2016 that its contacts with Darfuri within civil society and political parties, with UN agencies and other embassies do not suggest ethnic persecution of non-Arab Darfuris settled in regions outside Darfur.¹⁸⁷The British embassy added that many Darfuris, including non-Arab Darfuris, are represented at senior levels in government, the security forces, and the media.

In August 2017, the British Home Office considered that non-Arab Darfuris are not generally at risk of persecution or serious harm in Khartoum solely on the grounds of their ethnicity. This view departs from the British Upper Tribunal's jurisprudence holding that non-Arab Darfuris are eligible for international protection and have no internal relocation alternative,¹⁸⁹and from its own policy guideline of 2016, which followed the Upper Tribunal's jurisprudence.¹⁹⁰The Home Office is of the view that a person's non-Arab Darfuri ethnicity is likely to be a factor which may bring them to the attention of the state and, depending on other aspects of their profile and activities, may lead to a risk of serious harm or persecution. The Home Office added that Darfuris in Khartoum face discrimination in accessing public services, education and employment, experience forced eviction, societal harassment from other Sudanese, and do not have access to humanitarian assistance. However in general such treatment is not so severe that it is likely to amount to persecution. Each case has to be considered on its individual facts. The Home Office further noted that all returns are to Khartoum and considers this a reasonable option, including for persons not previously resident in Khartoum. If the person is able to demonstrate a risk of persecution or serious harm in Khartoum, internal relocation to another part of Sudan will not be reasonable.

The ACJPS told the CGRS it did not have any evidence suggesting that persons are targeted because of their ethnic background and stated that ethnicity is a complicated matter and that ethnic disputes are used by the government to achieve political goals."

A263. Under the heading “Political Profiles” the report (para 2.3.2) deals with the sources on the issue of what risk, if any, faced by those viewed as political opponents of the Sudanese government:

“All sources agree that Sudanese political opponents face a risk of persecution upon return if they have been politically active abroad, where the diaspora is kept under close surveillance by the Sudanese secret service.

Several sources of the British-Danish mission (UNHCR; western embassies; Sudanese lawyers and activists in Khartoum and Kampala; Sudanese journalist) emphasized that returnees with a political profile or with rebel connections may be thoroughly questioned and/or arrested at KIA.

A range of sources contacted by the CGRS (Sudan expert of an international human rights organization; ACJPS; human rights activist (C) in Khartoum; DBA; a journalist in Khartoum; Sudanese professor; KACE Sudan) share the view that activists, vocal critics of the regime and members of the opposition all run a risk upon return. Activists known to be communist, secularist or political opponents run a heightened risk of ill-treatment, according to Muqhtar Alqabir (KACE Sudan). The ACJPS stated that arrests sometimes do not last long and are rather a form of intimidation, but that returnees who are viewed as a real threat may be detained for a longer time. The ACJPS is primarily thinking of lawyers, journalists and students. Arrests may even take place during social visits, according to the Sudanese human rights activist. A member of the Sudanese Congress Party was arrested at his mother’s funeral. This is an arbitrary process depending on the perception of NISS agents and immigration staff.

According to Geir Skogseth of Landinfo, the Sudanese authorities, especially the NISS, keep a close watch on political activities, broadly defined. This also extends to political activities in the diaspora. Individuals with political activities abroad may experience problems with the NISS upon their return, whether voluntary or forced. A collaborator of an international organization stated that the way a person is treated upon return strongly depends on the person’s individual profile. It is very dangerous for someone who is publicly active in the diaspora to be sent back, but persons who left Sudan merely to find a better life will only face interrogation.

The DBA considered that activists from Darfur and the Two Areas would be at greatest risk at KIA. The NHRMO told the British-Danish fact-finding mission that persons from these areas would be questioned extensively about their political activities and risked detention if they were suspected of activities against the government. The NHRMO declared that it is not safe for their collaborators to go to Khartoum. Two human rights lawyers from Khartoum mentioned that political activists are sometimes detained at the airport but that this is not very common. It is now more common for the authorities to obtain information about a returnee, and to arrest him later if he is deemed of interest. The EAC, who is active in Khartoum, noted that arrests of persons with a political profile have become less common since the conclusion of the 2005 Comprehensive Peace Agreement¹⁹⁷ and the return to Sudan of a number of opposition groups.

A Sudan researcher at HRW pointed out in July 2017 to the Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD) that a

Darfuri returning to KIA would probably not be targeted merely because of his ethnic background. Possible discrimination of a Darfuri returnee at KIA would rather depend on the profile of the person, on his ethnic background and political activities, which might arouse suspicion of rebel sympathies. The HRW researcher added that membership of the Hizb al-Umma (National Umma Party, NUP) and some other opposition parties would not necessarily be considered an aggravating factor as this party is part of the “acceptable opposition” with a handful of other parties.

On the other hand, Jérôme Tubiana stated in his e-mail to ACCORD of July 2017 that Darfuris are likely to be interrogated by security, and possibly beaten or tortured, detained, and even killed. He added that Hizb al-Umma or other opposition affiliation is an aggravating factor.

Amnesty International considers that Sudanese coming from areas other than Darfur and the Two Areas must not be sent back to Sudan when they are accused of opposition activities.

The British Upper Tribunal estimated in April 2016 that not all political opponents suffer persecution and that for this to happen, their level of political engagement has to be fairly high. The Upper Tribunal added that sur place activities may entail a risk, for instance when the activities are public and known to the intelligence service. It does not take much for the NISS to create a file on an opponent but this does not necessarily mean that the file will be used later on. However, the British Sudan expert Peter Verney told the Upper Tribunal that little more than suspicion is sometimes enough to detain someone.

Relying on the Upper Tribunal’s jurisprudence, the British Home Office noted that there is a risk of persecution or serious harm for those who oppose the government, including members of the political opposition or civil society, student activists and journalists, who may be subjected to arbitrary arrest and detention, forced disappearance and ill-treatment. The Home Office added that not every person belonging to a category at risk will be persecuted and assessed the risk as follows:

“The risk a person faces will depend on their profile and activities, and whether they are likely to be perceived as a threat to, and attract the attention of, the authorities in such a way that amounts to more than a routine, commonplace risk of detention and questioning but meets the threshold of a real risk of persecution or serious harm.”

In an e-mail to the CGRS, Waging Peace deplored that the Upper Tribunal and the Home Office are minimizing the risk of widespread arrests and detention, so as not to reach the threshold of “risk of serious harm”. The NGO considers this an “unwarranted reformulation of the Refugee Convention”. Moreover, according to Waging Peace, it’s up to the asylum applicant to prove that he or she is a person of interest, whereas repression in Sudan is of an arbitrary nature and claiming refugee status is in itself a political act.

A number of sources contacted by the CGRS (Waging Peace; human rights activist (C) and journalist in Khartoum; human rights lawyer in Khartoum; Sudanese professor) have knowledge of a blacklist of persons wanted by the authorities. The NISS relies on a detailed and sophisticated database, according

to Reeves²⁰⁷, and creates files on individuals, according to a Sudanese human rights activist and a collaborator of an international organization. The latter does not believe that files are created on individuals who are not viewed as a threat.

A number of testimonies included in Waging Peace's report of 2014 show that Sudanese activists and opposition members returned several times to Sudan without problems, possibly because of their status, but that this privilege can be revoked when tensions are high. The moment of the return to Sudan can therefore also be a risk factor. Waging Peace refers to the detention of Mariam El Mahdi, vice-president of the Hizb al-Umma, and to the testimony of Dr Sidgi Awad Kaballo, member of the Sudanese Communist Party."

A264. At section 4.3 under the heading "Surveillance of the Diaspora", setting out the passage in full and upon which Mr Jacobs relied in part, the report says this:

"The British embassy in Khartoum reported that under the Sudanese 2014 Asylum Act, the Commissioner for Refugees has an "obligation to monitor the situation of Sudanese refugees abroad and to expressly encourage them to return to Sudan". The Office of the Commissioner for Refugees comes under the Ministry of Interior, but maintains close relations with the NISS.

The British embassy also wrote that it has no independent evidence of overseas surveillance of asylum seekers by the Sudanese government, but that in October 2012 a Sudanese diplomat was expelled from Norway following allegations of spying on Sudanese refugees.³⁴⁶In 2013, a Sudanese asylum applicant was found guilty in Norway of spying on the diaspora, according to Landinfo.

The ECtHR noted that there is no systematic surveillance by the NISS, which does not have the means to spy on every member of the diaspora. The NISS surveys specific persons, for instance those who have a political past in Sudan, are engaged in public political activities abroad or have family or personal ties with the opposition in exile.

In 2013 and 2014, The Telegraph, relying on statements from Sudanese activists, wrote that the Sudanese intelligence service was infiltrating opposition circles and that the Sudanese government coordinated a network of spies in cities across the UK where the Sudanese opposition is strongly present. According to the activists, spies also work at the Sudanese embassy, where they collect information on the diaspora.

The British Home Office wrote in 2016 that Sudanese intelligence conducts surveillance on politically active members of the diaspora within the UK and is likely to focus attention on those who (or are perceived to) pose most risk to the regime.

In 2012 and 2014, Waging Peace collected testimonies among Sudanese from the diaspora and Sudanese who had been interrogated upon their return to Sudan about their activities in the UK. From their testimonies, Waging Peace concluded that Sudanese intelligence spies on the diaspora and closely monitors political meetings and demonstrations abroad. Information collected by the NISS may be used against returnees to Sudan. Waging Peace is also of the view that the NISS does not have the means to monitor all activists who are less actively engaged."

