Upper Tribunal
(Immigration and Asylum Chamber)

MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC)

THE IMMIGRATION ACTS

Heard at Procession House
On 16 and 17 October, 24 November 2008;
7 and 8 May, 9 June, 18 August 2009

Before

Senior Immigration Judge Goldstein
Senior Immigration Judge Jordan
Mr M G Taylor CBE DL

Between

MD

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr B. Bedford, Counsel instructed by Sultan Lloyd, solicitors
For the Respondent: Ms Z. Kiss, Home Office Presenting Officer

1. *There is a wide variation in attitudes towards women in different parts of the Ivory Coast. In particular there is a strong contrast between traditional rural communities, particularly in the North and Central regions when compared with Abidjan, a relatively cosmopolitan city of mixed ethnicity, along with other urban centres.*

2. *This variation in attitude impacts on the risk faced by women of FGM, forced marriage, domestic violence, the effects of adultery and discrimination.*

3. *If in a particular area, a woman faces one or more of those risks, the state is unlikely to offer a sufficiency of protection. In such a case internal relocation may be possible without undue hardship.*

4. *In the Ivory Coast, women as such do form a particular social group for the purposes of the Refugee Convention. Whether an individual applicant is at risk of persecution by reason of membership of that particular social group will depend on her own particular circumstances including her cultural, social and tribal or regional background.*

5. *Operational Guidance Notes should not be regarded as country information. They are not produced by the Country of Information Service. They are, in essence, policy statements and as such fall into a different category.*

DETERMINATION AND REASONS

Introduction, immigration and procedural history

1. This appeal is the determination of the Tribunal to which each of its members has contributed. Although we heard this matter as members of the Asylum and Immigration Tribunal, this determination is a determination of the Upper Tribunal, Immigration and Asylum Chamber as provided by paragraph 4 of Schedule 4 to the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI 2010/21).

2. The appellant is a citizen of the Ivory Coast who was born on 7 July 1987. She is now 22 years old. She arrived in the United Kingdom on 9 September 2005 and applied for asylum on the same day. She was then aged 18. By a decision made on 1 December 2006, the Secretary of State refused her asylum claim and, on 6 December 2006, made a further decision to give directions for her removal to the Ivory Coast. This gave rise to a right of appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 which the appellant exercised by giving notice of appeal on 28 December 2006.

3. The appeal came before Immigration Judge D Harris on 1 March 2007. He rejected her appeal on asylum and human rights grounds and found that she was not entitled to humanitarian protection. It is the reconsideration of this determination that is the subject of this appeal.

4. The Immigration Judge addressed two specific issues. The first concerned the protection available to women generally. Relying on the decision of the Tribunal in DI (IFA-FGM) Ivory Coast CG [2002] UKIAT 04437, he concluded that there was an

element of protection and the authorities would be willing and able to use the law to protect her. He then went on to consider internal relocation and found that it was reasonable for the appellant to relocate in Abidjan or indeed anywhere else away from her home area. He accepted that the appellant would fall within the definition of a particular social group for the purposes of the Refugee Convention.

5. Senior Immigration Judge Nichols found that the determination contained a material error of law. She gave her reasons in these terms:

> 1. This is a reconsideration of a decision of Immigration Judge Harris who on 1st March 2007 dismissed the appellant's appeal on asylum and human rights grounds against a decision of the respondent on 1st December 2006 to refuse to grant her asylum and to remove her as an illegal entrant to the Ivory Coast, her country of origin.
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> 2. No challenge is made to the appellant's account and that remains the position. She was forced into marriage with a 70 year old man in her village by her father. She was repeatedly raped by her husband and ill-treated. In December 2004 she began an adulterous affair with a young man called B and in June 2005 fell pregnant by him. She fled her home and eventually ended up in Abidjan with B. In September 2005 fearing that her father and her husband would kill her as a result of what happened, the appellant fled the country and arrived in the United Kingdom.
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> 3. The Immigration Judge accepted that the case had little to do with fear of FGM as sadly the appellant had already undergone that procedure when she was forcibly circumcised after her mother's death in 2003. Nevertheless, he accepted, as the respondent had done that the appellant had fled the Ivory Coast because she feared family retribution as a result of her adultery. The appellant had since given birth to a son.
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> 4. The Immigration Judge was addressed by Counsel for the appellant on the general problems for women in the Ivory Coast however in particular he was referred to the House of Lords decision in Fornah [2006] UKHL 46. It was submitted before him that since the House of Lords had decided in Fornah that Sierra Leonean women suffered persecution as a result of their gender and that the practice of FGM was a component part of that persecution, then the same principle could be applied to women from the Ivory Coast.
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> 5. The Immigration Judge purported to look at the position of women generally in the Ivory Coast at paragraph 19 of the determination as follows:
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> > *"I address the two specific issues. Firstly, the position with regard to protection for women generally. DI (IFA-FMG) Ivory Coast CG [2002 UKIAT 04437] is authority for saying that protection is available. However, I do acknowledge that that case is now some five years old and that that authority centred very largely on the issue of FGM. The Human Rights Watch World Report 2007 notes that the law does not prohibit domestic violence and that the courts and police have viewed domestic violence as a family problem unless serious bodily harm was inflicted or the victim lodged a complaint, in which case they could initiate criminal proceedings. However, the report notes that victims were not encouraged to bring proceedings due to the shame that could be brought upon an entire family. Whilst the report notes that the law prohibits rape and provides prison sentences for up to five to ten years, it notes that women's advocacy*

groups continue to protest the indifference of authorities to female victims of violence. However, the national committee in charge of fighting against violence against women and children under the Ministry of Women, Family and Children's Affairs had set up a hotline for abused women and had helped to provide shelters for victims of abuse and counselled abusive husbands. Consequently whilst I do acknowledge that conditions are far from ideal for women, the objective evidence does show that there is an element of protection. As the Tribunal said in DI 'The law is there to protect the appellant and we find that the authorities would be willing and able to use the law to protect her.'"

6. At paragraph 20 the judge found that there were "no reasons to suppose that that scenario does not apply in this case." Whilst he acknowledged the submission that the reality on the ground was not the same as that painted in the objective material, the Immigration Judge clearly said that he had to follow the objective material and the case law. He then went on to say this:

> *"In this case the appellant has made no effort whatsoever to seek the protection of the authorities. I may well be told by the appellant and by her Counsel that that is simply because the reality of the position is that such state protection does not exist. That does not sit well with the case law nor, overall, the objective evidence. This appellant has made no effort to pursue the route of state protection at all."*

7. At paragraph 21 the Immigration Judge then went on to look at the question of internal flight and whether that was open to the appellant. He accepted the appellant had been subjected to horrific abuse and said that "due to her personal circumstances [she] would not be in a position to return to her home town of Odienne." However he was of the view that she could go to Abidjan having been there in the past with her lover B. He found the couple had spent a period of time there and there was no evidence that the appellant could not relocate. There was no evidence her father or husband would pursue her across the country. The Immigration Judge found it would not be unduly harsh for the appellant to relocate and that she would not have any fear of persecution for a Convention reason if she were to return and relocate there.

8. Following this at paragraph 22 the Immigration Judge then considered whether the appellant was a member of a particular social group for the purposes of the Refugee Convention. He stated as follows:

> *"I have already expressed a view as to the extension that Fornah makes for the criteria for a social group. The question here is 'Will the appellant be persecuted if she returns?' I acknowledge that Fornah provides authority for widening the scope of the group that are likely to be persecuted and that in all the circumstances of this instant case, I conclude that the appellant would fall within that social group. However, that alone is not sufficient for the appellant to succeed in her case. In this case, I am perfectly satisfied that this is an appellant for reasons I have given clearly above, would be able to relocate to another part of the Ivory Coast without fear of persecution from either her family or her husband. She is not being pursued by the agents of state persecution, something quite properly conceded by Mr Shafi. Internal flight is an option to the appellant and therefore the appeal must fail".*

9. Reconsideration was ordered because it was thought arguable that the Immigration Judge had not properly determined the question as to whether or not the appellant would receive adequate state protection in her town of origin. Instead he had

concentrated on whether she had sought to avail herself of state protection before her flight to the UK. Secondly that he had strongly relied on the authority of DI which was now well out of date and the evidence in the Human Rights Watch Report 2007 which he had quoted properly reflected the reality of the situation. Finally that he had failed to consider the correct test on internal flight.

10. I heard brief submissions from both parties. Mr Bedford sought to persuade us that the Immigration Judge had been correct in his interpreter of Fornah, i.e. that it extended the meaning of particular social group with regard to women in general in countries where FGM is practised. He argued that the Immigration Judge had made a clear finding that women in the Ivory Coast were discriminated against as a social group and that at paragraph 19 the Immigration Judge had found that there was not a sufficiency of protection. He submitted that at paragraph 21 the judge had clearly accepted the appellant was at risk of persecution in her home town however he appeared not to have addressed the issue as to whether it was unduly harsh for her to live in Abidjan.

11. Ms Mapstead also agreed that there had been an inadequate consideration of the proper legal test to apply in relation to internal flight.

12. Having heard the submissions and considered the determination I am of the view that the Immigration Judge has materially erred in law and that in fact, Ground 1 of the application identifies to some extent the real difficulty with the determination.

13. I say at the outset that I reject entirely, Mr Bedford's argument that the case of Fornah was only authority for the proposition that women in the Ivory Coast must also be members of a particular social group in the light of what was found in Fornah. That is clearly not correct and the obvious and immediate problem with his argument is that in the House of Lords decision in Fornah the House was very clear that the general position for women in Sierra Leonean society was one of social inferiority that existed whether or not the practise of FGM was carried out although that was an "extreme and very cruel expression of male dominance" – Lord Bingham of Cornhill at paragraph 31 of the decision. The House had no hesitation in finding in those circumstances that the social group of women in Sierra Leone was a persecuted group in the light of the evidence as to their position in Sierra Leonean society and that the appellant in that case had established, on those facts, that she was entitled to refugee status. By contrast, in this appeal, it is impossible to say what the evidence was before the Immigration Judge generally as to the position of women in the Ivory Coast because he has simply not dealt with the issue. At paragraph 19 the judge was not concerned with whether or not women from the Ivory Coast were a particular social group for the purposes of the Convention, he considered the Human Rights Watch World Report in relation to whether there was a sufficiency of protection available to the appellant against the domestic violence that she feared. Whilst there was some evidence before him that there was a lack of protection in this regard, nevertheless he noted that the action taken by the government to try to help abused women and concluded that that demonstrated there was a sufficiency of protection. His conclusion at paragraph 22 that the case of Fornah allowed him to conclude that the appellant was a member of a particular social group and at real risk of persecution is fundamentally flawed. The case of Fornah says nothing of the kind and what was required was a proper analysis of the evidence about the position of women in Ivorian society to determine whether, as a result of their gender they can properly be regarded as a particular social group and secondly whether they are at risk of persecution for reasons of that membership. Certainly the

evidence before him that he quotes from the Human Rights Watch World Report was not remotely supportive of the appellant's case in this regard.

14. In any event the Immigration Judge's findings are confused. On the one hand he finds that the appellant would have an adequate level of protection available to her and that she never sought the protection of the state authorities presumably in her home town and on the other he considered the issue of internal flight which is predicated on a finding that the appellant was at risk of persecution in her home town and concludes that she can safely relocate. If there was an adequacy of protection in the appellant's home town then she was not at risk of persecution or Article 3 ill-treatment in any event. If there was a real risk of ill-treatment in her home town from her father and/or husband and the authorities could not give her adequate protection, was it by reasons of her membership of a particular social group i.e. as a woman in Ivorian society or was this purely an Article 3 risk. None of these questions have been adequately addressed by the Immigration Judge: his findings are confused; made without any reference to relevant evidence and wrong in law.

15. In the circumstances the appeal will have to be reconsidered. As I have indicated there is no issue as to the credibility of the appellant's account and therefore the issues for reconsideration will be:-

    (i) whether or not having regard to all of the evidence, the appellant can establish that she is a member of a particular social group, namely women in Ivorian society and that she is at risk of persecution for that reason – this will include a consideration of women who are victims of domestic violence and/or forced into marriage and the level of state protection available. It follows however that if the appellant is able to establish she is at real risk on this ground, it would apply wherever she went in the Ivory Coast:

    (ii) and/or whether she is at real risk of Article 3 level ill-treatment in her home town and if so, whether there is a sufficiency of protection available there or internal flight coupled with sufficiency of protection is a viable option.

16. In the circumstances I make it clear that none of the findings of Immigration Judge Harris can stand in relation to the legal issues set out above".

6. For reasons that we shall explain later in this determination and with great respect to Senior Immigration Judge Nichols who, unlike us, did not have the opportunity to consider this matter in greater depth, we have found that her view that if the appellant was able to establish that she was at real risk of persecution on grounds of being a member of a particular social group "it would apply wherever she went in the Ivory Coast", would not apply to every part of the Ivory Coast.