5. *Respecting the Principle of Non-Refoulement when Organising the Return of Person to Sudan (February 2018)*

A265. In the “COI Focus” report, the Belgian authorities considered reports of documented repatriations to Sudan from a number of European countries, including Belgium, Italy, France, Germany, The Netherlands and Norway and from a number of non-European countries, including Jordan and Israel (see section 1 at pages 10 – 15; and section 2.4 at pages 31 – 38).

A266. These formed the basis of an investigation by the Office of the Belgian Commissioner General for Refugees and Stateless Persons resulting in a report entitled “Respecting the Principle of non-Refoulment when Organising the Return of Persons to Sudan (8 February 2018). These returns, largely resulting from an investigation by the Tahrir Institute were relied upon by Madeline Crowther in her evidence as demonstrating a risk to returned asylum seekers (including Nuba). The Belgian Commissioner General found that “some important elements” of the individual’s counts “were not true, to such an extent that this raises serious doubts about the rest of the testimony”. The Commissioner General’s assessment leading to that conclusion is set out at pages 7-10 of the report as follows:

“An assessment

Main findings:

- Efforts were made to obtain more specific information about the facts of the treatment or ill-treatment encountered upon arrival in Khartoum. The descriptions were very summary.
 - The conversations with Mr Koert Debeuf and the person identified as “a Sudanese refugee”, who seemed to have played an important part in the investigation by the Tahrir Institute, did not yield more information than the information mentioned in the note of the Tahrir Institute. An analysis of the conversations on WhatsApp with some persons who were returned to Sudan (made available by Mr Koert Debeuf), did not yield any additional information either. For some aspects, a (slight) difference was found between the declarations made and their transcription in the note.
 - The conversation the CGRS had on WhatsApp with one of the persons who had been removed to Sudan did not yield any additional information either. This person did not seem to be disposed to give additional information.
 - Several embassies of EU member states let us know that no incidents or cases of ill-treatment of persons who were recently removed to Sudan had come to their attention. Neither did the UNHCR and IOM possess such information. The UNHCR informed us that they do not as a rule monitor rejected asylum seekers or persons who did not apply for asylum after their return.
- The CGRS has not been able to obtain absolute certainty or clarity about the question whether the facts mentioned in the report of the Tahrir Institute have actually taken place. There is no hard evidence that the facts actually took place. Neither could it be established with certainty that the facts

mentioned did not take place. However, some findings of the CGRS give rise to serious doubts, at least regarding some of the testimonies.

- A distinction must be made between the person who returned voluntarily under the IOM REAB program, and the nine persons who were removed. For the voluntary returnee, it has been alleged that he had in fact been forced to return. This claim does not appear to be well-founded. Regarding the first testimony reproduced in the note of the Tahrir Institute, the following was stated: “MR. ... was going through a process organized by the IOM and didn’t leave Belgium voluntarily. ... They forced me to sign the papers to go to Sudan. They told me we will do you a business investment, they will forcibly deport me, so they intimidated me so I signed the papers. ... They told me I will get 1.700 euros. ... They cheated me, they didn’t do anything for me. They didn’t even give me one euro until today.” But on the other hand it appears that on the day after his detention (on 5 September 2017), the person involved announced that he wanted to return voluntarily and that on 3 October 2017, he benefited from special counselling by the IOM and reiterated on that occasion his wish to return voluntarily. The visit of the identification mission took place after the person concerned announced that he wanted to return voluntarily. It also appears that the IOM did all the necessary to support the business plan of the person concerned: on 16 October 2017 (four days after his arrival), the person concerned visited the IOM for the first time. He then came back several times to put his business plan in order. Financial aid was due to be paid on 16 November but because the person concerned did not present himself in person, the payment could not be executed. The project was eventually concluded in January 2018: “Mr. ... has been fully assisted -on Monday 22nd of January 2018 business of play station center will be established in his area of origin Rabak -White Nile state”. Regarding this person, the report of the Tahrir Institute also stated: “I am from Darfur and our lives are difficult in Darfur. ... My life is difficult and dangerous in Darfur”. According to his statement (included in his file at the Immigration Office), he was born in Rabak, capital of the State of White Nile. This is also mentioned on the laissez-passer. And IOM confirmed that he is to start his integration project in “his area of origin Rabak -White Nile state”. Many elements in the testimony appear not to be true. One therefore wonders if the other elements mentioned in the testimony are true. This concerns the person mentioned first in the report of the Tahrir Institute, whose testimony is the most extensive.
- For one person (the second testimony in the report of the Tahrir Institute), it appears that he made his first visit to the IOM office on the day of his arrival in Khartoum. He appears to have visited this office for the first time on 22 October 2017 and to have arrived in Khartoum shortly after midnight on the same day or shortly before midnight. IOM confirmed the following: “MR ... approached our office for the first time on 22 October 2017. He received his in-kind entitlements on 28 January for purchasing mobile phones for release. We did not come across any harsh treatment complaint from Mr. ..., neither has he shown any traces of possible harsh treatment.” On the other hand, it appears that according to the report of the Tahrir Institute he claimed the following: “Upon arrival in Khartoum, he was detained at the airport for two days and interrogated on political charges:

questioned on where he was from in Darfur and accused of working with the Darfur opposition. He denied it and was tortured physically (beaten with a stick) and psychologically for three hours. ... “. Contrary to the statement as reported, it appears from the analysis of the WhatsApp conversation that the person concerned declared to have been detained for one day. On 26 January 2018, the CGRS had a brief conversation with this person on WhatsApp. During this conversation, he repeated that he had been detained for one day, from the afternoon until the next morning. He did not give any more information about possible ill-treatment. After some time, he seemed no longer willing to continue the conversation. His testimony seems incompatible with the fact that he visited the IOM office on the day of his arrival. The same can be said regarding his statement that he cannot leave his room and look for work.

- The CGRS found that three of the persons mentioned in the report of the Tahrir Institute have contacted IOM to start an integration project in Sudan. This concerns the first three persons mentioned in the note of the Tahrir Institute, i.e. the three persons who gave a direct testimony. Two of them had the most outspoken complaints about ill-treatment after their arrival in Khartoum. The third person has not mentioned ill-treatment upon arrival. For all three persons, IOM confirmed that they visited their office at least once to obtain financial help to start an integration project in Khartoum or Rabak. For all three persons, IOM also confirmed that while visiting the IOM office, they did not say anything about any incidents upon their arrival. The fact that those three persons are not “persecuted” at the moment can be considered as an indication of the fact that they do not belong to special categories at risk.
- Because the CGRS has not been able to thoroughly assess the situation of the persons concerned, it is impossible to formulate a clear conclusion regarding their profile and the risk in case of return. Most of the persons who returned or were removed may very well belong to profiles that are not at risk of being persecuted, tortured or treated in an inhuman way; for some of them, questions can be raised about the credibility of their claims or their profile, for others there are no concrete indications.
- A special situation concerns the last, indirect testimony mentioned in the updated version of the report of the Tahrir Institute. Regarding this person, the report of the Tahrir Institute states: “He said he was from Darfur and was recruited for the armed struggle. He claimed he was a minor (16 years old) but a medical examination (bone scan) carried out by the Belgian authorities determined he is 20 years old +/-2 years. ... Once in Khartoum he was questioned and beaten for a fully day, then released. He went home to his family. A week later, a group of men (probably from intelligence) came to violently take him away from his home, and this was witnessed by the relatives present. Since then, he has disappeared. One of his uncles –a deportee from Israel –was recently killed for having attempted to migrate.” The information mentioned in the report about an attempted removal via Istanbul, from where the person concerned was allegedly sent back to Belgium with an escort by the Turkish authorities, is clearly not true: the planned removal via Istanbul was cancelled before the departure to Istanbul. This raises doubts about the accuracy of the rest of

the testimony. It is likely that the testimony is not based on the own words of the person concerned or of a family member who has met the person concerned. In order to find out more about this aspect, the CGRS had a conversation with two Sudanese nationals who were said to have more information or to be in touch with the person concerned or his relatives. The first person, who was contacted on the advice of Mr Koert Debeuf, informed us that he did not know that much and had got this information from another person. This person (still detained in a removal centre, heard on 7 February 2018) in turn let us know that he had not had any direct contact. However, he claimed to have been present during a conversation of a fellow inmate (who left for Italy in the meantime) with a person living in France, at the end of December. This person in turn was allegedly in touch with relatives of the “missing” person. Until now the CGRS has not been able to obtain more information. Therefore, it is difficult to assess the profile of the person concerned and the claims made, especially the fact that the person has disappeared. But in this case also, some elements of the so-called testimony are clearly not true, which raises doubts about the truthfulness of the rest of the testimony. Moreover, it was found that various persons gave the impression that they had been in touch with the person concerned, whereas this appeared to be untrue.”

A267. In its conclusions, the report states (page 15) that:

“The CGRS has not been able to obtain absolute certainty or clarity regarding the question whether the facts mentioned in the note of the Tahrir Institute have actually taken place. But for the three most important testimonies from the report of the Tahrir Institute, some important parts of the testimony have been found to be untrue, to the extent that this casts serious doubt on the rest of the testimony. To obtain more certainty in this matter, additional research would be necessary.”

A268. The report concludes (page 16) that:

“...the removal or return of persons to Sudan can be resumed providing the protection need of each of the persons concerned has been assessed ‘on its merit’ beforehand (including a protection need regarding article 3 ECHR).”

6. *Landinfo Response to UK Home Office Query on Sudan (April 2018).*

A269. We were referred to short passages in the Landinfo (Norway) response to an enquiry via EASO, by the Home Office (dated 9 April 2018). In section 2 of the response, the document deals with the interest of the NISS in individuals coming from the conflict areas as follows:

“In meetings with Landinfo in Sudan, our sources have generally stated that NISS definitely has a special focus on the populations coming from the conflict areas. According to one source, NISS has a special “tribal branch” dedicated to monitoring political activity among populations with origins in the periphery. Activists with origins in South Kordofan have pointed out that NISS in particular monitors four groups among Nubans: people belonging to armed groups, activists, those with higher education, and recent arrivals.

- People belonging to armed groups will face arrest if identified by NISS. This applies especially to persons who have taken up arms

and people who provide practical support, but also to political supporters.

- Activists are in focus as they are seen as people who actively influence others to support organisations that are critical towards the regime's politics regarding the "Two Areas". The definition of activist is wide and not limited to members of political parties or the political wings of armed groups. (Activists from conflict areas belonging to civil society organisations or political parties are fairly often suspected and/or accused by NISS of supporting armed groups.)
- People with higher education (high school or more) are followed more closely than others, as they are "potential activists" and people with influence over others within the community.
- Recent arrivals from zones with ongoing armed conflict are followed closely to keep them from sharing information about recent developments, the humanitarian situation and human rights violations committed by Sudanese armed forces or their proxies to activists reporting on the human rights situation.

What is difficult to tell, is whether NISS operatives outside the "Two Areas" fine tune their monitoring to mainly include people who are known to belong to ethnic groups or other social communities that are perceived as being "in opposition", or if they focus on people with Nuba origin in general."

A270. In relation to the issue of discrimination, the response says this:

"There is no institutional, explicit discrimination based on ethnicity regarding access to state services and the like. On the other hand, the regime does very little to level out the deep rooted social and economic differences in Sudanese society, whether these differences follow ethnic (or regional, or religious) divides or not. Therefore, access to public services and resources is generally easier for the urban middle class, which is dominated by Nile River Arabs, than for other segments - especially those with origins in the periphery."

E. The Respondent's Documents

A271. Mr Thomann placed before us a number of recent Home Office documents prepared by the Country Policy and Information Team (CPIT) relating to the current situation in Sudan. The main document is a "Response to an Information Request: Sudan" (23 October 2019) ("CPIT 1"). In addition, in relation to a specific issue of return there was a "Response to an Information Request: Sudan" (22 October 2019) ("CPIT 2"). We were further referred to a document produced by the International Crisis Group, "Safeguarding Sudan's Revolution" (21 October 2019) ("the ICG report"). That document is extensively referred to and cited in CPIT 1 and we refer to its detail in the citation from that Home Office document.

A272. With one exception, Mr Jacobs in his written submission accepted that the Home Office documents were "broadly uncontentious". The one exception concerned an email from the British Embassy in Khartoum at Annex A of CPIT 1, the content of which was in dispute and dealt with by Dame Rosalind in her evidence.

1. *Response to an Information Request: Sudan (23 October 2019) ("CPIT 1")*

A273. The political situation is summarised in paras 2.1.1 – 2.1.2 of CPIT 1, relying heavily on the ICG report, as follows:

"2. Political situation: summary

2.1.1. International Crisis Group (ICG) in a report dated 21 October 2019, based on interviews with informed individuals and publicly available sources, summarised events leading to the formation of the transitional government, the main political actors and dynamics, and key challenges facing the country:

'Sudan has swung between hope and despair since 11 April [2019], when the most sustained civilian protest movement in the country's modern history swept Omar al-Bashir from power. Many Sudanese celebrated Bashir's ouster, seeing him as responsible for economic ruin and severe rights abuses. But the generals who sought to placate the demonstrators by deposing Bashir have shown reluctance to cede power. The security forces' brutal 3 June attack on protesters in Khartoum repulsed the world and galvanised support for mediation that yielded a power-sharing agreement on 17 August. Still, more outside support is needed to keep the transition on track. The African Union (AU) should appoint an envoy to help bridge the gap of mistrust between parties. For their part, Western powers should signal willingness to open the taps of badly needed financial support, encourage Khartoum to make peace with rebel factions on Sudan's periphery, and sustain pressure on the generals' Gulf allies to ensure that all sides abide by the deal Sudan needs to move ahead after Bashir's rule.

There have been encouraging steps since the military leadership and civilian opposition signed a constitutional declaration sealing the power-sharing agreement at a ceremony by the Nile in Khartoum. The parties named representatives to an eleven-member sovereign council that is to steer the country to free elections over the 39 months following 17 August. A widely respected economist, Abdalla Hamdok, became prime minister four days after the ceremony, and a new cabinet took office on 8 September. But the generals continue to wield enormous influence, and they have shown few signs that they intend to respect the Sudanese people's demand for a civilian-led administration. In Sudan's lopsided, patronage-driven economy, the top brass has a clear interest in clinging to political power.

That is just one challenge among many. In addition to being a potential spoiler, the security establishment is fragmented, unaccountable and subject to dangerous internecine rivalries. The once-dominant army has lost its primacy to the Rapid Support Forces, a paramilitary group formed from the remnants of the Janjaweed militia of Darfur infamy and run by Muhammad Hamdan Dagalo "Hemedti", who may be the most powerful man in Sudan. The country's primary military and paramilitary organisations should be unified under one command, but that project will require patience and encouragement from outside powers like Saudi Arabia and the United Arab Emirates (UAE). Forcing the issue could result in confrontation at a time when the last thing Sudan needs is more conflict.

Then there is the challenge of maintaining the unity of the extraordinarily broad civilian coalition – named the Forces for Freedom and Change – that has been at

the vanguard of the uprising. Comprising professional associations, civil society groups, unions, political parties and armed groups, the coalition has had its own internal struggles. It will need to deftly manage them lest the security establishment use fissures in its unity to peel off constituents and weaken it politically.

There are also wars on the country's periphery - in the Blue Nile, Kordofan and Darfur regions - that tear at national cohesion. The transitional government should focus on ending these conflicts.

Yet for all the challenges standing in Sudan's transitional path, there are reasons for hope. For one thing, the protest movement's strength and increasing sophistication set it apart from anything in the country's recent history. The generals have already seen that strong-arm tactics of the sort used to quell prior movements - for example in 2013 - are not likely to work here. For another thing, a botched transition could stymie prospects for a surge of desperately needed international support and investment in Sudan's flailing economy. That is an outcome for which the security forces will almost certainly not wish to be blamed.'

2.1.2. The ICG report also observed:

'There is also much to do on the economic front. Rescuing Sudan's anaemic economy will require broad international support through a major multilateral donor initiative. Hamdok has estimated that the country needs a [US] \$10 billion infusion over the next two years. Donors, including the US, the EU and its member states, and Gulf countries, should begin taking steps to support this request. The US should also move expeditiously to rescind Sudan's designation as a state sponsor of terrorism, which forbids international financial institutions from issuing loans and impedes other foreign investment, thereby hobbling Sudan's private sector. Lifting the designation would help the newly appointed, civilian-led cabinet by giving it an early win and would be an important step toward Sudan's qualifying for debt relief. External partners should couple these supportive measures with stern warnings that spoilers in Khartoum who impede the economic and political reforms necessary for Sudan's successful transition will be subject to targeted sanctions on part of the AU, EU and US.

Sudan is one of Africa's most important countries, sandwiched between two major powers, Ethiopia and Egypt, abutting the Red Sea and located in a region scarred by instability. The benefits of a successful transition are potentially enormous, and the cost of state failure would be vast. Until recently, it was hard to imagine a moment of opportunity like the country now faces. It would be a mistake to squander it.' "

A274. Section 3 of CPIT 1 deals with the peace talk between the new government and the rebel forces. The section draws again upon the ICG report but also a number of other sources, some less formal than others, to describe the recent developments in Sudan:

"3. Peace talks with armed opposition

3.1. Armed groups.

3.1.1. Radio Dabanga reported on 15 October 2019 that the Sudan Revolutionary Front (SRF) is an:

'... alliance [that] consists of the Sudan People's Liberation Movement-North faction led by Malik Agar (SPLM-N Agar) in Blue Nile state, and the Darfuri Justice and Equality Movement, the Sudan Liberation Movement faction under the leadership of Minni Minawi (SLM-MM), and the SLM-Transitional Council faction headed by El Hadi Idris.

In March 2017, Abdelaziz El Hilu resigned from his position as SPLM-N deputy chairman, blaming the movement's peace talks delegation of neglecting the right to self-determination in the conflict regions. The Nuba Mountains Liberation Council publicly supported the resignation and replaced leader Agar with his deputy El Hilu, which paved the way for a split in the SPLM-N.

The mainstream Sudan Liberation Movement under the leadership of Abdelwahid El Nur withdrew from the SRF when the alliance opted for a peaceful solution instead of continuing the armed struggle. El Nur says he will only join peace negotiations after Khartoum has restored stability and security in Darfur.'

3.1.2. The ICG report observed that:

'The [SRF]... has since splintered, however, limiting its relevance as an armed force. Among its constituent parts, the Sudan People's Liberation Movement-North faction under Malik Agar, of Blue Nile, and Yasir Arman, of northern Sudan, lost most of its fighters following a bitter split in 2017. Darfuri rebel leader Minni Minnawi's Sudan Liberation Army faction is now based in Libya as mercenaries fighting on behalf of General Haftar. The fighting force of the Justice and Equality Movement under Jibril Ibrahim is thought to have dwindled below a few hundred operating in South Sudan and Libya. These groups' political strength among Sudanese is difficult to gauge but is likely eroding, even in war-affected regions.