7. The Senior Immigration Judge found that the determination was flawed by virtue of the Immigration Judge's confused treatment of the various distinct elements of the claim. If the appellant were able to draw upon an adequate level of protection in her home area but she had not sought to avail herself of that protection, she had failed to establish a real risk of serious harm and her appeal failed at the first hurdle. Were she to be at risk of harm in her home area, that risk would arise because of their

being an inadequate level of protection to her. In that event, if she further established that she was a member of a particular social group she would be able to establish the risk of persecution limited to her home area and the enquiry would continue as to whether it would be unduly harsh for her to obtain protection in another part of the Ivory Coast bearing in mind that the source of harm was non-state actors whose influence might not extend beyond the home area. If the appellant were unable to establish membership of a particular social group but nonetheless established she was at risk of serious harm in her home area, she would have made out a claim under Article 3 or for humanitarian protection if relocation were not possible without it being unreasonable. If relocation were reasonable, her claim to be a risk of serious harm would fail both under Article 3 and under paragraph 339C of the Immigration Rules (humanitarian protection). Hence the Tribunal directed that the second-stage of the reconsideration required a comprehensive reassessment of the risk.

The Legal Framework

Burden and Standard of Proof

8. The burden of proof rests on the Appellant to prove her case on the lower standard of a reasonable degree of likelihood, which we take to be the same as "substantial grounds for believing" or "real risk". Where below we refer to 'risk' or 'real risk' this is to be understood as an abbreviated way of identifying: (1) whether on return there is a well-founded fear of being persecuted under Refugee Convention; (2) whether on return there are substantial grounds for believing that a person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and (3) whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of ECHR.

9. We have to consider the evidence in the round and, so far as the assessment of the Appellant's case is concerned, place it in the context of all of the background evidence.

Internal Relocation

10. Of particular relevance to part of the guidance given in this case is paragraph 339O headed "Internal Relocation". This states:

> 'i. The Secretary of State will not make:
>
> (a) a grant of asylum if in part of the country of origin a person will 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 his 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. It applies notwithstanding technical obstacles to return to the country of origin or country of return."

11. In considering the proper approach to the issue of internal relocation we have also to apply the principles set out by the House of Lords in Januzi [2006] UKHL 5 (which adopts the criteria now contained in paragraph 339O but also contains more detailed guidance) and AH (Sudan) [2007] UKHL 49.

12. In Januzi their Lordships held that the test for whether it would be unreasonable for an asylum seeker to relocate to a safe haven within his own country, was not whether the quality of life there failed to meet the basic norms of civil, political and socio-economic human rights, but whether he would face conditions such as utter destitution or exposure to cruel or inhuman treatment, threatening his most basic human rights. There was no presumption that when persecution emanated from agents of the state or where the state encouraged or connived in that persecution by others, there could be no viable internal flight option. The greater the power of the state over all parts of the asylum seeker's country the less viable such an option would be and vice versa.

13. In AH (Sudan) their Lordships repeated that the test to determine whether internal relocation was available was as set out in Januzi namely whether it was reasonable to expect the Appellant to relocate or whether it would be unduly harsh to expect him to do so. The 'unduly harsh' test did not require conditions in the place of relocation to reach the Article 3 ECHR level. The inquiry was to be directed to the situation of the particular Appellant, whose age, gender, experience, health, skills and family ties might all be very relevant. Cases had to be assessed holistically with specific reference to personal circumstances, including past persecution or fear thereof in family and social relationships.

Sufficiency of Protection

14. As the House of Lords decision in Horvath [2000] UKHL 37 demonstrates, to qualify as a 'non state agent of persecution' it is not enough to show the person or group concerned has a real potential to cause a claimant serious harm. There must also be an insufficiency of state protection. Unless there is a failure of state protection the non-state actor simply remains an 'agent of serious harm' not an 'agent of persecution'. As Lord Hope stated:

> "The standard to be applied is therefore not that which eliminates all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard which takes proper account of the duty which the state owes to all its nationals."

Particular Social Group (PSG)

15. In Fornah [2006] UKHL 46 their Lordships held that in seeking to establish refugee status under the Refugee Convention, where a well-founded fear of persecution was based on membership of a particular social group, a claimant had to show that the relevant group consisted of persons who shared, other than their risk of persecution, a common characteristic that was innate or otherwise fundamental to identity, conscience or the exercise of human rights or who were perceived by society as a group.

16. Lord Bingham who gave the leading judgment, in particular, gave approval to the UNHCR's *Guidelines on International Protection,* issued in May 2002 and set out his proposed definition of a particular social group, as a group of persons who shared a common characteristic that would often be one which was innate, unchangeable and which was otherwise fundamental to identity, conscience or the exercise of one's human rights. That definition included characteristics which were historical and therefore could not be changed and those which, although possible to change, ought not to be required to be changed because they were so closely linked to the identity of the person or were an expression of fundamental human rights.

17. Sex could properly be within the ambit of the social group category with women being a clear example of the social subset defined by innate and immutable characteristics and who are frequently treated differently to men.

Article 3 ECHR

18. In the context of the present case and indeed the medical evidence (see post) it would be as well to refer as our starting point to the decision of the House of Lords in N [2005] UKHL 31 that held *inter alia*, that Article 3 did not require contracting states to undertake the obligation of providing aliens indefinitely of medical treatment lacking in their home countries; did not impose medical care obligations on contracting states; could not be interpreted as requiring contracting states giving an extended right to remain, to would-be immigrants who had received medical treatment whilst their applications were being considered; if their applications were refused, the improvements in their medical treatment brought about by that interim medical treatment and the prospect of serious or fatal relapse on expulsion could not make expulsion inhuman treatment for the purposes of Article 3.

19. Their Lordships in N [2005] added that it would be strange if the humane treatment of a would-be immigrant whilst his/her immigration application was being considered were to place such a person in a better position for the purposes of Article 3 than a person who never reached this country at all.

20. In NA v UK [2008] ECHR 616; (Application no. 25904/07) it was held that it was for the applicant to adduce evidence that there were substantial grounds for believing that he would be exposed to the risk. Where such evidence was adduced, it was for the government to dispel any doubts about it. The assessment must focus on the foreseeable consequences of removal in the light of the situation in the country of destination as well as the applicant's personal circumstances. The court could form its own view of the situation in the destination country and assess the risk of a violation of Article 3 on the basis of the objective evidence including any obtained of its own motion.

21. The court in NA refer to the absolute nature of Article 3 and reiterated that a breach of Article 3 might come from a threat posed by non-government bodies if the government was not able to offer protection.

22. The Court of Appeal in RS (Zimbabwe) [2008] EWCA Civ 839 observed that Article 3 jurisprudence had developed along two separate lines: cases in which the interest of the contracting state could be balanced against the risk of ill-treatment, the Article 3 obligation being absolute and; healthcare cases such as in N v UK holding that as a 'general principle' Article 3 could not be relied upon to alleviate the disparity in medical care between Contracting States and an applicant's state of origin. However the articulation in N v UK recognised that a broader approach might be taken to Article 3 in cases where the humanitarian considerations made such a case 'very exceptional'. In Y and Z (Sri Lanka) [2009] EWCA Civ 362 it was held that where an asylum claim had failed and there was considered to be no objective risk to the asylum seeker on return to their home country, but the individual was said to be at risk of suicide if returned, it was right to scrutinise the claim with care. Sedley LJ who gave the leading judgment applied J [2005] EWCA Civ 629 and the test of real risk as:

> "1. An assessment of the severity of the treatment which was said the applicant would suffer if removed. This must attain a minimum level of severity.
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> 2. A causal link must be shown to exist between the act or threatened act of expulsion and the inhuman treatment relied on as violating the applicant's Article 3 rights.
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> 3. In the context of a foreign case, the Article 3 threshold was particularly high and even higher where the alleged inhuman treatment was not the direct or indirect responsibility of the public authority of the receiving state but resulted from naturally occurring illness whether physical or mental.
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> 4. An Article 3 case could in principle succeed in a suicide case.
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> 5. In deciding whether there was a real risk of a breach of Article 3 in a suicide case, a question of importance was whether the applicant's fear of ill-treatment in the receiving state was objectively well-founded. If not, that would weigh against there being a real risk that the removal would be in breach of Article 3.

6. A question of considerable relevance was whether the removing and/or the receiving state had effective mechanisms to reduce the risk of suicide."

23. However his Lordship continued at paragraph 62 of his judgment:

> "None of this reasoning represents a licence for emotional blackmail by asylum-seekers. An efficient Immigration Judge would be right to continue to scrutinise the authenticity of such claims as these with care".

Article 8 ECHR

24. In Razgar [2004] UKHL 27 the court identified the approach to be adopted when considering Article 8. The Appellant has to show that the subject matter of Article 8 exists and that the decision under appeal interferes with it. If she does so, the Respondent has to show that the decision is in accordance with the law, for one of the legitimate purposes set out in Article 8(2) that it is necessary in a democratic society and that it is proportionate to the legitimate aim being pursued.

25. Where the claim rests on Article 8 the decision–maker should ask:

"1. Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life? If not there would be no ground for challenge.

2. If so, will such interference have consequences of such gravity as potentially to engage the risk of Article 8? A minimum level of severity is required to engage the Convention: Costello-Roberts v UK [1993] 19EH4412.

3. If so, is such an interference in accordance with the law?

4. If so, is such interference necessary in a democratic society satisfying the criteria set out in Article 8(2)? Removal in pursuance of a lawful immigration policy would almost always satisfy this test.

5. If so, is such interference proportionate to the legitimate public end sought to be achieved? A fair balance must be struck between the rights of the individual and the interests of the whole of the community in the Convention in assessing the severity of the interference and consequences, taking into account all material available at that stage."

Lord Bingham pointed out that:

> "Decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identifiable only on a case by case basis".

26. The guidance in Razgar was followed by their Lordships in Huang [2007] UKHL 11 who held *inter alia*, that if family life could not reasonably be expected to be engaged

elsewhere, the question was simply whether taking full account of all the considerations weighing in favour of refusal, the refusal of leave prejudiced the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8. It was not necessary to ask in addition whether the case met the test of exceptionality.

The claim

27. The appellant was born in Daloa. She is Muslim. The appellant's father comes from the Diaby tribe. He was born in the town of Odienne. The appellant's mother comes from the Toure clan. Both clans speak Dioula. In her further statement, the appellant described her ethnic group as (Dioula) Mallenke.

28. The appellant described both communities as deeply conservative in nature in which many of the homes are huts and where water is drawn from wells. The women wear modern dress, although not trousers and their heads are covered. Women would have to be accompanied by a male if travelling long distances.

29. Her mother's Toure clan do not practice compulsory FGM and she was strongly opposed to the practice for her daughter. Amongst her father's clan, FGM was universally practised. As far as he was concerned, to have a daughter who had not been ritually circumcised brought ostracism, shame and ridicule.

30. There was strong opposition on the part of her father's family to her parents' marriage and the couple left the village of Daloa and moved to the capital of Abidjan where the family settled and where, we think, her sister was born. Abidjan is some 13 hours by car from Odienne.

31. When the appellant was 15 years old, and her sister was aged 9, their mother died. Four months later, in or about August 2003, the appellant's father and his two children returned to the village of Daloa from Abidjan. Immediately after the formal period of mourning had ended, the appellant was forcibly circumcised. The appellant suffered great pain and felt betrayed by her father who had instigated the procedure and who could have prevented it. Five months later, once again apparently following customary practice, the appellant was forced to marry an elderly man from the village. She was the third of his wives and the youngest. She was mistreated and abused but refused to have sexual relations with him.

32. In December 2004 she met a man called B. According to her interview, B lived in Abidjan but had come to Daloa to see his people. She formed a relationship with him and became pregnant by him. Her husband did not find out about the relationship. When her pregnancy became apparent in June 2005, she fled the village fearing both her father because of the shame her conduct would bring on the family and her husband by reason of her 'adultery'. In her interview, the appellant spoke of a cousin who had been beaten to death when it was believed she had brought dishonour to the family. The appellant found refuge in Abidjan at the home of one of her former

teachers. Although B had by then returned to Abidjan, she had received no news of him and did not know of his current whereabouts.

33. Using her mother's jewellery, the appellant left the Ivory Coast with the help of an agent on 7 September 2005, arriving in the United Kingdom on the following day. Her son was born in Birmingham on 16 December 2005. He is now aged 3. Since her arrival the appellant has had no contact with her father, (whom she does not wish to see). The appellant submitted a letter from her younger sister Fatima, dated 10 March 2006, in which she described how an attempt was made to circumcise her too but which she resisted by fleeing. The letter was apparently written in Abidjan, although it is also said her sister has now left the country. She has had no contact with her since.