Though vocal in its efforts to get a seat at the table during transitional agreement talks, the Front is in reality overshadowed by larger, more powerful armed groups that sit outside it. One is the Sudan People's Liberation Movement-North faction led by Hilu, who took most of the rebel fighters with him in the 2017 split. Hilu has a secure stronghold in the Nuba Mountains of South Kordofan and commands the largest rebel faction in Blue Nile. Another is the Sudan Liberation Movement faction of Abdul-Wahid al-Nur, which is the only remaining significant rebel force in Darfur. Nur's faction has declined in power in its Jebel Marra stronghold during his long self-imposed exile in France, as has the strength of his personal command. Both leaders disengaged from peace talks in Bashir's final years – especially Nur, who earned notoriety among diplomats for his consistent refusal to enter negotiations.'

3.2. Peace Process – Juba Declaration of Principles

3.2.1. The ICG report of 21 October 2019 noted

'The new transitional government must reckon with the legacy of decades of efforts by elites in the wealthier riverine centre to subdue rebellions across the country by force. This legacy encompasses several regions

devastated by conflict, huge displaced populations and an array of rebel movements, some scattered outside Sudan's borders. Bringing peace to warring areas should be a priority during the transitional period and will require careful consideration of the accommodations that the rebels are seeking. These include steps to reverse the imposition of Islamic law on religious minorities, separate religion and state, and provide for a fairer distribution of power and resources to areas in the periphery, including by allowing them to elect governors rather than imposing these from distant Khartoum.'

3.2.2. Radio Dabanga observed that "In the Juba Declaration of Principles, signed by the Sudanese government and the rebel movements on September 11 [2019], it was agreed to begin negotiations mid-October [2019] for a period of thirty days, a comprehensive ceasefire by the two sides, the abolition of death sentences facing leaders of armed movements, and the release of prisoners of war." The same source also reported that on Monday 14 October 2019 "Sudanese peace talks began in Juba, at the invitation of South Sudanese President Salva Kiir. During the inaugural session, the chairman of the Sudanese Sovereign Council, Lt Gen Abdelfattah El Burhan, stressed Khartoum's commitment to achieving a comprehensive peace in the country".

3.2.3. However, the Sudan Tribune reported that the Sudan Liberation Movement - Abel Wahid al-Nur (SLM-N) "... refuses to take part in the Juba peace process and called to hold a referendum on the legitimacy of the transitional authority before to join the peace process."

3.3. Peace agreement

3.3.1. Radio Dabanga went on to note that "The current chairman of the Sudan Revolutionary Front (SRF, an alliance of Sudanese armed movements), El Hadi Idris, emphasised the SRF's commitment to reach a comprehensive peace agreement, stating that the change in Sudan which happened with support of the rebel movements has created a new reality open for peace."

3.3.2. The Sudan Tribune reported on 20 October that:

'[The] Transitional government and the Sudanese Revolutionary Front have reached a political agreement paving the way for the launch of talks for peace in Darfur region and the Two Areas.

According to the draft political agreement seen by Sudan Tribune, the parties will sign also an agreement renewing the cessation of hostilities for humanitarian purposes.

Also, "the government will deliver humanitarian assistance from inside and outside Sudan to conflict-affected areas".

The former regime had failed to sign such agreement in the past as the government wanted to control the humanitarian aid and demanded that all the assistance be delivered through the government-controlled areas.... Under the would-be signed agreement, the parties also agree to negotiate

all issues related to the Sudanese crisis, including areas of armed conflict, national issues and specific issues.

The deal provides to review previous decisions on dams and the territory of the northern state, referring to the dispute on Kajabar dam.'

3.3.3. Radio Dabanga similarly reported on 21 October 2019 that '[t]he Sudan Revolutionary Front (SRF, an alliance of Sudanese armed movements) and the Sudanese transitional government, today signed an agreement in the South Sudan capital of Juba, paving the way for the launch of talks for peace in Darfur and the Two Areas'. The article went on to note that:

'The political agreement also includes an agreement renewing the cessation of hostilities for humanitarian purposes. The government will also deliver humanitarian assistance from inside and outside Sudan to conflict-affected areas.

The parties agreed to negotiate all issues related to the crisis in Sudan, including areas of armed conflict, national issues, and specific issues.'

3.3.4. On the peace agreement with the rebel groups, DW reported on 21 October 2019 that:

'Sudan's government has signed a political declaration with rebels, calling it a major step toward ending years of civil war. A nationwide cease-fire was also extended as part of efforts to create a lasting peace.

Sudan's new government and major rebel groups have signed a declaration opening the door for further political talks while also renewing a cease-fire for three months, all part of efforts to end the country's years long civil wars.

"The political declaration will pave the way for political negotiations and is a step toward a just, comprehensive and final peace in Sudan," said General Mohamed Hamdan Daglo on Monday. Daglo is a key figure in the transitional government that is tasked with transitioning to civilian rule after the ouster of President Omar al-Bashir in April.

The Khartoum administration also agreed to let aid into war-torn areas including Darfur, the Nuba Mountains and Blue Nile regions, which were cut off from humanitarian groups during al-Bashir's rule.'

Peace agreement – SPLM-N (El Hilu)

3.3.5. The Sudan Tribune observed that 'The government is holding a separate process with the SPLM-N led by Abdel Aziz al-Hilu [from discussions with the SRF] The rebel group which is not part of the SRF umbrella demands the right of self-determination if the government fail to repeal Islamic legislations and ensure fair representation to the Sudanese minorities in the state institutions.'

3.3.6. However, on 16 October 2019, Radio Dabanga reported that the SPLM-N (El Hilu):

'... has suspended negotiations with Sudan's transitional government on Wednesday accusing government forces of violating the agreed ceasefire.

A statement issued by Ammar Daldoum, head of the movement's delegation to the negotiations in Juba ... said that [on 15 October 2019,] elements of the Rapid Support Forces (RSF) government militia driving Land Cruisers reportedly ambushed civilians on the road which connects the western and eastern regions, near Khor Waral in Habila locality, which is part of the "liberated areas". The RSF detained 16 people. They released three of them later, but still hold 13 people including their goods and belongings.'

3.3.7. In response, the "Chairman of Sudan's Transitional Sovereign Council (TSC), Lt Gen Abdelfattah El Burhan, on Wednesday issued a constitutional decree declaring a cease-fire "on all fronts throughout Sudan". He asserted that "this decree affirms the sincerity of the leadership to move forward for achieving peace, halting the bloodshed and meeting the demands of the Sudanese people and leading the country to the ranks of developed countries".

3.3.8. On 18 October 2019, after resuming discussions, "the Sudan People's Liberation Movement-North faction under the leadership of Abdelaziz El Hilu (SPLM-N El Hilu) and the Sudanese government reached an agreement on a roadmap for peace negotiations concerning South Kordofan." The agreement

'... defines three negotiating items concerning political, security, and humanitarian arrangements.

The spokesman for the SPLM-N El Hilu negotiation team, El Jak Mahmoud, reported in a press conference... that the two negotiating parties expressed the necessity to agree on a Declaration of Principles as a roadmap for the regulation of the peace talks process. Also, the two parties agreed to present their perceptions on the political agenda.

'The agreement was signed by Lt Gen Shamseldin Kabashi on behalf of the Sudanese government, Amar Daldoum, chairman of the SPLM-N El Hilu negotiation team, and Tut Galwak, the chairman of the South Sudanese mediation committee.'

3.3.9. The Sudan Tribune reporting on 21 October 2019 observed:

'Deputy leader of the Sudan People's Liberation Movement-North (SPLM-N) led by Malik Agar Yasir Arman, predicted that the humanitarian situation in the war-affected areas will improve after the Sudanese Transitional Authority agreed to introduce relief from inside and outside the country.

The transitional government and the Sudanese Revolutionary Front (SRF) signed a political agreement and a cessation of hostilities agreement providing to open humanitarian access to the rebel areas.

"The government will deliver humanitarian assistance from inside and outside Sudan to conflict-affected areas" read the agreement signed in Juba on Monday [21 October 2019].

'It is the first time since the long-time Operation Lifeline Sudan (OLS) that the government accepts the delivery of humanitarian assistance from outside the country and the armed groups accepts food delivery by government agencies... According to the signed deal, the parties will seek a mandate from the Peace and Security Council of the African Union.

Further, besides the national issues such as development and national wealth distribution, the tracks will discuss the armed conflicts in Darfur and the Two Areas, and the issues of eastern and northern Sudan.'

A275. At para 3.4 CIPT 1 records the announcement of a permanent ceasefire in the three conflict zones, including South Kordofan as follows:

"3.4. Ceasefire

3.4.1. As part of the peace agreement (and during the negotiations), the government announced a permanent ceasefire in the 3 conflict zones (Darfur, Blue Nile and South Kordofan). Aljazeera reported that there had been unofficial ceasefire in place since the former President Omar al-Bashir had been overthrown in April 2019."

A276. In section 4, CIPT 1 sets out the new government's constitution including the two ministers from the Eastern Sudan region and Blue Nile State, the appointment of a new Chief Justice, a highly respected Supreme Court Judge and the first woman to hold that position along with the appointment of a new Attorney General.

A277. Section 5 of CPIT 1 deals with the security situation, again drawing heavily on the ICG report, as follows:

"5. Security sector power and reform

5.1.1. The ICG report of 21 October 2019 observed:

'In practice, however, and though the civilian-led cabinet has wide popular support, the security establishment continues to hold most instruments of raw power in the country. It has control of the streets, a grip on Sudan's illicit economy, and political and financial backing from foreign capitals, principally Riyadh and Abu Dhabi.

This establishment is far from being a cohesive body. At its core, it comprises the Sudanese Armed Forces, Hemedti's RSF, the intelligence services and allied militias. It is vulnerable to internecine rivalries. Its constituent parts have their own loyalties and political backgrounds. Against this backdrop, the security sector represents a dual threat to the peace process. It is, first and foremost, a spoiler that may try to block civilian oversight of the transitional government in order to preserve the extensive prerogatives it enjoyed under Bashir and has not yet been forced to yield. Additionally, its internal divisions could spur instability if they blow up into armed clashes.'

5.1.2. The ICG report goes on to discuss the strengths and weakness of the key security actors – the Lt-General Burham and the Sudanese Armed Forces; General ‘Heme Dagalo (known as ‘Hemedti’) and the Rapid Support Forces; Salah Gosh and National Intelligence and Security Services (NISS; now renamed the General Intelligence Services) – and its recommendations for managing these competing interests within the government.”

A278. Section 6 deals with “Political Opposition” and the context of the FFC and its future role in sustaining democratic change. Again, the document draws heavily on the ICG report:

“6. Political opposition

6.1. Diversity and cohesion

6.1.1. The ICG considered that:

‘The Forces for Freedom and Change is a fragile coalition of parties, political personalities, unions and civil activist groups often with competing interests, divergent constituencies and opposing ideologies. Some veteran opposition party leaders within its ranks are part of the same old guard that many Sudanese view as sharing responsibility for the country’s woes. Its younger leadership cohort, however, particularly the professionals and civil society figures who organised the protest movement, enjoy great credibility with the public, as demonstrated by their capacity repeatedly to summon tens of thousands of Sudanese into the streets.

Throughout, the opposition has shown not only determination but also a mastery of optics. The sit-in outside the army’s Khartoum headquarters was redolent with symbolism – and made for great television. In naming Ahmed al-Rabia, a schoolteacher who drives a taxi at night to supplement his income, as a chief spokesman in April, the opposition drew a sharp contrast between its support base – ordinary Sudanese seeking change – and the generals who got rich during Bashir’s long rule.’

6.1.2. The ICG report cautioned ‘The Forces for Freedom and Change coalition is expected to form the bedrock of support for efforts to institute full civilian rule at the end of the pivotal 39-month transition, but it is a work in progress. For all the FFC’s accomplishments, it is not yet clear whether its many component organisations will maintain the unity required to check the security sector.’

6.1.3. The ICG report goes on to discuss the opposition groups and their internal dynamics

6.1.4. Radio Dabanga reported on 13 October 2019 that:

‘El Sadig El Mahdi, head of Sudan’s opposition National Umma Party (NUP), has warned that “the current transitional regime is deadlocked because of manoeuvres on peace, conspiracies by former regime members, opportunistic foreign interventions, as well as economic conditions”... He called for what he called “digging out the manoeuvres of the peace project”. He said he considers peace as part of the permanent constitution, adding that among the challenges

facing the transitional system will be imbalances within the Forces for Freedom and Change (FFC).

He described the transitional emergency programme submitted by a committee of the FFC as “weak”, stressing the support of the NUP for the transitional government until the end of the transition period.’

A279. Section 6.2 of CPIT 1 deals with demonstrations and marches in Khartoum during October and citing the Middle East Monitor, para 6.2.7:

“6.2.7. The MEM also observed that:

‘A statement by the police stressed that “the constitutional document and the law guarantee the right of peaceful expression and demonstration.” It also called on all parties to “provide the requirements for the holding and conduction of rallies and marches, and to stick to routes and timings, to secure and protect those gatherings.” ... To date, no violent clashes between security authorities and demonstrators have been reported.’”

A280. In section 6.3, CPIT 1, again with citation from the ICG report, deals with “Islamic discontent”:

“6.3. Islamic discontent

6.3.1. The ICG report of 21 October noted:

‘The coup against Bashir and the generals’ consolidation of power with Gulf backing has put Sudan’s Islamist political machinery, embodied in recent years primarily by the ruling National Congress Party, out of order. Its incapacity may be temporary, however, since it still controls layers of the state bureaucracy and military. A failed counter-coup attempt on 24 July, reportedly involving Islamist-allied military personnel, suggests that at least some of Bashir’s old guard may see themselves as his legitimate heirs.

Sudan’s version of the so-called deep state has its roots in the country’s Islamist movement, which Bashir co-opted first to mount his own coup in 1989 and later to extend his rule. This movement, the National Islamic Front, was led by the prominent preacher Hassan al-Turabi for almost ten years. It was a major component of Sudan’s ruling party and controlled much of the government bureaucracy....

By standing apart from the transition, and in fact defining themselves in opposition to both the civilian coalition and the generals, parties associated with Islamism could well profit from the inevitable challenges that the transitional government will face. Because they are outside of it, they stand to gain public support should the transitional government be unable to deliver on key promises, especially with respect to reviving the economy. Further, they may be able to call upon eager patrons in Qatar and Turkey, which are both looking for opportunities to regain their foothold in Khartoum.

That said, both Abu Dhabi and Riyadh are keen to keep parties with strong links to Islamists in political exile. These two monarchies calculate that Sudan’s security forces are their most dependable ally in that regard. The civil society

component of the opposition coalition has also consistently rejected any accommodation with Muslim Brotherhood-style political Islam, identifying it as a legacy of Bashir that must be swept away.'

6.3.2. The Sudan Tribune reported on 20 October:

'The Sudanese army called on political forces planning to demonstrate on Monday to stay away from the headquarters of the armed forces in Khartoum and the various positions of its forces in the country.

The warning comes after calls by Islamist groups to demonstrate on the 55th anniversary of the 21 October Revolution to demand the army seize power and remove Forces for Freedom and Change from power.

The anti-revolutionary calls triggered other calls by the Sudanese Professionals Association, the spearhead of protests that brought down the al-Bashir regime to demonstrate and hold public rallies on Monday to defend the revolution and demanding the dissolution of the National Congress Party.

On the same vein, the Sudanese Communist Party called for a protest to demand the transitional authority to realize the goals of the revolution.

In a statement issued on Sunday evening, Sudanese army spokesman Brigadier General Amer Mohamed al-Hassan renewed the support of the Sudan Armed Forces for the December Revolution and recalled that peace will not be achieved without political stability in the country.

Al-Hassan also stressed that the armed forces will remain a "faithful guardian of the country", but will not interfere in political practices.'"

A281. Section 7 deals with the economic crisis and the fall of the al-Bashir regime. At para 7.1.3, the report states that the aim of the government is to remove blocks on accessing international finance by achieving Sudan's removal from the US list of state sponsors of terrorism.

A282. Section 8 of CPIT 1 deals with changes to the law and the intention to give prosecution powers to an independent investigation committee into the brutal attacks on the pro-democracy protesters in June 2019 and to a commitment to abolish the Public Order law:

"8. Prosecution for past crimes, impunity and legal reform

8.1.1 The Sudan Tribune reported on 17 October 2019:

'[The] Minister of Justice, Nasr al-Din Abdel Bari and Attorney General Taj al-Sir al-Hebir on Thursday discussed the drafting of laws allowing to dismantle the former regime based on the constitutional document.

The two officials further agreed to give prosecution powers to the independent investigation committee on the brutal attack on the pro-democracy protesters.

The meeting discussed the amendment of the Public Prosecution Law, the National Investigation Committee formed under the Transitional Constitutional

Document, the Joint Committees and the files before the Ministry of Justice related to some major corruption affairs, said a statement released by the office of the Attorney General... According to the statement, the Attorney General agreed to grant prosecution powers to the Independent National Investigation Committee, to draft amendments to the Public Prosecution Law, and other laws restricting freedoms.'

8.1.2. The Sudan Tribune also reported on 19 October 2019:

'[The]... Justice Minister Nasr al-Din Abdel Bari on Saturday [19 October] reiterated the transitional government's commitment to abolish the Public Order Law and to amend the Criminal Code articles that violate women basic rights.

The minister made his remarks after receiving a memorandum on women rights from women groups at the inauguration of the Violence Against Women Database project launched by Darfur Lawyers Association and the Ma'an (Together) Cultural Centre... Under Sudan's public order, Sudanese women face arrest and punishment of up to 40 lashes if they violate Article 152 of the Criminal Act of 1991, which broadly prohibits "indecent and immoral acts."

Most of the offences prohibited under this law relate to gender interactions, dance, choice of dress, smoking, and other behaviours that the authorities consider as violating moral Islamic standards.

In a report on the Public Order Law in 2010; Human Rights Watch, citing police sources, said that in 2008 the police brought 43,000 public order charges against women in Khartoum state alone.'

8.1.3. The Sudan Tribune reported that:

'[The]... transitional government has announced a three-month extension of the state of emergency.

""The Presidential Decree No. (8) extending the state of emergency in all regions of the country for three months will take effect on Friday, 11 October 2019," said Mohamed al-Faki, member of the Sovereign Council in a statement issued on Thursday.

Al-Faki stressed that during the state of emergency, the Council of Ministers may take any measures that do not restrict, partially repeal or limit the effects of the Constitutional Document.

The ruling Forces for Freedom and Change (FFC) this week announced the extension of the state of emergency allow the detention of the leaders of the former regime who are not yet investigated or facing justice.

However, the Islamist Popular Congress Party which was part of al-Bashir's government condemned the extension saying it is "contrary to the revolution of the Sudanese people."

A283. In section 11, CPIT 1 considers the position of the Nuba first as an overview, then in Khartoum and finally outside Khartoum:

"11. Nuba: human rights violations

11.1. Overview

11.1.1. There is limited information in sources consulted in this note about the treatment of Nuba generally or in Khartoum in particular prior to and following the formation of the transitional government in August 2019.