34. The appellant says that there are no family members on her mother's side to whom she could turn. She claims that she would be discovered by her husband or her father were she to be returned to Abidjan. She claims that both her husband and her father would kill her for bringing shame and dishonour to their families and the authorities would not intervene to protect in what they would consider to be a domestic dispute. She claims that she could not return to Abidjan as her father is living there, nor to the area around Odienne, where her husband came from, nor where her father's relatives continue to live. As a single woman, with a young child, she claims that she would be vulnerable to sexual exploitation. Were she to come to the attention of the authorities, the information is likely to be passed back to her father or husband. As a single mother, she claims that she would not be able to work and could not fall back on the extended family to support her. As a single woman, without home or without work, she would become destitute. Her presence in any community would arouse suspicion and elicit questions about her background, particularly so as she has a son.

The refusal letter

35. In her letter of 1 December 2006, the Secretary of State relied upon background information that the Ivorian authorities maintained a Ministry of Women, Family and Children's Affairs and had set up a National Committee in Charge of Fighting against Violence against Women and Children. Under their auspices, shelters were provided for the female victims of abuse. FGM had been criminalised and was on the decrease although 60% of women had undergone the procedure. It was particularly prevalent in rural areas to the north and west. NGOs operated to help women affected by FGM.

36. The Secretary of State accepted that the appellant had undergone an enforced customary marriage but this was not a legal one. Once again, she referred to the availability of protection provided by the authorities in the Ivory Coast and NGOs. In any event, the Secretary of State considered that internal relocation was feasible. She drew attention to the fact that the appellant had travelled to Abidjan where B lived without suffering harm and that the appellant could have remained there, rather than seeking asylum in the United Kingdom.

37. A third witness statement of the appellant dated 22 February 2007 comments upon specific paragraphs in the Secretary of State's refusal letter. It takes the form of a critique of the reasoning within the refusal letter and a repetition of her claim that she and her son are at risk on return to the Ivory Coast.

Medical evidence

38. In her interview, conducted on 23 November 2006, the appellant said that she had difficulty in sleeping, suffered from depression and required medication to remain calm. She said that in October or November 2005 she was diagnosed as suffering from depression. However, by the time of her interview, she had completed her course of medication and was no longer taking any. She also complained of suffering abdominal pain as a result of the FGM.

39. Since March 2006, the appellant has received counselling in order to help her work through the trauma and difficulties arising from her experiences in the Ivory Coast. The counselling has consisted of providing support and practical help. A letter from Ms Lynn Learman dated 21 November 2006 spoke of her expectation that therapy would continue for some time.

40. It is apparent from the report prepared by Ms Doocey dated 15 April 2008, that Ms Doocey has been seeing the appellant since 29 March 2006 on a weekly basis. She stated that the appellant continued to experience persistent headaches and was prone to becoming severely distressed. Her distress was centred upon a fear of a return to the Ivory Coast. Her fear had inhibited her ability to move therapeutically beyond her trauma. She recorded the appellant's success in attending an ESOL course and the progress made in learning English. Ms Doocey recorded that the appellant had a limited ability to trust others and remained very isolated and reliant on her own limited and fragile resources. It was her opinion that the appellant struggled to cope with suicidal ideation and her deeply depressive moods. Her trauma would be exacerbated by a return to the Ivory Coast; she would struggle to function well enough to allow her to work, to negotiate the payment of bills and to make important decisions. Her hyper-arousal would increase making it difficult for her to focus on practical issues. It was also Ms Doocey's belief that the appellant would need continued psychological support for some time. The report of April 2008 followed a report of 19 February 2007 in a similar vein. The earlier report spoke of the destabilising effect upon the appellant of a return to the Ivory Coast, although the appellant had displayed great resilience and some improvement in her psychological well-being.

41. The appellant was admitted to hospital on 5 July 2006 for a minor operation following the birth of her son. The contents of a report from the Liverpool Women's Hospital do not require further comment. The outcome of the procedure should result in a complete recovery.

42. The appellant came under the care of Adult Mental Health Service on 3 April 2008 following a referral by her General Practitioner. By then she was already on antidepressant medication and was receiving counselling. A psychiatric report prepared by Dr Perera on 13 June 2008 followed a full psychiatric assessment of the appellant on 24 April 2008 and a review held on 5 June 2008. The appellant described herself as suffering from persistent low mood, difficulty in sleeping, experiencing a continuous headache, feeling frightened and not wishing to leave the house.

43. Dr Perera noted that, although she was supposed to have weekly sessions with a counsellor, the effect of these sessions was to make her feel so much worse that she waited a further two or three weeks before attempting another. As at the date of the report, 13 June 2008, the appellant was receiving 100 mg a day of Sertraline as an antidepressant.

44. In Dr Perera's opinion, the appellant was suffering from a Depressive Disorder, Moderate in severity with somatic syndrome. He recorded that she lived in fear that her father could pursue her and take her back to the Ivory Coast. He accepted that this was irrational but the fear has made her paranoid and therefore reluctant to venture outside her home. In his opinion, the fact that she was not living in the Ivory Coast was pivotal to the improvement or stability of her mental state. Her biggest worry appeared to be to the safety of her child were she to return and the risk he faces of being killed. In his opinion her condition was related to the trauma she suffered in the Ivory Coast. The appellant had not, however, directly expressed suicidal thoughts to Dr Perera. He believed that her prognosis would depend on her circumstances; she remained highly distressed about past events and a prerequisite for effective treatment was that she be made to feel safe which he did not believe would occur in the Ivory Coast.

The appellant's evidence

45. In her evidence to us, the appellant described how her father worked as a driver in a road haulage business, carrying goods from Abidjan to Odienne and other towns and villages in the area. She described the area in which they lived in Abidjan as a mixed community in which there were many ethnic groups. To her knowledge, most districts comprise mixed communities and the Dioula people live alongside other ethnic groups. The family compound was in a predominantly Dioula area but the various clans were otherwise evenly spread.

46. She described how conditions were different in Abidjan for a young Muslim woman. She could dress as she wanted. She did not wear a headscarf. This was not because she was a child but, as she expressed it, because Abidjan is *'modern'*. She was not required to be accompanied when walking outside her father's compound and the only restrictions on her movements were the normal limitations placed by any parent that she should return home before midnight. Provided her father knew where she was (and she was 15 years old at the time), she could do as she wished. The sort of incident that she described as occurring in Odienne where a married woman who

refused to remain with her husband was beaten up in an act of communal punishment was not something that would occur in Abidjan.

47. The appellant, however, said that she would not be safe there whilst her father lived there and that it would not be easy to find a place to live. She spoke of how, on return to the airport or if she attempted to rent property, the information would filter back to her father.

48. The appellant also spoke of her employment prospects in the Ivory Coast. She said that those who find work have gone to university and obtain certificates, having already undergone a long private education. In contrast, she spoke of the relative ease with which she could find a job in the United Kingdom, particularly at the conclusion of her education here. She spoke of the difficulty of obtaining a job and how the income would be insufficient to support her and her son.

49. The appellant was cross-examined about the period that the appellant spent with her old teacher in Abidjan after she had fled her husband. The woman with whom she stayed was her mother's best friend, a married woman. The couple did not mind putting the appellant up for a period of three months. The appellant was asked whether she had maintained contact with the woman since arriving in the United Kingdom. She told us that she did not have her contact details and, although she had lived there for three months, she did not know the address. She explained that she did not think of taking contact details with her after arrangements had been made for her departure to the United Kingdom. She said her main concern was for her life and that, in the anxiety of departure, she had overlooked doing so. She accepted, however, that if she returned to Abidjan, she would know where the teacher lived.

The background information

The overall situation

50. The US State Department Report 2007 deals with the overall political situation in the Ivory Coast:

> Cote d'Ivoire is a democratic republic with an estimated population of 18 million. Laurent Gbagbo, candidate of the Ivorian People's Front (FPI), became the country's third president in 2000. In 2002 a failed coup attempt evolved into a rebellion, which split control of the country between the rebel New Forces (FN) in the north and the government in the south. The failure of subsequent peace accords resulted in the 2004 deployment of 6,000 peacekeepers under the UN Operation in Cote d'Ivoire (UNOCI), who joined the 4,000-member French Operation Licorne peacekeeping force already in the country. Approximately 8,000 UNOCI and 1,800 Licorne peacekeepers remained in the country at year's end to support the ongoing peace process. Civilian authorities generally maintained effective control of the security forces in government-controlled zones. Authorities in FN controlled zones generally did not maintain effective control of the security forces.

> In 2007 President Gbagbo and FN rebel leader Guillaume Soro signed the Ouagadougou Political Agreement (OPA), which mandated elections and led to the dismantling of the zone of confidence (ZOC) dividing north and south. At year's end nearly 90 percent of civil administration had returned to the north, and mobile courts had distributed birth certificates to many of those persons who were never registered. However, implementation of other key tenets of the OPA--including disarmament of armed factions and determination of citizenship--remained incomplete.

51. In the 21st progress report of the Secretary-General on the United Nations Operation in the Ivory Coast (7 July 2009), the overall security situation during the period April - July was described as remaining generally stable. The main security incidents included armed robberies and other criminal activities in both rural and urban areas, as well as killings, armed attacks perpetrated by unidentified individuals, coupled with abductions and rape of women and girls, and theft and extortion of money in some areas, particularly in the western part of the country.

52. According to the 7 July 2009 report, significant progress has been made in the past two years in the implementation of the Ouagadougou Agreement. The main achievements included the end of hostilities between the *Forces Nouvelles* and the national defence and security forces; the removal of the zone of confidence that had physically divided the country; the restoration of free movement of people and goods throughout the country; the successful conduct of a credible process to identify the population and register voters; the overall improvement of the human rights situation throughout the country; sustained dialogue among the main political leaders; the gradual return to the north of State officials displaced during the conflict; the encouraging rebound of the economy; and the technical preparations for the first round of the presidential elections to be held on 29 November 2009 and announced on 14 May 2009.

53. Progress in the implementation of processes related to the reunification of the country as part of the Ouagadougou Agreement process, including the disarmament, demobilisation and reintegration of former combatants and the disarmament and dismantling of militias, centralisation of the collection of revenues and the reunification of the defence and security forces, has been limited, according to the Secretary General.

54. Dealing with the humanitarian situation, while an estimated 77,860 IDPs, out of approximately 120,000, have voluntarily returned to their areas of origin, land disputes and an overall weak social fabric still pose a threat to the sustained pace of return of the remaining IDPs and hinder the provision of durable solutions for returnees and host communities in the west. UNHCR, leading the protection cluster in the west, has been working closely with the local authorities and traditional leaders, including through the deployment of UNHCR protection monitors to several IDP displacement and return areas, to find lasting solutions to the underlying causes of conflict, to promote a favourable protection environment conducive to return and

to rekindle the declining IDP return momentum. Meanwhile, financial requirements for responding to critical humanitarian were revised to $36.7 million.

55. While humanitarian assistance efforts were, according to the Secretary General, being consolidated, the needs of communities affected by the Ivorian crisis are gradually shifting towards recovery.

56. Dealing with human rights, the Secretary General noted that the prevailing insecurity in certain areas provided a fertile ground for serious human rights violations and led to demonstrations by the local population, who demanded full respect for their right to safety and security. Acts of violence by student groups provoked disruptions in the education sector and caused the death and injury of several persons, as well as the destruction of public and private property. These abuses very often went unpunished. Recurrent conflicts in the north between farmers and cattle-breeders over the destruction of crops by cattle, as well as inter-community violence fuelled by the resistance of the native population to the return of non-native internally displaced persons, particularly in the western part of the country, threatened social cohesion in several villages. In the north, several instances of killings, torture and ill treatment, arbitrary arrest, illegal and incommunicado detention, harassment, forced labour, extortion and intimidation of civilians were perpetrated by former combatants and traditional hunters.

57. A disturbing trend of abduction, rape and violence against girls and women persisted, especially in the west and north, where young children were raped by unidentified men. UNOCI efforts to prevent and address impunity and violence against girls and women continued with limited progress, including because of delays in the effective redeployment of judicial services. In many instances, the families of victims of sexual violence withdrew complaints and opted for extrajudicial settlement of the matter.

58. In the sections marked 'Gender' and 'Child Protection' in the 21st progress report of the Secretary-General, it is said that UNOCI focused on sensitizing national and international partners on the campaign to end violence against women, in particular in the context of an upsurge in sexual violence in the country. UNOCI also continued to strengthen the capacity of local women's groups to encourage their participation in the electoral process, and provided technical and financial support in that regard. Furthermore, UNOCI organized a round table on female genital mutilation following a series of awareness-raising sessions for school youth. The round table explored legal, social and health-related implications of female genital mutilation with Government representatives and local stakeholders. Sexual violence against children remained prevalent throughout the country, in particular in areas where law enforcement is weak. Most of these abuses occurred in connection with other serious criminal incidents.

59. In July 2007 UNHCR provided an update of its position on the international protection needs of asylum-seekers from Côte D'Ivoire. Reciting the fact that in

January 2004, the UNHCR issued a "*Position on the Return of Rejected Asylum Seekers to Côte d'Ivoire,*" which recommended a moratorium on returns with the exception of individuals from Abidjan whose relatives had been contacted in the city prior to their return. For asylum-seekers originating from outside Abidjan, but not meeting the refugee definition, the position recommended that they be extended complementary forms of protection. An "*Update on International Protection Needs of Asylum-Seekers from Côte d'Ivoire*", issued in October 2006, reaffirmed and expanded the previous position with regard to the granting of asylum of asylum to persons fleeing the Ivory Coast and urged that no asylum-seeker from the Ivory Coast should be forcibly returned, including those from Abidjan. By July 2007, however, the situation in the Ivory Coast had undergone significant positive changes that warranted an update of UNHCR's position on the international protection needs of asylum-seekers from the Ivory Coast.

60. In its assessment of international protection needs, UNHCR said it was apparent that with the signing of the Ouagadougou Agreement on 4 March 2007, and a clear demonstration of the parties' commitment to respect its implementation, the situation in the Ivory Coast had undergone positive changes. While the full completion of the UNHCR process and the identification process would take time, and the security in some areas remained a source of concern, the progress in the implementation of the Agreement had allowed the Ivory Coast to make significant steps towards stability. In consequence, UNHCR revised its position on the international protection needs of asylum-seekers from the Ivory Coast so that, amongst other things, all claims of Ivorian asylum-seekers were being considered on the basis of their individual merits.

Women

61. The Multiple Indicator Cluster Surveys (MICS) report (2006) provides an insight into the position of women and attitudes towards them. The study surveyed 7,500 households taken as a cross-section, identifying about 13,000 women who surveyed. 19% of the heads of household were women. The report continued:

> "36% of women had already been subjected to excision. The practice of excision occurs with women in town locations (34%) as with women in rural locations (38%). According to regions women from Central region (13%) and Central West (15%) are less excised than those in other regions. The opposite is true in the north, north west, west and central north, and north east, where the practice is the most prevalent ranging from 53% to 88%.
>
> When one considers the age of the women questioned, one observes, overall, higher proportions with older women. From the point of view of education, the facts reveal that there is an important gap between educated women and non-educated women. In the latter case there is a little over half that have been excised. This is similar when one considers the economic welfare of the households. In effect, only 23% of women who live in the richest households have been excised, against 56% of women living in the poorest households. It is also in the poorest households that one encounters women

who have been subjected to an extreme form of excision (7%) against women from the richer households (2%)."

Matrimonial violence

Nearly 2 out of 3 think that a husband has the right to hit or battered his wife/partner for different reasons…the proportion of women who think that a husband can hit or batter his wife/partner in certain circumstances is higher in rural areas (72%) than in he towns (57%) and in Abidjan (44%). At a regional level, the great majority of women affirm that husbands have the right to hit or batter their wives/partners in certain circumstances. However, it is in the north west (94%) and northeast (86%) that it is highest."

62. The legal position of women is considered in a report by the US Center for Reproductive Rights: *Women of the World - Laws and Policies affecting their reproductive lives.* Although produced in 2003, neither side suggested that its contents were out-dated, although it is inevitable that some changes will have occurred.

Marriage law

63. Marriage law is governed by the Marriage Act of 1964. Only marriages that are performed by a registry official are legal. All other forms of marriage, particularly polygamy and marriages in which a bride-price is paid, are prohibited. Polygamy is prohibited both under civil law and is criminally punishable by six months to 3 years imprisonment and a fine. To attempt polygamy is also punishable. Under the transitional provisions, however, the law recognises a polygamous marriage entered into before 1964.

64. Formally declared customary marriages that took place before the 1964 Act have the same legal standing as civil marriages. Undeclared customary marriages are considered "common law" marriages that it is, a *de facto* household that is not regulated by Ivorian laws.

65. Forced marriage is prohibited. Forced marriages involving minors may result in imprisonment of 1 to 5 years and/or a fine for those responsible.

66. Adultery is both a ground for divorce and a criminal offence punishable by imprisonment of two months to one year. A woman found guilty of adultery is punished along with her partner. For a husband's adultery to be punished however he must have committed the act in the matrimonial home or have had an ongoing sexual relationship with a woman other than his wife outside the marital home. The man's partner is not punished.

Property rights

67. There is no gender discrimination regarding access to land ownership in urban areas. In the case of a spouse's death, the household's common property is divided

according to the Marriage Act. The share of property reserved for the surviving spouse is then distributed according to the inheritance law, which bars discrimination. The surviving spouse ranks fifth among those eligible to inherit, and he or she is excluded from inheritance if there are children. Children and their descendants can inherit from parents, grandparents, or other relatives regardless of gender and even if they were born to different marriages or out of wedlock. Rural communities tend to apply their own customs despite the existence of the inheritance law. If the persons involved take the dispute to court, however, the courts will base their ruling upon civil law.

Labour law

68. In 1991, there were 109,000 civil servants of whom women represented 24,000 or 22%. A salaried woman who is a mother has the right to maternity and nursing leave. Maternity leave is at full pay; half is paid for by the employer and half by the state. It is payable for 14 consecutive weeks, 8 after childbirth. Short-term absences due to the illness of a child under a woman's care do not constitute a breach of the contract of employment. Pregnancy is not a ground for refusing to employ a person nor justification for the termination of the contract. A woman may not be dismissed during pregnancy or in the 12 weeks after childbirth unless there are special circumstances.

Access to education

69. According to information in 1994, education levels in the Ivory Coast are average compared with the education levels of similar countries. There are clear differences between men and women. Women's education levels remain significantly below that of men but there is a clear trend toward improvement. The percentage of women with no education has decreased from 98% among women aged 60 and over to 47% for those aged 15 to 19. That said, access to education beyond primary school remains much more limited for women than for men. Between the ages of 15 and 19, 38% of men had an education above primary level, compared to 18% of women. Significantly, the illiteracy rate for women is 70%, compared to a national average of 50%. There is a similar pattern of gender disparity in school enrolment with an increasing disparity as children and students get older. Between the ages of 21 and 24, male students represent 19%; women a mere 4%

Domestic violence

70. Marital rape is not considered an offence in the Ivory Coast and there is no specific criminal offence prohibiting a husband from assaulting his wife although general provisions in the law punish assault and battery.

71. The situation faced by women in the Ivory Coast is dealt with in the US State Department Report for 2008 (February 25, 2009) in these terms:

“The law prohibits rape and provides for prison terms of five to 10 years; however, the government did not enforce this law in practice. Claims were most frequently brought against child rapists. A life sentence can be imposed in cases of gang rape if the rapists are related to or hold positions of authority over the victim or if the victim is under 15 years of age. The law does not specifically penalize spousal rape. Rape was a problem. Since January 2007, for example, the Court of Abidjan has received an average of 16 cases of child rape per month.

Women's advocacy groups continued to protest the indifference of authorities to female victims of violence. Women who reported rape or domestic violence to the police were often ignored. Many female victims were convinced by their relatives and police to seek an amicable resolution with the rapist rather than pursue a legal case. The Ministry of Family and Social Affairs sought justice on behalf of rape victims, but as of September 30, only nine persons had officially been convicted and sentenced for rape. Twenty-one additional persons accused of rape were sentenced for "immoral offense."

The law does not specifically outlaw domestic violence, which continued to be a serious problem throughout the country. However, penalties for assault provided for prison terms of one to 20 years, depending on the extent of the offense. Government enforcement of domestic violence complaints remained minimal, however, partially because the courts and police viewed domestic violence as a problem to be addressed within the family. The exception was if serious bodily harm was inflicted or the victim lodged a complaint, in which case criminal proceedings could be initiated. Many victims' own parents often urged withdrawal of a complaint because of the effect of social stigma on the family. As of September, the National Committee to Fight Violence Against Women and Children (CNLV) had handled 19 cases of battered wives and 10 cases of forced and early marriage during the year.

During the year the Ministry of Family and Social Affairs continued to provide limited assistance to victims of domestic violence and rape. The ministry's support included providing government-operated counseling centers with computers, printers, and other equipment for record-keeping and visiting a few victims in their homes to attempt to reconcile troubled couples and to remove domestic servants from homes in which they had been sexually abused.

The CNLV did not operate a shelter or a hotline for abused women. Instead, committee members gave out their own cell phone numbers on weekly radio programs. The committee also monitored abusive situations through frequent home visits. Young girls who feared becoming victims of abuse, FGM, or forced marriage could appeal to the committee. The committee often stopped abuse by threatening legal action against offending parents or husbands.

In May, June, and July, the government held awareness-raising seminars on sexual violence for more than 1,000 judges and security personnel. In August the government conducted similar seminars for traditional kings, chiefs, and religious leaders. As a result of the seminars, some security forces reportedly modified their behavior to provide victims with greater privacy, and courts began recording the testimony of rape victims who are minors in private. Judges also increased the provision of statistics and information on cases to enable the CNLV to follow up with victims.

Other cases of societal violence against women included FGM, dowry deaths, levirat (forcing a widow to marry her dead husband's brother), and sororat (forcing a woman to marry her dead sister's husband).

Prostitution is legal between consenting adults in private, and the practice was reported to be increasing due to worsening economic conditions. Soliciting and pandering are illegal. There were credible reports that police demanded bribes or sexual favors for allowing prostitution.

The law prohibits sexual harassment; however, the government rarely enforced the law and such harassment was widespread and routinely accepted as a cultural norm. The penalties for sexual harassment are between one and three years' imprisonment and a fine ranging between 360,000 and one million CFA (approximately $720-2,000). During the year the government initiated one case against a prospective employer who sexually harassed a runner-up in the 2008 Miss Cote d'Ivoire pageant. He was tried and sentenced to one month in prison.

The law prohibits discrimination on the basis of gender; however, women experienced economic discrimination in access to employment, credit, and owning or managing businesses. Women occupied a subordinate role in society. Government policy encouraged full participation by women in social and economic life; however, there was considerable resistance among employers in the formal sector to hiring women, who were considered less dependable because of their potential for becoming pregnant. Some women also encountered difficulty in obtaining loans as they could not meet the lending criteria established by banks, such as a title to a house and production of a profitable cash crop.

NGOs supervised efforts to create economic cooperatives to provide poor women access to small loans from the government or private microfinance banks. Women in the formal sector usually were paid at the same rate as men; however, because the tax code did not recognize women as heads of households, female workers were required to pay income tax at a higher rate than their male counterparts. Women's organizations continued to campaign for tax reform to enable single mothers whose children have been recognized by their fathers to receive deductions for their children. Inheritance law also discriminated against women. Women's advocacy organizations continued to sponsor campaigns against forced marriage, marriage of minors, patterns of inheritance that excluded women, and other practices considered harmful to women and girls. Women's organizations also campaigned against legal provisions that discriminated against women. The Coalition of Women Leaders and the Ministry of Family and Social Affairs continued their efforts to promote greater participation of women in political decision-making and in presenting themselves as candidates in legislative and municipal elections".

72. The US State Department, issued 1 June 2001, entitled *Cote d'Ivoire: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)* released by the Office of the Senior Coordinator for International Women's Issues reports on the practice:

"The form of female genital mutilation (FGM) or female genital cutting (FGC) practiced in Cote d'Ivoire is Type II (commonly referred to as excision). The practice is prevalent among Muslim women and is also deeply rooted in traditional Animist initiation rites

in western, central and northern Cote d'Ivoire. It crosses ethnic and socioeconomic lines".

73. The report continues:

"According to a 1999 Demographic and Health Survey of 3,040 women nationally, 44.5 percent of the women of Cote d'Ivoire have undergone Type II.

The fact that a greater number of Ivorian are now living in towns, far from the elders and the traditions, is also playing an important role in the progressive eradication of this practice.

A December 18, 1998 law provides that harm to the integrity of the genital organ of a woman by complete or partial removal, excision, desensitization or by any other procedure will, if harmful to a women's health, be punishable by imprisonment of one to five years and a fine of 360,000 to two million francs (approximately US$576-3,200). The penalty is five to twenty years' incarceration if the victim dies and up to five years' prohibition of medical practice, if this procedure is carried out by a doctor. Before the 1998 law was enacted, existing provisions of the Criminal Code could be used to prohibit this practice. However, despite laws on the books governing crimes against the person, there were no Ivorian cases of women challenging this practice in court.