11.1.2. Radio Dabanga, which “produces independent news to make sure that everyone, wherever they are in Sudan is aware of vital information, including outbreaks of disease, gender-based violence, and human rights abuses. It is the belief of Radio Dabanga the representation of these issues in the media can help to foster information exchange, understanding, and eventually peace in Sudan” does report on incidents involving suspected SPLM-N sympathisers in South Kordofan, for example (see below)

11.2. Khartoum

11.2.1. An official at the British Embassy in Khartoum in an emailed response to the country policy and information team dated 16 October 2019 observed:

‘... I don’t think we will be able to provide information more detailed or evidently useful than what you have already produced [reference to 1 October 2019 draft of COI response 10/19-068, final version dated 4 October 2019].

Anecdotally, Sudanese contacts have expressed surprise at the suggestion that Nuba people are subject to systematic discrimination or mistreatment in Khartoum, with the exception that they might find it more difficult to obtain employment. However, this was placed in the context of high unemployment and broader cultural discrimination whereby employers in Sudan favour people from their own tribes. General Shams al-Din Kabbashi, who is a member of Sudan’s newly formed Sovereign Council... is Nuba and a significant number of Nuba are studying at university in Khartoum. Conversely but also anecdotally, DFID colleagues have advised of a small number of violent incidents in open areas in Khartoum in which people were killed. These are not known to have specifically targeted Nuba but more generally “southerners”.

On the current situation, we are still monitoring for evidence of meaningful change in how the security apparatus and police are operating. Your political situation update [COI response 10/19-068, as above] correctly notes that RSF Commander Hemeti sits on the Sovereign Council. The new Minister of Interior who has responsibility for the police is also one of two ministers (along with Defence) who were not civilian appointees and this might mean that there will be little change in how they operate.’

11.2.2. The US Commission on Religious Freedom (USCIRF) reporting on events up to April 2019, but mainly focussing on events in 2018 and therefore prior to the formation of the transitional government, stated:

‘Christians from the Nuba Mountains are uniquely targeted, highlighting the convergence of discrimination against religious and ethnic minorities by the government. For example, security and land authorities particularly target members and evangelical church leaders of the Sudanese Presbyterian Evangelical Church (SPEC) and Sudanese Church of Christ (SCOC). During USCIRF’s meetings in 2018, evangelical leaders said that the Ministry of

Guidance and Endowments has directly interfered in their church affairs since 2012. SCOC and SPEC interlocutors reported officials confiscating their papers documenting property rights. In 2016, Sudanese authorities placed 27 churches on a list to be destroyed, claiming issues with zoning and illegal construction, but reportedly rescinded the order in 2017. Nevertheless, in February 2018, authorities bulldozed a SPEC church in the Hajj Yousif neighbourhood in Khartoum. Church members told USCIRF that police gave no notice and demolished the building in spite of a pending decision on the church's property rights. Police confiscated belongings from within the church, including all of the church's books, and reportedly gave them to another individual claiming ownership of the land. Sudanese officials told USCIRF that churches were not uniquely targeted, and claimed that mosques had also been demolished for similar issues with zoning regulations... In August 2018, authorities dismissed the cases of and released eight SCOC leaders who were arrested in 2017. Minority religious leaders and their lawyers have been monitored, harassed, and frequently arrested for various reasons such as proselytization or speaking out against the government, accused of criminal activity, detained, forced to defend themselves in court, fined, and released, on a repeated basis. One Muslim human rights lawyer, who advocated for non-Muslims' rights and was repeatedly arrested and harassed, was forced to flee Sudan in 2018. Some of these arrests have been due to religious leaders' protest over authorities' interference in church affairs and leadership decisions.'

11.2.3. The USCIRF also observed problems faced by women, although specifically stating if Christian, or Christian Nuba women, were directly affected:

'In 2018, authorities continued to target women with arrest, harassment, and detention by applying existing religious laws. In particular, the enforcement of Sudan's public order laws under the 1991 Criminal Act and other state and local laws continued to uniquely impact women through criminalization of indecent dress and other offenses based on state interpretations of Islamic principles. Penalties for these offenses regularly include imprisonment, fines, and lashings, and research by Sudanese nongovernmental organizations (NGOs) has shown that women have been more likely to receive harsher penalties for some infractions than men. Determinations for arrests are at the discretion of public order police. Public order cases are common; according to Sudanese civil society actors, more than 40,000 public order cases are processed annually in Khartoum State alone.'

11.3. Outside Khartoum

11.3.1. Radio Dabanga reported on 10 October 2019:

'Security forces in rural South Kordofan reportedly continue to violate the rights and freedoms of residents and confiscate their property in the name of the emergency security measures applicable in the state.

According to neighbourhood committees in Hajeri Djawad south of Delling, the violations include curfews, arbitrary arrests, and the confiscation of consumer goods in rural areas of the Nuba Mountains through checkpoints stationed at Abujebel Bridge and Hajeri Djawad.

The committees confirmed complaints filed by residents about arbitrary confiscation of their property.

Hasan Kitan, a member of the Sudanese Professionals Association (SPA) in Delling, told Radio Dabanga that indiscriminate arrests are ongoing, the latest being the arrest of Jabir El Basha, the Headmaster of Hajeri Djawad Secondary School two days ago because of a statement on the conflict between herders and farmers in the area.

The neighbourhood committees demanded the emergency measures be lifted immediately and an acceleration the peace process.

Kitan said after a conference organised by the neighbourhood committees of Hajeri Djawad on Tuesday that despite the changes that took place in the country after the revolution, the people living in Delling locality do not feel that change while the emergency measures continue.'

11.3.2. Radio Dabanga reported on 21 October 2019 that:

'Military Intelligence agents briefly held a group of people, who they said they suspected of being Sudan People's Liberation Movement-North (SPLM-N) supporters, in El Abbasiya in South Kordofan on Thursday [17 October 2019]. They still hold one of them.

One of the victims told Radio Dabanga said that members of Military Intelligence halted a passenger vehicle returning shoppers from the Grand Market of El Abbasiya market to their villages west of the town on Thursday.

They accused us of supporting the Sudan People's Liberation Movement-North (SPLM-N) in the area and that, they needed to inspect the vehicle and our purchases," he reported, "but they just stole most of our belongings."

When passenger El Taj Yousef protested the inspection, they took him to the garrison of El Abbasiya.

The source said that the people living in El Abbasiya strongly reject the continual detentions and confiscations "despite the changes that took place in the country and statements of the governor speaking about freedom of movement in the region"."

2. Response for an Information Request: Sudan, Returns (22 October 2019) ("CPIT 2")

- A284. The final document relied upon (CPIT 2), relates to returns to Sudan and is dated 22 October 2019. It is a response to an information request concerning the figures for returns to Sudan which were compiled with the assistance of Eurostat's published numbers and the European Asylum Support Office. The figures do not purport to be comprehensive. The numbers cover the period January 2014 to October 2019.
- A285. The total numbers in each of the countries recorded for forced return is relatively low ranging between 0 (Slovenia) and 27 (Switzerland). Belgium returned 13 and Sweden 7. The UK returned 15. Of the countries considered, only Switzerland confirmed that it returned Nuba to Sudan (see para 4.2.5). The figures for Switzerland do not, however, disclose if any of the forced returns were, in fact, Nuba. Three countries - Belgium, Switzerland and the United Kingdom - accepted that applicants for asylum included those

belonging to Nuba groups (para 4.2.4). Slovenia indicated that, whilst it returned rejected applicants for asylum, their returnees did not include Nuba (or non-Arab Darfuri). Cyprus, likewise, did not return Nuba (or indeed non-Arab Darfuris) but it did not return any rejected asylum applicants and had no applications from Nuba.

A286. At para 1.2.1, the document notes that the UK government does not monitor returned asylum seekers.

APPENDIX 2



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00006/2016

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)
On 14 February 2017

Decision & Reasons Promulgated

.....

Before

UPPER TRIBUNAL JUDGE GRUBB
DEPUTY UPPER TRIBUNAL JUDGE CHALKLEY

Between

K M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sinfield of Albany Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Sudan who was born on 31 May 1987. He is a member of the Nuba tribe.

2. The appellant left Sudan on 21 November 2014 and, having travelled through a number of countries, arrived in the United Kingdom on 31 August 2015 and claimed asylum.
3. On 18 December 2015, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and under Article 8 of the ECHR.
4. The basis of the appellant's claim is set out in the decision letter at paras 2 and 9. The claim was as follows. First, the appellant claimed to be at risk from the Sudanese government because he belonged to the Nuba Tribe. Secondly, he claimed that he had been arrested and detained by the government and accused of being a member of the opposition party, the Sudan People's Liberation Movement (SPLM). Thirdly, he claimed to fear the SPLM whom he had refused to join. Finally, the appellant relied upon *sur place* activities.

The Appeal

5. Following the refusal of his claim, the appellant appealed to the First-tier Tribunal. His appeal was heard by Judge Sweeny on 3 August 2016. Judge Sweeny dismissed the appellant's appeal on all grounds. Judge Sweeny accepted that the appellant was a Sudanese citizen and a member of the Nuba Tribe. However, the judge rejected the appellant's account that he had been arrested and detained by the Sudanese government. The judge concluded that the appellant would not be at risk from the SPLM not least because they had shown no adverse interest in him since 2011/12. Finally, the judge rejected the appellant's claim to be at risk because of his *sur place* activities.
6. The appellant then sought permission to appeal to the Upper Tribunal. In his grounds, the appellant did not challenge the judge's adverse credibility finding nor his finding that the appellant had failed to establish he would be at risk because of his *sur place* activities or from the SPLM. However, the grounds argue that the judge failed to consider the risk to the appellant because of his Nuba ethnicity. The grounds argue that the background evidence submitted to the judge demonstrated that a person of Nuba ethnicity was at risk simply due to their ethnicity. They were, in effect, a non-Arab tribe similar to non-Arab Darfuris who were recognised to be at risk following MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC).
7. On 27 September 2016, the First-tier Tribunal (Judge M J Gillespie) granted the appellant permission to appeal on that ground.
8. On 10 October 2016, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision, inter alia, on the basis that the appellant had not claimed to be at risk as a result of belonging to the Nuba Tribe.