Protection: Before the adoption of the 1998 law, the possibility of enforcing a law at the village level, where the practice is most likely to take place, was almost nil. The powerful association of this practice with religion and witchcraft made reporting and prosecuting excisors virtually impossible. Furthermore, the government had no interest in imposing the existing laws on unwilling families and antagonizing village elders and chiefs who are the guardians of tradition. This has begun to change. Following the adoption of the law in 1998, the government and the various NGOs and institutions fighting this practice gave themselves some time to pursue information and education campaigns before requesting the enforcement of the law. In 1999, AIDF launched an intensive campaign aimed at informing the population, law enforcement authorities and local government officials of the existence of the law. The campaign gathered momentum when AIDF's president was appointed Minister of Family and the Promotion of Women in January 2000. During 2000, her Ministry and AIDF held several seminars in the regions where the practice is most prevalent, working primarily with police officers and gendarmes, administrative authorities (Prefects and Sub-Prefects), as well as traditional, political and religious authorities. AIDF focused on information dissemination and enforcement of the new law. The Minister received additional support from the Ministries of Interior and Security. In addition to the formal seminars, the Minister used every opportunity, such as the inauguration of economic projects, to talk to women and local authorities about the negative impact on women of harmful traditional practices. The Minister also initiated a basic management training and small economic projects implementation program for excisors willing to abandon the practice".

74. The OGN of 13 February 2009, where material, provides as follows:

"3.9 Female Genital Mutilation (FGM)

3.9.1 Some applicants will apply for asylum based on ill-treatment amounting to persecution at the hands of non-state agents, usually community elders or tribal leaders, because they have undergone, are liable for, or face pressure to carry out on others, FGM.

3.9.2 ***Treatment.*** FGM is a serious problem in Ivory Coast. In 2007, it was practised most frequently among rural populations in the north and west and to a lesser extent in central and southern regions. The procedure usually is performed on young girls or at puberty as a rite of passage. An estimated 60% of women have undergone the procedure. Unlike the previous year, no arrests related to FGM were made in 2007. Local non-governmental organisations (NGOs), such as the Djigui Foundation, Animation Rurale de Korhogo, and the National Organization for Child, Woman, and Family, have established programmes to prevent FGM and in 2007 continued to work to persuade FGM practitioners to turn in their instruments.

3.9.3 ***Sufficiency of protection.*** Ivorian law specifically forbids FGM and provides penalties for practitioners of up to five years' imprisonment and fines of approximately US$720 to US$4,000 (360,000 to 2 million CFA francs). Double penalties apply to medical practitioners. In 2007, the National Committee in Charge of Fighting against Violence against Women and Children (under the Ministry of Women, Family and Social Affairs) maintained a hot line for abused women, helped provide shelters for victims of abuse, and counselled abusive husbands. The Committee also monitored abusive situations through frequent visits. Young girls who feared becoming victims of abuse, FGM, or forced marriage could appeal to the committee, which arranged for shelter in facilities run by the Government or NGOs. The Committee often stopped abuse by threatening legal action against offending parents or husbands. Those in fear of undergoing, or being forced to perform FGM are therefore able to seek and receive adequate protection from the authorities.

3.9.4 ***Internal relocation.*** Although both members of government forces and FN rebels reportedly engage in acts of extortion and intimidation at roadside checkpoints, the Government generally does not prevent internal travel or freedom of movement. Furthermore, the Zone of Confidence, which divided the rebel-held north and the Government-held south for almost four years, was dismantled following the peace agreement of March 2007. With FGM being a localised practice, those in fear of undergoing, or being forced to perform FGM are able to internally relocate to another part of the country to escape this threat.

3.9.6 ***Conclusion.*** While FGM remains a serious problem in Ivory Coast, particularly in the north, it is illegal and practitioners have been prosecuted under anti-FGM legislation. The availability of adequate state protection and a viable internal relocation alternative means that claims in this category are unlikely to engage the UK's obligations under the 1951 Convention or the ECHR. The grant of asylum or Humanitarian Protection in such cases is therefore unlikely to be appropriate.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Ivory Coast due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Medical care in Ivory Coast outside of Abidjan is extremely limited. Abidjan has privately-run medical facilities that are adequate and good physician specialists can be found, though few speak English. While pharmacies are well stocked with medications produced in Europe, newer drugs may not be available. According to Médecins Sans Frontières, most people in Ivory Coast cannot afford healthcare under the current cost-recovery system.

[This material replicates the travel advice of 2 April 2009 given by the US authorities to its citizens:

Medical Facilities and Health Information: Abidjan has privately-run medical and dental facilities that are adequate, but do not fully meet U.S. standards. Good physician specialists can be found, though few speak English. While pharmacies are well stocked with medications produced in Europe, newer drugs may not be available. Medical care outside of Abidjan is extremely limited. Malaria is a serious health problem in Cote d'Ivoire.]

4.4.3 Mental health is part of the primary health care system. Actual treatment of severe mental disorders is available at the primary level. There are community care facilities for patients with mental disorders and regular training of primary care professionals is carried out. Therapeutic drugs are generally available. HIV/AIDS adult prevalence rate for adults was estimated to be 7% in 2003.

4.4.4 Where a case owner considers that the circumstances of the individual applicant and the situation in Ivory Coast reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365- 368 of the Immigration Rules.

5.2 In a position paper dated January 2004, the United Nations High Commissioner for Refugees (UNHCR) advised that the return of unsuccessful asylum seekers originating from Abidjan should be approached with caution and that it is not safe for those originating from outside the capital to return. This view was reaffirmed in the UNHCR's paper of October 2006, in which it was stated that no asylum seeker should be forcibly returned to Ivory Coast until such time as the

security and human rights situation in the country has improved sufficiently to justify it. The UNHCR's position provides a broad assessment of the situation in Ivory Coast and it presents an accurate overview of the general humanitarian situation and the social and security problems inherent in Ivory Coast. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We therefore do not share the UNHCR's view that every Ivorian should automatically be entitled to some form of protection. Similarly, we do not share the UNHCR's view with regard to the return of Ivorian failed asylum seekers and any individual Ivorian applicant found by the Home Office and the independent appeals process not to be in need of international protection may return safely to Ivory Coast.

5.3 Ivorian nationals may return voluntarily to any region of Ivory Coast at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Ivory Coast. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers".

75. DI (Ivory Coast) CG [2002] UKAIT 04437 concerned the threat of female genital mutilation in the Ivory Coast. The claimant alleged that her Articles 3 and 8 rights would be breached due to the threat of FGM. The Tribunal found that there was protection available in the Ivory Coast and that an internal flight option was available.

Assessment of Evidence of Ms Ticky Monekosso

76. We need to make some comments about our approach to the oral evidence and reports of Ms Monekosso who explains that she was commissioned to write her reports by the appellant's solicitors in her capacity as an independent expert on the affairs of the Ivory Coast.

77. There are a number of general observations that we would wish to make. Our starting point is the Asylum and Immigration Tribunal Practice Directions where at paragraph 8A.4 (now Practice Direction 10 of February 2010) it is stated that an expert should assist the Tribunal by providing an objective, unbiased opinion on matters within his or her expertise and should not assume the role of an advocate.

78. Practice Direction 8A.5 (now 10.5) reminds us that an expert should consider all material facts, including those which might detract from his or her opinion. Paragraph 9A.6 (now 10.6) points out that an expert should make it clear:

a) when a question of issue falls outside his or her expertise; and

b) when the expert is not able to reach a definite opinion, for example because of insufficient information.

79. The role of a country expert is thus to assist the Tribunal giving expert evidence in a field where specialist knowledge is required, in particular providing comprehensive and balanced factual information relating to the issues that the Tribunal must resolve.

80. In that regard, it is important to bear in mind that the UTIAC is itself a specialist Tribunal that has its own level of expertise and therefore it is for the Tribunal on the basis of the totality of the material before it, including the opinion of the country expert, to conduct its own assessment and reach its own conclusions.

81. A competent expert's report is always entitled to respect and due consideration but from the point of view of the judicial decision-maker, such reports may sometimes (if not often) amount in the end to just one among other items of evidence which have to be weighed in the balance.

82. As held by the Tribunal in SK [2002] UKAIT 05613, the Tribunal builds up its own expertise. Naturally an expert's report can assist, but that does not mean that heavy reliance is or should necessarily be placed on such reports. All will depend upon the nature of the report and the particular expert. The Tribunal is accustomed to being served with reports of experts, many of whom have their own points of view which the reports seek to justify. The whole point of the country reports is to bring together all relevant material. From them, the Tribunal will reach its own conclusions about the situation in the country and they will see whether the facts found in relation to the individual before it establish to the required standard, a real risk.

83. Ms Monekosso described herself as an independent journalist and a French citizen, originally from Cameroon. She told us that her professional experience and knowledge has been accumulated over more than twenty years as an independent journalist reporting on human rights, development issues and related humanitarian affairs in Africa. She stated that she had visited many African countries on a regular basis. Ms Monekosso described her career background as that of a freelance journalist and independent consultant with a number of media groups, international organisations, non-government organisations and the private sector for twenty years.

84. Ms Monekosso holds a Masters Degree in Mass Communication Studies and Journalism, a post graduate Diploma in Audio-visual Communication, post graduate studies in Communications and Cultures, post graduate studies in Applied Anthropology as well as a Graduate Diploma in Economics and other qualifications.

85. She states that she has prepared a number of research studies on the United Nations Information System.

86. Ms Monekosso obtained an International Press Award in 2000. Ms Monekosso was a Programme Support Officer (1993-1995) with the Regional Bureau for Africa and the Middle East at the International Organisation for Migration (IOM) Geneva Headquarters, gathering information on human rights and historical research on migrations in Francophone Africa and Maghreb countries.

87. Ms Monekosso worked as an independent consultant in communications with public information organisations in what she describes as the "United Nations System" including the United Nations Information Centre (UNIC/Brazzaville), the UN Information Office (Geneva) and other associated organisations.

88. Ms Monekosso is a founding member of Femmes Africa Solidarité (FAS) that she describes as a Geneva-based African women's' NGO dealing with "gender mainstreaming in management and resolution of conflict in Africa – monitoring and assessing women and children's conditions in African countries; Communications and public information advisor to the group".

89. Her CV states that she was based at the UN Headquarters in Geneva between 1995 and 2005, that she reported on humanitarian issues, development economies and Africa related diplomacy for a number of organisations that included BBC News on-line (Africa and World Services) and various African and pan Africa news agencies. In particular, and notably under the heading "Journalism", she states that she has conducted research "into the position of refugees and the provision of humanitarian relief in Côte d'Ivoire, Congo and the Central African Republic for monthly country bulletins issued by Writenet /UNHCR and Writenet /UNHCR special reports on Côte d'Ivoire and the Central African Republic".

90. Ms Monekosso states that she remains a regular visitor to Africa "for meetings and other professional trips" and that she has extensive knowledge of Africa and has "regular contact with friends and journalist colleagues living in Africa from where I get up-to-date first-hand information".

91. Ms Monekosso describes herself as having "detailed country expertise on Sub-Sahara Africa" and that she has "developed extensive specialist knowledge on social structures and traditions, the position of women in local issues in several regions of Africa – Central Africa and the Great Lakes, West Africa and the Horn of Africa". Further that she has substantial experience of detailed case-specific research into social and legal issues and the position of women in these regions.

92. Ms Monekosso further claims that in her work as an expert witness, she has carried out a large number of detailed investigations into issues including:

> "The customary punishment of women such as customary adultery laws, national legislation related to nationality laws, rights of sexual minorities, ethnic of origin dispute and the impact of post-colonial borders …"

93. Ms Monekosso describes her current occupation as that of Office Director for Afromedi@net. She describes Afromedi@net as a:

> "Leading Network Journalist and Researcher specialised in African issues. The office Afromedi@net is based in France and working in partnership with Hawksmoore Bureau BUK-focuses on investigative journalism and providing up-to-date first-hand information and independent analysis on human rights, development and humanitarian affairs in Africa".

94. Ms Monekosso's language skills include fluency in Douala, she qualifies that claim by adding *"Cameroonian language"*.

95. Ms Monekosso produced two reports in respect of the appellant.

Ms Monekosso's first report

96. In her first report dated 19 June 2008, she explained that she had last visited the Ivory Coast between 1 and 8 December 2007 when she described having had "a high level political meeting with the country authorities". She visited Abidjan and met President Gbagbo and on a visit to Bouake in the North she met the Prime Minister and the Head of *Forces Nouvelles*, Guillaume Soro. On a visit to Yamoussoukro she met the Ministers of Foreign Affairs and of Communication and other members of the current government and what she describes as "many other important personalities including traditional leaders". Ms Monekosso tells us that she discussed with them a number of the country's political matters that included economic and humanitarian conditions. Further that she discussed in private with a number of Ivorian journalist colleagues who lived and worked in the Ivory Coast and with other foreign press correspondents to the country, matters concerning conditions in the country and in the region.

97. In the course of her evidence before us, it became clear that such meetings were largely the result of her having attended the Annual Congress of the International Francophone Press Union where she was one of approximately 200 journalists visiting the country for eight days with the programme being focused on the Côte d'Ivoire's current situation and its position in Francophone Africa. In the course of Ms Monekosso's cross-examination, it became apparent that these were not, as we had first thought, face-to-face meetings with the President of the Ivory Coast, its Prime Minister, Foreign Minister and other senior government officials, but meetings that occurred as one of this group of 200 journalists. Ms Monekosso had not personally spent any time alone with the President on her visit in December 2007.

98. Ms Monekosso explained that she retained regular contacts with her friends and journalist colleagues living in the Ivory Coast, "from whom I get up-to-date first-hand information".

99. Ms Monekosso explained that her report drew "on a wide range of sources some of which may not be familiar". The report set out what was described as *a "a brief guide*

to major sources" from which it was apparent that she was largely endorsing material from international news agencies such as Agent France Presse (AFP) and Reuters. Account was also taken of US State Department reports and what she described as "*a range of Côte d'Ivoire domestic and externally based electronic media sources reflecting diverse points of view*".

100. In that latter regard, Ms Monekosso acknowledged that "*some have a pro or anti-government slant and must be treated with caution but they provide useful insights into debates and trends and tips about insider news and politics*".

101. The three issues that Ms Monekosso was asked to address in her report were described by her as follows:

> "1. Firstly, whether women in Côte d'Ivoire share a fundamental condition of social inferiority compared to men and whether FGM, marriage and/or domestic violence are expressions of discrimination against women in the Côte d'Ivoire.
>
> 2. Secondly, whether the appellant would be at real risk of persecution in Odienne for defying the institution of her customary marriage by giving birth to a child outside that marriage and if so to what extent would she be at similar risk in the rest of Côte d'Ivoire.
>
> 3. Thirdly, if the appellant is not at risk of persecution for her actions in defiance of her customary marriage in Côte d'Ivoire outside Odienne, I am asked to state whether the appellant, as a single mother, could reasonably and without due harshness live outside Odienne".

102. As to the first issue, it was Ms Monekosso's understanding that only forty per cent of the female population of the Ivory Coast were literate.

103. The practice of Female Genital Mutilation (FGM) was common especially among the rural population in the North and West. Sixty per cent of women had undergone FGM in the Ivory Coast. This is the figure seen in the OGN but a more accurate indication of the variable incidence of FGM appears in paragraph 86 where as little as 13% and 18% have been incised in central and central west ranging to as high as 88% in some areas.

104. Spousal abuse occurred frequently in the Ivory Coast and as many as seventy per cent of Ivorian women had experienced domestic abuse. Nevertheless domestic violence was widely regarded as a private family problem.

105. At paragraph 12 of her report Ms Monekosso claimed that the law prohibited sex discrimination as it did discrimination of all kinds, but that in practice, women occupied a subordinate role in Ivorian society.

106. In rural areas women and men divided the labour. Government policy encouraged full participation by women in social economic life but there was considerable

informal resistance among employers who considered women of child-bearing age less dependable then men. Women were under-represented in some professions and in the managerial sector as a whole. Some women also encountered difficulty with obtaining loans because they could not meet the lending criteria mandated by the banks.

107. Ms Monekosso continued that in the Ivory Coast the state organised religion and traditional society all played a part in creating and maintaining the social inferiority of women compared to men by coercing female conformity with norms of customary behaviour.

108. The State had failed in practice to protect young women and children from FGM. It did not afford women property rights in marriage or on dissolution of marriage. Moreover, the state discriminated against women in the matter of adultery and it did not outlaw marital rape. This is corroborated by what we have said in paragraphs 71 to 75 above.

109. Ms Monekosso referred to what she described as "three powerful customary norms" that women were expected to obey. Firstly, that women should undergo FGM; secondly, that they should get married and have children; thirdly that women should not dishonour their communities.

110. For Ivorian women to attain any honourable condition they had to be married although they were only expected to marry once and beforehand they were required to be circumcised. Adultery was a criminal offence for women. For men on the other hand polygamy was respectable. Ms Monekosso stated that "men are not punishable under the criminal law for marital rape or adultery". (For reasons which later appear, this is not accurate).

111. Ms Monekosso considered that these norms "marked women as second class because they are coercive". Traditional society enforced these norms and serious transgressions were punished. Traditional societies had customary powers to investigate, try and punish individuals. In secular matters most cases were adjudicated upon in informal hearings often convened by the village chief.

112. Traditional society in effect sought to guide women and reinforce their acceptance of living within community norms as second class citizens.

113. There were rituals of purification as well as punitive measures to deter and curb the tendency to deviate from these norms. Every extended family or tribe evolved its distinct ethical code.

114. In the case of adultery, customary decisions might be taken that women were punished by cutting their backs with razors. The results of mutilation or "*scarifications*" would communicate that the women was an adulteress. She was then beaten and repudiated in public.

115. On the issue of FGM, Ms Monekosso placed reliance on what she described as the preliminary results of the MICS 2006 Report. MICS refers to "The Multiple Indicator Cluster Survey Programme" developed by UNICEF that assists countries in filling data gaps for monitoring the situation of children and women through statistically sound, internationally comparable estimates of socio-economic and health indicators.

116. Those results showed that nearly eighty seven per cent of women in Northern Ivory Coast had been the victims of FGM/Cutting (FGM/C). FGM/C was still practiced among most population groups in the Ivory Coast even though the prevalence of such was higher within some ethnic groups, the Muslim population and in rural areas.

117. Ms Monekosso referred to the UNICEF MICS 2007 analysis that showed that there was a strong social consensus around these mutilations initially done to prepare a young girl to womanhood. FGM practices affected an increasing number of younger girls and even babies. These practices continued despite the adoption almost ten years ago of a law prohibiting FGM. In Ms Monekosso's opinion, FGM was an extreme expression of discrimination against women in the Ivory Coast because they were forced to undergo FGM before being considered full members of Ivorian society. In addition, those women who refused to undergo FGM were "socially rejected, stigmatised and ostracised".

118. Ms Monekosso described FGM as a "gender based form of violence and a typical form of domestic violence practiced within the family".

119. She considered that given the presence of FGM in the Ivory Coast, the State had failed to protect women, particularly girls from FGM. This is clearly one of the more controversial passages of Ms Monekosso's evidence to which we will return later. Whilst there is no doubt that the practice is widespread, its impact is variable and we will need to consider the steps taken by the authorities to counter it. Ms Monekosso pointed out that, until 1998, there was no law that specifically prohibited the practice which was considered illegal only as a violation of general laws prohibiting crimes against persons.

120. However, the Law Concerning Crimes against Women enacted in December 1998 specifically forbade FGM and subjected those who performed it to criminal penalties, imprisonment of up to some five years and a fine of approximately $650 to $3,500 (360,000 to 2 million CFA francs) and there were double penalties for medical practitioners.

121. As regards marriage in the Ivory Coast, this was an institution highly esteemed by Ivorian society and women especially were expected to get married and stay married. If a woman could not get married she was considered to be of low morality.

122. Unmarried women were not seen as full members of society. They lacked social status. Unmarried women were considered blameworthy by society. Marriage and children conferred more value and status on women than education which was believed to reduce a woman's prospect of marriage so in the Ivory Coast there was one official form of marriage recognised by law which was married under ordinance.

123. According to the Ivorian Civil Code, only marriages that were performed by a registry were legal. Official polygamy was outlawed in the Ivory Coast although it continued to be widely practiced, particularly in Muslim communities. However in Ivorian society, male polygamy was common and respected. Further, both customary and Islamic marriages conferred marriage status on women even though those marriages did not prevent their husbands entering into other polygamous marriages.

124. Customary or traditional marriages usually took place by agreement between families and were commonly confirmed by the payment of a dowry. Many such marriages were arranged marriages or even forced marriage. Nearly all Ivorian marriage was customary. Even couples contracting a marriage under ordinance, performed a customary marriage first.

125. Husbands were regarded as the head of the household. Spousal abuse (usually wife beating) occurred frequently and it was not specifically penalised, nor was marital rape. A woman was presumed to have consented to sexual intercourse by marriage even if a union was at an early age and/or forced.

126. In relation to inheritance rights, Ms Monekosso explained that on the death of a spouse, household property was divided according to the Marriage Act. A surviving female spouse ranked fifth among those eligible to inherit and she was excluded from inheritance if there were children because the children got this share in that case.

127. Ms Monekosso referred to Article 391 of the Penal Code that stated that "adultery is not only grounds for divorce but also an offence punishable by imprisonment of two months to one year. A woman found guilty of adultery is punished along with her partner".

128. Notably, at paragraph 48 of her report, Ms Monekosso continued as follows:

> "Only the female spouse is punishable under the criminal law if found guilty of adultery, together with her partner. **A male spouse cannot be punished for adultery**." (Emphasis added).

129. Ms Monekosso continued that men were heads of household and were permitted to rape and abuse their spouses with impunity.

130. Although the law specifically penalised anyone who forced a minor under 18 years of age to enter a religious or customary matrimonial union, twenty six per cent of 15 to 19 year old girls were married in the Ivory Coast and the state failed to protect

children from forced marriage in traditional ceremonies rather than to illegal registration.

131. In Ms Monekosso's opinion, whether marriage was legal, customary, forced or consensual, it was the fundamental expression of the inferiority of women in the Ivory Coast. It institutionalised their inferior status compared to men.

132. Ms Monekosso explained there was no reliable statistical data on the extent of domestic violence in the Ivory Coast, though according to the Association Ivoirienne de Défense des Droits de la Femme (AIDF), seventy per cent of women in the Ivory Coast were victims of domestic violence. This is consistent with the 2006 MICS report (from a survey sample of 13,000 persons) which indicated that nearly 2 out of 3 (roughly 60% or more) thought a husband had the right to hit his wife. (But we recall, this figure was significantly less in Abidjan, 44%, less than half, suggesting the different attitudes in urban areas.)

133. The inferior status of women and the considerable number of newspaper reports suggested that domestic violence was widespread throughout the country. Women who complained of domestic violence were socially excluded and suffered tremendous pressure from their families. Traditional attitudes did not permit women to reject domestic violence. Much of this is supported by the US State Department report to which we have referred in paragraphs 72 to 73 above.

134. Ms Monekosso considered that the prevalence of domestic violence in the Ivory Coast was an expression of social inferiority because wife beating which was a criminal offence that constituted grounds for divorce under civil law was common in the Ivory Coast but the police rarely intervened in domestic disputes.

135. Ms Monekosso continued that the courts and police viewed domestic violence as a problem to be addressed within the family unless serious bodily harm was inflicted or the victim lodged a complaint in which case criminal proceedings could be initiated. However a victim's own parents often urged withdrawal of a complaint because of the effect of social stigma on the entire family.

136. It was Ms Monekosso's opinion that the prevalence of domestic violence in Ivorian society was an expression of the inferior status of women compared to men.

137. On the second issue, (the risk of persecution in Odienne or elsewhere for defying the institution of her customary marriage by giving birth to a child outside marriage), it was Ms Monekosso's considered opinion that if the appellant returned to Odienne she would face ritual punishment for adultery and abandoning her husband. In secular matters most cases were adjudicated upon in informal hearings often convened by the village chief but that in any event, family and community members might also apply disciplinary procedures even trying and torturing individuals for serious violations of norms, such as adultery.

138. The vast majority of norms, taboos and prohibitions were directed towards protecting the community.

139. Every extended family or tribe evolved its distinct ethical code which it would act to preserve. The observance of tradition was a matter of honour and having a child born of adultery could be considered a crime of honour. Furthermore, the Muslim society in the Ivory Coast would regard the appellant's actions as particularly taboo, offensive and humiliating.

140. Customary laws relating to adultery "undoubtedly existed". It was however "*uncertain*" whether the appellant could be punished under Article 391 for adultery given that she was not married under the ordinance. Nevertheless Article 391 reinforced the legitimacy of customary law which punished women for adultery rejecting forced marriage, and in the appellant's case disobeying her father and also her husband. By customary law the appellant had broken the contract under which she was married. It would, in Ms Monekosso's opinion, "be impossible to defy these customary laws".

141. As to the existence of risk to the appellant outside Odienne, Ms Monekosso pointed out that Muslim social and community structures were highly traditional and placed great importance on marriage and female fidelity. The appellant's particular circumstances would thus prevent her from seeking the assistance of local Muslim communities elsewhere in the Ivory Coast as these communities would seek to punish or ostracise her.