The Submissions

9. We heard oral submissions from Mr Sinfield on behalf of the appellant and Mr Kotas who represented the Secretary of State.
10. Mr Sinfield submitted that the appellant had directly raised his fear of persecution due to his ethnicity in his witness statement dated 25 July 2016 (at A1-A6 of the bundle), in particular at para 10. Mr Sinfield submitted that the background evidence and the expert report of Dr Bekalo also raised the risk to those of Nuba ethnicity and equated their position to those of non-Arab ethnicity from Darfur. He accepted that, on reading the judge's determination, the appellant's (then) Counsel may not have pressed this basis of the appellant's claim.

However, it was properly raised and, in particular, was referred to in Counsel's skeleton argument before the judge at paras 14-15.

11. Mr Kotas submitted that the judge had not failed to consider a relevant basis upon which the appellant put his claim. He drew our attention to para 29 of the determination where the judge pointed out that Counsel had said that the "widespread violence against the Nuba Tribe ...[was] ... a red herring". Mr Kotas submitted that in paras 14 and 15 of the skeleton argument Counsel was not seeking to put the appellant's case based upon a simple risk because of his ethnicity but rather to support his claim (and credibility) based on the fact that he had been arrested and detained by the Sudanese authorities. Mr Kotas submitted that the expert report of Dr Bekalo dated 3 May 2016 (at B3-B15) was based upon the appellant's claim to have been arrested and detained which the judge considered at paras 98-100 but had properly given little weight to as he had rejected the appellant's account to have been arrested and detained. Mr Kotas submitted that the judge's decision should stand.

Discussion

12. At the conclusion of the submissions, and following a short adjournment, we informed the representatives of our decision that we had concluded that the judge had erred in law in failing to consider the risk to the appellant based upon his Nuba ethnicity. Our reasons for reaching that decision are as follows.
13. First, we accept that the appellant's (then) Counsel does not appear to have focused to any great extent, or at all, upon the appellant's claim to be at risk because of his Nuba ethnicity. That is supported by what Counsel is reported to have said at para 29 of the determination which we set out above. The focus of the case was, undoubtedly, the risk to the appellant having been arrested and detained by the Sudanese authorities and any risk due to his *sur place* activities.
14. Secondly, however, the appellant undeniably raised before the judge in his evidence a fear based upon his ethnicity. At para 10 of his witness statement he states the follows:

"It is well documented that there is war in the Nuba Mountains (paragraphs 37-28RFRL). The government is bombing and killing us in the Nuba Mountains and persecuting and discriminating against us everywhere else in Sudan. The Sudanese government is trying to ethnically cleanse my people in the same way that they are trying to ethnically cleanse the Africans in Darfur."
15. That the appellant was relying, as one basis for his claim to asylum, upon his ethnicity could not be clearer.
16. Thirdly, whilst the matter is not entirely free from doubt, we do not accept Mr Kotas' submission that paras 14 and 15 of Counsel's skeleton argument did not raise a claim based on the appellant's ethnicity. Those paras are as follows and appear under the heading "Nuba Tribe":

"14. The objective evidence supports the assertion that those who reside in the Nuba Mountains in South Kordofan and Blue Nile have been subject to numerous indiscriminate attacks and armed conflict [C73 **Amnesty 2015/2016**]. The Appellant's account as to indiscriminate arrest by security

forces in the South Kordofan is also consistent with the objective evidence [C166].

15. The Respondent's position that the Appellant would not be at risk on return to Omdurman is misconceived. The Tribunal is invited to note the treatment of Nubans generally in Omdurman [C253] and the treatment of perceived political Nubans [C254]."
17. Whilst those paragraphs can, in part, be seen as adding substance to the preceding two paragraphs which identify a claimed risk to the appellant due to his arrest and detention, we are not persuaded that they do not also raise, particularly when read with the appellant's evidence, a claim based upon his ethnicity.
18. Fourthly, there is also at least some supporting evidence in Dr Bekalo's expert report relevant to a claim that the appellant was at risk as a non-Arab from the Nuba Tribe. So, at para 3.1 (at B10) it is stated that:

"It is well documented that human rights violations of persecution continue unabated in Sudan. There is a political-economy monopolisation and marginalisation, by the so-called Arab tribe groups over non-Arab tribes, which fuel the widely reported conflict in Nuba/Kordofan and Darfur regions and elsewhere across Sudan. There is on-going mistreatment and persecution by the GoS against individuals and groups, who object marginalisation and those believed or perceived to be supporters of rebel groups."
19. The report then goes on to refer to the atrocities and genocide in the Darfur region.
20. Again, the contrast between Arab tribes and non-Arab tribe - the appellant belonging to the latter - is referred to on a number of occasions in the report reflecting on the adverse treatment of the latter. At B5 of the report, Dr Bekalo refers to "conflicts" which are "raging" in Darfur and Nuba/Kordofan.
21. Fifthly, although we were not specifically taken to the background evidence, attacks upon, and ill-treatment of, those of Nuba ethnicity can be readily identified in the material, for example, Human Rights Watch Report, "Sudan: Cluster bombs used in Nuba Mountains" (15 April 2015) (at C93-C96) and Asylum Research Consultancy, "Situation in Khartoum and Omdurman" (9 September 2015) (at C261-C311) especially at para 1.2.2. We do not say that these documents establish the appellant's claim but they are undoubtedly relevant to any claim to be at risk because of Nuba ethnicity.
22. In short, therefore, we are satisfied that the issue of whether the appellant was at risk because of his Nuba ethnicity was a matter properly raised on the material before the judge. We are unable to conclude that any such claim was bound to fail and that, therefore, the judge's failure to deal with this aspect of the claim was a material error of law.

Decision

23. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law.

24. We indicated at the end of the hearing that the appeal would be retained in the Upper Tribunal in order to remake the decision. The sole issue will be the appellant's claim to be at risk on return to Sudan because of his Nuba ethnicity.
25. The judge's adverse credibility finding and his findings on the other aspects of the appellant's claim stand and are preserved.

Signed

A Grubb
Judge of the Upper Tribunal

Date

APPENDIX 3

DOCUMENTARY EVIDENCE BEFORE THE UPPER TRIBUNAL

Item	Document	Date
1.	Overseas Development Institute: "Where to Now? Agency Expulsions in Sudan: Consequences and Next Steps"	March 2009
2.	Hansard Online: Africa: Post-Conflict Stabilisation	08/07/2010
3.	Overseas Development Institute: "City limits: Urbanisation and Vulnerability in Sudan Khartoum Case Study, Sara Pántuliano et al"	January 2011
4.	Hansard Online: Sudan	07/02/2011
5.	Hansard Online: Migrant Domestic Workers	08/06/2011
6.	Hansard Online: South Sudan	26/03/2012
7.	Hansard Online: Queen's Speech	17/05/2012
8.	Home Office: "Sudan OGN v 17.0"	August 2012
9.	Waging Peace: "The Danger of Returning Home"	September 2012
10.	Hansard Online: Sudan and South Sudan: EUC Report	17/10/2012
11.	Enough Project: Crime against Humanity: Sudan Burns 26 Nuban Villages across 54 Square Miles	06/12/2012
12.	Enough Project: Sudan Caucus Brief: Crisis in the Nuba Mountains	11/12/2012
13.	British Embassy Letter	08/04/2013
14.	Enough Project: Life in the Nuba Mountains - Humanitarian Needs Assessment in Sudan's South Kordofan State	October 2013
15.	Enough Project: Sudan Minister Speaks on Resilience as Dire Need in Nuba Mountains Made Public	10/10/2013
16.	Hansard Online: Sudan	28/10/2013
17.	Small Arms Survey, Andrew McCutchen: "The Sudan Revolutionary Front: Its Formation and Development"	2014
18.	Hansard Online: South Sudan	24/03/2014
19.	Enough Project: School in Nuba Mountains Bombed for Second Time	27/03/2014
20.	Asylum Research Consultancy (ARC): "Sudan COI Query Response"	11/04/2014

21.	Enough Project: Human Security Alert: Massive Mobilization of Sudan Armed Forces (SAF) in the Nuba Mountains	15/04/2014
22.	Hansard Online: Republic of Sudan: Human Rights	14/07/2014
23.	Sudanreeves.org: Minutes of the Military and Security Meeting Held in the National Defence College [Khartoum]	31/08/2014
24.	Article 1, Waging Peace: "The Long Arm of the Sudanese Regime"	September 2014
25.	Enough Project: Extermination by Design - The Case for Crimes against Humanity in Sudan's Nuba Mountains	November 2014
26.	Enough Project: Mass-Scaled Human Suffering in Nuba Mountains, Sudan	20/11/2014
27.	Hansard Online: Modern Slavery Bill	08/12/2014
28.	British Embassy Letter	19/02/2015
29.	International Refugee Rights Initiative: "We just want a rest from war." Civilian perspectives on the conflict in Sudan's Southern Kordofan State	April 2015
30.	Nuba Mountains Peoples Foundation: "Alternative Report to the Committee on the Elimination of Racial Discrimination (CERD)"	April 2015
31.	HRW.org: "Sudan: Cluster bombs used in Nuba Mountains"	15/04/2015
32.	The Conversation: "The World's Unexplained Silence over Human Tragedy in the Nuba Mountains of Sudan"	20/05/2015
33.	Amnesty International: "Don't we matter? Four years of unrelenting attacks against civilians in Sudan's South Kordofan"	July 2015
34.	Asylum Research Consultancy (ARC): "Situation in Khartoum and Omdurman"	09/09/2015
35.	Enough Project: Life as a Surgeon in Sudan's Nuba Mountains: Atavist Feature	26/10/2015
36.	Amnesty International: "Hotspot Italy - How EU's Flagship Approach Leads to Violations of Refugee and Migrant Rights"	2016
37.	Nuba Reports.org	2016
38.	Humanitarian Aid Relief Trust: "Report on Sudan and South Sudan"	January 2016
39.	Joint Report of the UK Home Office and the Danish Immigration Service: Situation of Persons from Darfur,	February to March 2016