142. Ms Monekosso referred to the security climate in the Ivory Coast and the forthcoming national elections and was of the view that it was thus certain that the police would control the appellant as they would other ordinary citizens. The police in the South would regard the appellant with suspicion as a Muslim woman from the North. She would be interrogated for information concerning *Forces Nouvelles*.

143. In addition, there were credible reports that gendarmes entered homes and businesses to extort money, that police detained persons overnight in police stations where they beat detainees and forced them to pay bribes. The police also harassed persons of northern origin or with northern names. (We note the latter claim was sourced from a 2006 US State Department Report).

Ms Monekosso's view of appellant's situation

144. Ms Monekosso believed that during interrogation it was "certain" that the appellant would be asked about her marital status as was usual for young women when confronted by the security forces. If she was identified as a single mother and a Muslim then it was "certain" that the security forces would try to abuse her for they would be able to do so with impunity. They would act in the knowledge that the appellant had nobody to intervene on her behalf.

145. Ms Monekosso continued that the appellant would require official identity papers to access public services, develop a business or pass through checkpoints that were commonly established on roads by the security forces. Without an official identity the appellant would have to live as a '*non-person*' deprived of access to public services or formal sector employment, on the margins of society.

146. The appellant would require identity papers to prove that she was Ivorian given the proximity of national elections and the suspicion on the part of the security forces that the Ivory Coast Northern neighbours would seek to infiltrate the country to influence the election results.

147. Ms Monekosso considered the relevance of the appellant's name that identified her as a Douala, a Northerner and a member of a cross-border ethnic group. As such she would face discrimination from the security forces and could not present herself as a member of any community.

148. Ms Monekosso considered that it would be extremely difficult for the appellant to live in any provincial region outside of her home area because she would be viewed with suspicion and socially ostracised. As a woman living alone without access to land or economic assets, the appellant would find it extremely difficult to be accepted and would have no ready access to a basic means of livelihood and she would be at risk of maltreatment or sexual exploitation. Thus the appellant would be certain to suffer social exclusion and severe discrimination even in areas far from the North.

149. The judiciary would not offer effective protection to a lone woman who had an elicit child from an adulterous relationship even if her marriage was traditional as opposed to a marriage under ordinance.

150. As to the third issue, that essentially focused on whether or not the appellant could safely and internally relocate outside Odienne. Ms Monekosso acknowledged that in Abidjan, the capital, "*the social climate (was) more relaxed*". The appellant would however be without any means of support in business, employment or farming.

151. Ms Monekosso considered that the appellant would face prostitution or being trafficked in West Africa. Indeed wherever she went as a Douala, Ms D would "*lack the privileged and protected social position which married women enjoy*".

152. Away from her home area, the appellant without access to land would find herself in exceptional difficulty to survive in a rural area. She would not be accepted in a rural community elsewhere in the Ivory Coast where discrimination was at its worst. As a young woman from the Douala community without any family links in the new area she would be considered to be a foreigner.

153. Ms Monekosso continued that the appellant's status as a single Muslim mother in the Ivory Coast would leave her in an acutely isolated and weakened position where she would face discrimination, stigmatisation, ostracism and rejection.

154. Being a Muslim and single mother was a case of dishonour in the Ivory Coast and would lead to all kinds of suspicion, that the appellant was "*an adultery mother or a sex worker*". The appellant would find it exceptionally difficult to live as an independent single mother elsewhere in the country as the entire Muslim and Douala community would consider her to be the "*wife of …*" even if it was a forced marriage.

155. Further the appellant if returned to the Ivory Coast as a young woman who had been to Europe was likely to be rejected by Ivorian society. Many people would assume that she had been a sex worker. She was likely to be marginalised in society.

156. Ms Monekosso continued that such risks would be sharply increased if it were known that the appellant committed adultery and was raising an illicit child and that she had run away from a forced marriage and had defied domestic violence. The appellant's risk would be increased as she would be perceived as a woman of low morality and a likely prostitute. If the appellant sought to move elsewhere she would lack access to a source of income or land and would also be regarded with suspicion in social terms.

157. In addition, Ms Monekosso considered that given the number of myths well-known in the country about traditional matters and witchcraft, other communities would not wish to have a '*Muslim fugitive woman*' living in their community. Not having acted in accordance with tradition, the appellant would be widely perceived by any community as threatening and dangerous; for other ethnic groups to harbour such an individual would be embarrassing. This stigma and discrimination would seriously affect the appellant's attempts at relocation.

158. Ms Monekosso thus concluded her report as follows:

> "The institutions in Côte d'Ivoire who should in theory protect an individual such as Ms D are in fact completely ineffective. The judiciary is highly corrupt; the police and army are characterised by frequent resorts to brutality and show no concern for protecting women against harsh traditional social practices, regardless of the letter of the law that bans domestic violence".

Ms Monekosso's second report

159. In her second report dated 8 October 2008 Ms Monekosso set out in French and also in translation the provisions of Article 391 of the Ivory Coast's Penal Code. It will be as well to set out the translation:

> "Adultery is not only grounds for divorce, but also an offence punishable by imprisonment of two months to one year. A woman found guilty of adultery is

punished along with her partner. For her husband's adultery to be punishable, however, he must have committed the act in the marital home or have had an ongoing sexual relationship with a woman other than his wife outside the marital home. The man's partner is not punished. Divorce proceedings may be averted or halted by the offending spouse's collusion or forgiveness."

160. Ms Monekosso continued that she now recognised that it was:

> "Immediately apparent that paragraph 48 of my original report was mistaken in suggesting that the penal code did not criminalise or punish male spouses for adultery."

161. Ms Monekosso continued that:

> "Plainly, a male spouse may be criminally liable for adultery but in more limited circumstances than female spouses. A female spouse is exposed to criminal liability for any act of adultery, whereas a male spouse is only liable for an adulterous act in the marital home or for a series of adulterous acts with a woman.
>
> It would seem that a male spouse is not punishable under the penal code for single acts of adultery with different women outside of the marital home".

162. Ms Monekosso's report continued by reference to information she had received from Fatimata Diabate who was described as:

> "The Training Officer of the Association of Women Jurists of the Ivory Coast, who was admitted to the Bar of Abidjan in [date] and who practices as an advocate, that in practice it is very much more difficult for a woman to bring a charge of adultery against her spouse than it is for a man to do so against his spouse. Ms Diabate is from the Northern Ivory Coast as is the appellant". (The square bracket reference is Ms Monekosso's who did not subsequently provide us with any information as to the date of Ms Diabate's admission to the Abidjan Bar).

163. Ms Monekosso summarised the information that she had gleaned from Ms Diabate. Indeed, many of the paragraphs that follow begin or end with the expression "*Ms Diabate advised that …*"

164. Ms Monekosso was told by Ms Diabate, that before a male spouse could be prosecuted for adultery, consent was required from two sources firstly the Procureur de le Republique and secondly from a court bailiff. There were no restrictions governing the commencement of criminal proceedings against women for adultery. In practice therefore, Ms Diabate advised that only female spouses were punishable under Article 391. Ms Diabate had however, further advised that there were no reported cases in the Ivory Coast concerning the prosecution of female spouses under Article 391. That was not to say there had not been any prosecutions, but the court archive could only be consulted with the permission of the Procureur de le Republique and then only after a legal process to determine whether access was necessary and relevant to the needs of the country.

165. Ms Diabate advised that it was much more common for husbands to use traditional or informal institutions to punish their female spouses for adultery.

166. Ms Diabate advised that a woman such as the appellant would be publicly shamed and blamed. The appellant would be required to take the Calabash and make several tours of the village roads. The appellant would be forced to confess her adultery in the various compounds that housed the community and beg for forgiveness. Local community leaders would question the appellant in front of her husband. The appellant's husband would have the choice of pardoning, punishing, tolerating or repudiating his wife. Punishments could range from forced servitude on the husband's land for both the appellant and her child, beatings followed by repudiation, ritualistic cutting of the appellant's back to leave scars indicating that she was an adulteress, ostracism or even honour killings.

167. Ostracism was a particularly devastating form of punishment in that the appellant would no longer be allowed to share the life of her community. So severe was the punishment of ostracism, that every member of the community would dread it and do everything possible to avoid it. It deprived one of access to land and any means of livelihood.

168. Notably, Ms Monekosso conceded that she had no personal knowledge of the rituals or punishments observed by the Muslim community in Odienne. Every extended family or tribe would have evolved its own distinct ethical code. Ms Monekosso sourced that information from the following: "Crime and African Traditional Religion", S A Adewale.

169. Ms Monekosso concluded her second report by repeating that it was unrealistic to expect a lone Muslim woman with a child to live an independent life which would not be unduly harsh in the Ivory Coast pointing out that:

> "Apart from or outside a traditional family or community network of support such a life would be below the minimum level for subsistence, alternatively, the appellant would be forced into prostitution and trafficking".

Ms Monekosso's Oral Evidence and evaluation

170. In addition to her written reports, we have had the opportunity of listening to and evaluating Ms Monekosso's lengthy oral evidence before us over a period of two days. Although we do not underestimate or undervalue the expressed opinion of someone whose professional experience and knowledge of related humanitarian affairs in Africa has extended over more than twenty years, we have nevertheless concluded that her evidence falls to be treated with caution. Our reasons for so finding are as follows.

171. At an early stage in her oral evidence we asked Ms Monekosso to explain to us why there was no report directly from Ms Diabate. Her response was as follows:

> "Women do not want to be named publicly. I did not ask Ms Diabate for a statement **I told her I was preparing the report as a journalist not that I was preparing a report for the court.** In my experience I have learned every time I have asked questions from people, if I say it is for a court to be publicised they would be a little afraid. **I told her that I was not going to name her.**" (Emphasis added)

172. When it was drawn to Ms Monekosso's attention, that her evidence (insofar as it related to the Ivory Coast's Civil Code Procedures and particularly Article 391 of the Penal Code) appeared to us to be second-hand, her candid response was as follows:

> "**The only evidence I have in this matter is what I was told by Ms Diabate**". (Emphasis added)

173. When asked as to whether Ms Diabate had provided details of the proof required in terms of establishing the fact of adultery, Ms Monekosso responded that she did receive an explanation from Ms Diabate:

> "But I do not think I mention that in my report because that was not asked of me and I did not want to give more information than I was asked – but there are several forms of proof according to the ethnic groups".

174. When asked if she had undertaken any research studies in the Ivory Coast her response was evasive in her stating:

> "It depends on what you mean. I am an investigator."

175. On being further pressed, Ms Monekosso explained that she worked with a colleague who conducted research for the UNHCR under the auspices of Writenet which was in fact an UNHCR bulletin. Ms Monekosso had worked "*most for the confidential press and the public press*".

176. Whilst we are mindful that an expert can be perfectly well-qualified to speak about the territory without herself having been there (see for example, K [2005] EWCA Civ 1627) we have concluded upon a consideration of Ms Monekosso's evidence, oral and documentary, that her expertise has significant limitations in the sense that she has a wide-ranging interest in Pan African/ethnic affairs as a journalist, with a very keen interest in African issues. She last visited the Ivory Coast for one week with a group of some 200 journalists in December 2007. However, it became apparent to us in the course of her oral evidence, that her direct knowledge of matters relating to the Ivory Coast was in fact limited.

177. Much of her evidence in relation to the Ivory Coast was derived from what she was told by Ms Diabate in the course of a telephone interview that Ms Monekosso admitted had been conducted in circumstances where Ms Diabate had been misled

as to its purpose. Ms Monekosso on her own admission misled Ms Diabate when assuring her that any information that she gave would not be the subject of a report or for a Court's evaluation. She also said that she would maintain the confidentiality of her source.

178. Although much of Ms Monekosso's report is clearly derived from the same sources as we have set out above, we are concerned about certain aspects of the report and, in particular, her evidence about punishments meted out in traditional communities upon those accused of adultery. Mr Bedford both before us and in his skeleton argument (see for example paragraph 54 of his skeleton) was clear that Ms Monekosso was:

> "… the principal source of the evidence that female adultery is severely punished by traditional society for which she is reliant on Ms Diabate, Training Officer of the Association of Women Jurists in the Ivory Coast and Barrister in Abidjan: Monekosso's report Oct. 2008 paras 11 to 15".

179. Ms Monekosso gave evidence that Ms Diabate had given her permission to mention her name and she admitted that Ms Diabate was unaware that it was for court proceedings. When asked to explain, Ms Monekosso responded:

> "I think I need to go back to my recollection. Generally I say to people they won't be quoted just to reassure them. That is the best way to preserve my contact for me to be able to approach them in the future without any problem – but as a journalist I am free to mention them – it is up to me to deal with it … In our profession we are free to quote or not quote someone".