	Southern Kordofan and Blue Nile in Khartoum	
40.	UN General Assembly Report Summarising Stakeholder Submissions: Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(b) of annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 - Sudan	19/02/2016
41.	Australian Government Department of Foreign Affairs and Trade: "Country Information Report - Sudan"	April 2016
42.	Sudantribune.com: "SPLM-N accuses Sudanese army of indiscriminate bombardments in S. Kordofan"	11/04/2016
43.	Home Office: "Country Information and Guidance Sudan: Persons involved in 'sur place' activities in the UK"	May 2016
44.	Foreignpolicy.com: "The Shrapnel Finds Us Wherever We Hide"	19/05/2016
45.	South Kordofan June 2016 Situation Report	June 2016
46.	Asylum Research Consultancy: "South Kordofan and Blue Nile Country Report"	01/06/2016
47.	VOA news.com: "Sudanese still feeling South Kordofan 5 years into war"	03/06/2016
48.	Wikipedia: "Sudanese Conflict in South Kordofan and Blue Nile"	11/07/2016
49.	Joint Report of the UK Home Office and the Danish Immigration Service: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum	August 2016
50.	British Embassy Letter	29/09/2016
51.	Refworld: Sudan and Chemical Weapons - a Serial Offender?	10/10/2016
52.	Refworld: Amnesty International Report	2017-2018
53.	Refworld: World Report 2017 - Sudan	12/01/2017
54.	Amnesty International Report 2016/2017: "The State of the World's Human Rights"	22/02/2017
55.	US State Department: "Country Report on Human Rights Practices for 2016, Sudan"	March 2017
56.	Hansard Online: International Women's Day	09/03/2017

57.	SKBN Coordination Unit: Humanitarian Update	April 2017
58.	The Conversation: "Tragedy in the Nuba Mountains - Hunger and Starvation are Constants"	17/07/2017
59.	Home Office: "Sudan: Country Policy and Information Note; Opposition to the government, including sur place activity"	07/08/2017
60.	Home Office: "Sudan: Country Policy and Information Note; Rejected asylum seekers"	10/08/2017
61.	US State Department "Sudan 2016 International Religious Freedom Report"	15/08/2017
62.	Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD): "Sudan, second quarter 2017: Update on incidents according to the Armed Conflict Location & Event Data Project (ACLED)"	14/09/2017
63.	National Human Rights Monitors Organisation: "The US lifts sanctions against Sudanese despite opposition from Sudanese in the Nuba Mountains"	October 2017
64.	Hansard Online: Sri Lanka	12/10/2017
65.	Human Rights Watch: "World Report 2018, Sudan"	January 2018
66.	Refworld: World Report 2018 - Sudan	18/01/2018
67.	Belgian Government, Office of the Commissioner General for Refugees and Stateless Persons (CGRS): "COI Focus, Sudan: Risk upon return"	06/02/2018
68.	Belgian Government (CGRS): "Report on Sudan"	08/02/2018
69.	Human Rights and Development Organization (HUDO Centre): "Report on Human Rights Situation in South Kordufan, Blue Nile States/Sudan, January-December 2017"	11/02/2018
70.	Amnesty International: "Annual Report 2017/18"	22/02/2018
71.	UN Office for the Coordination of Humanitarian Affairs: "Humanitarian Response Plan, January - December 2018"	13/03/2018
72.	Waging Peace: "Risk to Individuals from Nuba Mountains in Sudan"	19/03/2018
73.	DG ECHO Daily Map: "European Union, Sudan, Refugees, IDPs and Malnutrition"	28/03/2018
74.	US State Department: "Country Report on Human Rights Practices for 2017, Sudan"	April 2018

75.	Landinfo: "Response to an information request from the UK Home Office"	April 2018
76.	African Centre for Justice and Peace Studies: "Human rights violations in South Kordofan"	11/04/2018
77.	EASO COI Query Response: "Sudan: People from Nuba Mountains; State and Societal Treatment of the Nuba in Khartoum and Elsewhere; Freedom of Movement from South Kordofan to Khartoum"	18/04/2018
78.	US State Department: Sudan 2017 Human Rights Report	20/04/2018
79.	US Commission on International Religious Freedom: "Sudan"	25/04/2018
80.	Amnesty International Letter	24/05/2018
81.	National Human Rights Monitors Organisation: "Human Rights Update: September 2017 - February 2018"	25/05/2018
82.	Home Office: "Report of a Fact-finding Mission to Khartoum, Sudan (2018)"	26/11/2018
83.	All Party Parliamentary Group (APPG) for Sudan and South Sudan: "Report from Visit to Sudan in September 2018"	10/12/2018
84.	SKBN Coordination Unit: "Humanitarian Update"	January 2019
85.	Human Rights Watch: "Sudan: Security Forces Killing, Detaining Protesters"	07/01/2019
86.	African Centre for Justice and Peace Studies (ACJPS): "Sudan Update: Deaths in Custody, Continued Arbitrary and Incommunicado Detention of Peaceful Protesters and Obstruction of Media Coverage of Protests"	09/01/2019
87.	Reporters Sans Frontieres: "Sudan's NISS Steps Up Harassment of Media Again"	15/01/2019
88.	African Centre for Justice and Peace Studies (ACJPS): "Sudan: Activists Targeted with Arbitrary Arrest and Incommunicado Detention whilst the Media Remains Restricted amidst Crackdown on December 2018 Peaceful Protest"	17/01/2019
89.	European Parliament Resolution of 17 January 2019 on Sudan (2019/2512(RSP))	17/01/2019
90.	Human Rights Watch: "World Report 2019 - Sudan"	17/01/2019
91.	Office of the United Nations High Commissioner for Human Rights (UNHCR): "Reports of Excessive Force against Sudan Protests Deeply Worrying - Bachelet"	17/01/2019

92.	Amnesty International: "Sudan: Security Forces Continue Deadly Onslaught on Protesters and Medical Personnel"	18/01/2019
93.	US State Department: "US Concern Over Sudanese Government Response to Protests"	23/01/2019
94.	The Arab Weekly: "Al-Bashir Cannot Pin Sudan's Crisis on Foreign Plots"	27/01/2019
95.	Human Rights Watch: "Sudan: Video Footage Shows Extreme Violence, Abuse"	10/02/2019
96.	Reporters Sans Frontieres: "At Least 79 Journalists Arrested in Two Months of Protests in Sudan"	14/02/2019
97.	Reuters: "Sudan's economic decline provides fuel for anger against Bashir"	20/02/2019
98.	International Federation for Human Rights (FIDH): "Sudan: 30 Women Detained in Inhumane Conditions Following Involvement in Protests"	21/02/2019
99.	Office of the United Nations High Commissioner for Human Rights (UNHCR): "Report of the Special Rapporteur on the Situation of Human Rights Defenders: Observations on Communications Transmitted to Governments and Replies Received (February 2019) [Sudan excerpt]"	22/02/2019
100.	Amnesty International: "Sudan: State of Emergency Intensifies Brutal Government Crackdown on Protests"	25/02/2019
101.	United Nations News Centre: "Darfur Peace Process at a 'Standstill' as Demonstrations against Sudanese Government Continue"	25/02/2019
102.	International Crisis Group: "Bashir Moves Sudan to Dangerous New Ground"	26/02/2019
103.	SKBN Coordination Unit: "Flash Update "	March 2019
104.	US State Department: "2018 Country Reports on Human Rights Practices - Sudan"	13/03/2019
105.	African Centre for Justice and Peace Studies (ACJPS): "Sudan Protests: Deep Concern for the Safety and Wellbeing of Eight Activists Detained Incommunicado"	15/03/2019
106.	Radio Dabanga: "Massacre in Ardamata, West Darfur Widely Condemned"	17/03/2019
107.	Radio Dabanga: "Sudan Uprising - Fourth Month of Mass Demos, Vigils"	20/03/2019
108.	US Commission on International Religious Freedom, Annual Report 2019, Sudan	April 2019
109.	African Centre for Justice and Peace Studies (ACJPS): "Sudan Protests: NISS Introduces a New Tactic Targeting Chief-Editors after Lifting Censorship against Four Newspapers"	04/04/2019

110.	Global Observatory: "How Peaceful Protests in Sudan, Violently Suppressed, Could Yield Political Change"	05/04/2019
111.	CNN: "As Sudan Brutalizes its People"	09/04/2019
112.	The Times: "Army Splits to Shield Protesters from 'Butcher of Darfur'"	09/04/2019
113.	The Times: "Middle-class, Professional Women Become Symbol of Sudan's Revolt"	10/04/2019
114.	BBC-Monitoring: Media Guide - Sudan	10/07/2019
115.	US Congressional Research Service: "Sudan's uncertain transition"	17/07/2019
116.	BBC Monitoring: "Explainer: What next for Sudan after power-sharing deal?"	18/07/2019
117.	BBC: "Sudan to charge eight military officers over deadly crackdown"	27/07/2019
118.	De Waal, Alex: "Sudan: a political marketplace framework analysis"	Circa August 2019
119.	Nubsud Human Rights Monitors Organisation: "Human Rights Update: April - June 2019"	04/08/2019
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