180. When asked if it was so, even if it meant breaking a promise, Ms Monekosso responded:

> "Yes – even if it would cause a scandal – **we have the right and in some instances when we are asked to reveal our sources we can refuse … that is how we work in general – apart from the formal interviewing most of the time we just have an informal discussion rather than a formal interview**". (Emphasis added).

181. It was put to Ms Monekosso that her answers meant that she was prepared to mislead an interviewee in the cause of journalism on the basis that the means justified the ends. To this Ms Monekosso responded that it was:

> "… a working technique an investigative technique and we get in step by step to obtain the most credible information".

182. Ms Monekosso continued that she recalled telephoning Ms Diabate and informing her that she was a journalist gathering information on the Ivory Coast but that:

> "I didn't mention at any time court proceedings. As a journalist and woman I must have mentioned to her that I was interested in women's' rights in the Ivory Coast. I asked the questions about adultery and I said to her that I wanted to find out about

traditional practices since it was not written law – and she gave me all the details on what she knew so I did not mention the court or any hearings".

183. When asked in what context Ms Monekosso informed Ms Diabate that her name would not be mentioned, Ms Monekosso responded in general terms as follows:

> "I told her not to worry. Once I have introduced myself as a journalist I say *'Listen I just want some information – I won't mention your name anywhere – it's not a formal interview'*. This is to put people at ease. Then they would not have to ask me *'Would you publish my name?'*."

184. Ms Monekosso continued:

> "It was better that she should feel I was writing for a female magazine".

185. In our judgment, Ms Monekosso's approach was not only misleading and regrettable but also prejudiced the integrity of the information provided. She should have appreciated that an interviewee would be likely to speak in different terms if told that what she had to say was for the purposes of a court report as distinct from information given in the course of a casual discussion about her work with a friend or acquaintance.

186. Formal interviews attributable to an official speaking on behalf of an organisation for whom she works with the knowledge that the material will be used for the purposes of a Tribunal's proceedings are likely to provide different information from an off-the cuff, unattributed expression of opinion. Far from providing more reliable information, (as Ms Monekosso appears to have thought), we would have thought it is likely to be less reliable; all the more so, if it is the sole source for that information.

187. At paragraph 18 of her first report, Ms Monekosso told us that:

> "Men are not punishable under the criminal law for marital rape or adultery".

188. In the same vein at paragraph 48 of her report Ms Monekosso stated:

> "Men are permitted to rape and abuse their spouses with impunity".

189. By the time of her second report, Ms Monekosso acknowledged that she was mistaken in suggesting that the penal code did not criminalise or punish male spouses for adultery and that:

> "Plainly a male spouse may be criminally liable for adultery …".

190. At paragraph 7 of her first report, Ms Monekosso quoted from a source that asserted that:

> "In secular matters, most cases are adjudicated upon in informal hearings, often convened by the village chief but in any event family and community members may

also apply disciplinary procedures, even trying and torturing individuals for serious violations of norms, such as adultery".

191. In fact, the document from which Ms Monekosso was quoting, related to Uganda and as Ms Kiss rightly noted, Ms Monekosso has not since submitted alternative written background evidence demonstrating such practices in the Ivory Coast.

192. This was not the only occasion in the course of Ms Monekosso's first report where her evidence as to the position of women in Ivorian society was sourced from material relating to a different country. At paragraph 20 of her first report, Ms Monekosso had stated as follows:

> "Traditional society in effect seeks to guide women and reinforce their acceptance of living within community norms as second class citizens. There are equally rituals of purification, as well as punitive measures to deter and curb the tendency to deviate from these norms. Every extended family or tribe evolves its distinct ethical code."

193. That contention was sourced as a footnote to her report from the following: "*Crime and African Traditional Religion*", S.A. Adewale.

194. When cross-examined, Ms Monekosso was informed by Ms Kiss, that she had obtained a copy of Mr Adewale's report from which it was clear that it did not relate to the Ivory Coast but to Nigeria. There was no mention of the Ivory Coast in the document. Ms Monekosso was therefore asked on what basis (given that she again referred to the same report at paragraph 11 of her second report) she relied on it as being of probative effect in relation to conditions in the Ivory Coast.

195. Ms Monekosso's response largely evaded the issue. She sought to explain that she worked:

> "… on different ethnic groups across Africa and these ethnic groups often have the same traditions but with different approaches".

196. There may or may not be traditions which cross national borders or ethnic groupings. In some cases, therefore, it may be possible to derive support from information from other countries. Where, however, this is relied upon, we would expect to see the source carefully explained and suitable consideration given as to whether a correlation is established.

197. Ms Monekosso continued that insofar as Mr Adewale's report was concerned he talked about adultery and that:

> "… even if it is not the same practice in the Ivory Coast – in the Ivory Coast itself the practice is different but the logics of punishment are more or less the same".

198. When asked why she had not made these matters clear in her report, Ms Monekosso stated that she worked:

> "… on traditional questions. My aim is towards the '*ethnic*' rather than the '*country*'."

199. Ms Monekosso was aware that Mr Adewale was Nigerian and provided no satisfactory explanation as to how a traditional paper on African Traditional Religion had direct relevance to the appellant who comes from a Muslim background.

200. Although in paragraph 11 of her second report, Ms Monekosso said that she had "no personal knowledge of the rituals or punishments observed by the Muslim community in Odienne" she had then referred to an extract from Mr Adewale's report. When asked to explain how, at paragraph 14, she could thus state that the appellant would suffer "beatings followed by repudiation, ritualistic cutting of the appellant's back to leave scars, indicating that she is an adulteress, ostracism or even honour killing", she failed to provide an adequate response and accepted that she had no specific evidence that the Muslim community in Odienne practised beatings and the treatment that she had earlier identified. She had relied on the information given to her by Miss Diabate although she again accepted that Ms Diabate's information was based "on the people of the North without being specific about the people in Odienne".

201. Ms Monekosso came from Cameroon. We had seen references to Nigeria and Uganda. What Ms Monekosso appeared to be talking about was in global terms over all the continents of West Africa and was thus not limited to the Francophone areas. We were not persuaded that such parallels might properly be drawn, at least without a suitable level of caution, not expressed in her report.

202. Ms Monekosso also told us about the existence of "secret societies" in the Ivory Coast of which we observed there was no mention in either of her reports. Her explanation for its omission was unsatisfactory, saying that it was implied although not expressly stated. We were not told where the implication is said to have arisen.

203. In oral evidence, Ms Monekosso accepted that her reports contained a number of errors and in that regard we are mindful of the observations of the Tribunal at paragraph 58 of SD Lebanon [2008] UKAIT 00078:

> "The fact that an expert has included a quote attributing it to a report which does not in fact include that quote, raises questions about the accuracy of the expert's report in other respects … Experts … can make mistakes. On the other hand we cannot dismiss this error out of hand as a trifling matter either, given the Tribunal is entitled to expect the material quoted in an expert's report is actually taken from the document indicated to be the source of the quote and that sources for any quotations are adequately indicated."

204. We have found that Ms Monekosso's errors, as Ms Kiss aptly described them, went "*beyond the mere typographical*".

205. On 20 June 2008, Senior Immigration Judge Gill adjourned the appeal to give the Home Office time to consider additional evidence lodged by the appellant. SIJ Gill issued specific directions and asked Ms Monekosso to produce her background source. Ms Monekosso's report dated 19 June 2008 did not comply with that observation.

206. It was Ms Kiss who managed to ascertain that the source for the material referred to in paragraph 190 (disciplinary action, even amounting to torture, taken by local chiefs for adultery) related to Uganda to which we have above referred in paragraph 192.

207. Further in her second report, having stated no personal knowledge of the Douala, Ms Monekosso then relied on the report of Mr Adewale which was sourced from an article that was predominantly a polemic about the Yoruba in Nigeria.

208. It is against this background that we assess the evidence of Ms Monekosso insofar as it relates to risk on return. Ms Monekosso is a journalist who uses investigative techniques in order to seek information. When asked if she had published any recent papers since she left university, Ms Monekosso explained that her techniques were simply investigative, describing herself as an investigator. There is something of the campaigner in her, seeking to advance the cause of women in Africa for which she must be applauded but in our view this has led to the loss, in part, of a rigorously objective approach.

209. We find it difficult to follow the logic of Ms Monekosso's uncertainty as to whether the appellant could be punished under Article 391 for adultery given that she was not married under ordinance. If the appellant had entered into a customary marriage, there was no reasonable prospect of her being prosecuted. That Ms Monekosso maintained that the risk was "uncertain" and expressed reluctance to change her position, does not properly reflect the evidence as the Record of Proceedings reveals. Ms Monekosso acknowledged at paragraph 9 of her second report, that there were no reported cases of female spouses being prosecuted for adultery under Article 391.

210. Having finally accepted that the appellant would not be prosecuted by the law, she then insisted that the appellant would face punishment by traditional methods in her home town. She "did not think the law would consider her legally married…" and accepted that the appellant would "not be prosecuted by the law – but by traditional methods in her home town".

211. In that regard we would refer to the following extract from our record:

> "Ms Kiss: You say family and community members may also apply disciplinary procedures?
>
> Ms Monekosso: I made a mistake.

Q. I have obtained the documents in relation to which you have sourced that claim (Ssenyonjo International Law Policy the Family 2007**). It seems you have not added that it actually relates <u>to Uganda</u> why didn't you mention it?**

Ms Monekosso: **I think I made a very big mistake maybe I was doing some research.**

Chairman: **Why did you not bring this matter to our attention of your own volition?**

Ms Monekosso: **It was only this morning when I saw this document – no one asked me to bring it to your attention.**

Ms Kiss: **This is a document upon which you rely – surely you cannot say you didn't know all that was in the document till this morning?**

A. **The contents of that document had nothing to do with what I wrote in that paragraph. This document talks of the Constitution in relation to Uganda and the rights of women, I am talking about traditional punishment - I am so sorry.**

Ms Kiss: **How can you say what you said in paragraph 57 and source it to an unsound document which is talking about another country to that which you are referring to in this report?**

Ms Monekosso: **I made a mistake."** (Emphasis added)

212. We turn now to what appears to have been Ms Monekosso's essential source of information on the Douala, namely that gleaned from Ms Diabate. For the reasons we have given, the weight that we attach to this information is limited. Ms Diabate is the Training Officer of the Association of Women Jurists of the Ivory Coast, a practising advocate of uncertain experience. This does not assist us in evaluating her evidence.

213. Having obtained the evidence of Ms Diabate, Ms Monekosso does not appear to have attempted to verify it through any independent sources. When referred to the US State Department Reports, in which there were no known incidents of resorts to physical punishment, Ms Monekosso's attitude was somewhat dismissive.

214. She admitted that she was mistaken in relation to earlier evidence that women in the Ivory Coast did not have property rights.

215. Ms Monekosso continued that there was:

> "… something I noticed in the Civil Code. Ms D's husband's age is very significant indeed. In 2003 he was 70 meaning today 75 and if one considers the birth certification in the olden days he could be 80 but the 1964 Law which abolished polygamy and brought about civil marriage, did not abolish the existing polygamous marriage or the customary marriage".

216. At this point in her evidence, Ms Monekosso was reminded that the appellant's marriage took place in 2004/2005 and therefore the Marriage Act of 1964 would not have permitted a polygamous marriage that post-dated it.

217. We are thus reinforced in our view that Ms Monekosso's evidence should be approached with care and we are not persuaded (unless the legal provisions permitting it were strictly proved) that a marriage celebrated after 1964 might be a lawful polygamous marriage, even if the first marriage had been conducted before 1964.

The FCO Political Officer's letter of 19 December 2008

218. The letter of 19 December 2008 stated as follows:

> "This answer has been papered by the FCO Political Officer who has been at post in Cote d'Ivoire since July 2007. The Political Officer spoke to LIDHO, a local Human Rights NGO, a member of the Human Rights Division of the UN Mission in Cote d'Ivoire and a Dioula community leader resident in Abidjan and a member of the Association of Women Jurists in Cote d'Ivoire in order to prepare this answer.
>
> The only legally recognised form of marriage in Cote d'Ivoire is a civil wedding. Religious and customary marriage services do not have legal status although they are widespread. According to all interlocutors it is common practice in Northern Cote d'Ivoire (including for members of the Dioula community) for customary marriage to be religious service conducted by an Imam.
>
> The legal age for marriage in Cote d'Ivoire is 18 for girls and 21 for men. However, all interlocutors confirmed that customary practice allows girls to be married at any time after puberty and this is generally tolerated.
>
> Forced marriage of minors is common in rural areas of Cote d'Ivoire. ONUCI (the UN Mission to Cote d'Ivoire) Human Rights Division are regularly asked to intervene before a marriage takes place but their scope is limited. They talk to the girl's family and explain that under age marriage is illegal. In most cases this is proven adequate to stop or postpone the marriages. On some occasions ONUCI has consulted the Children's Law Courts and the judges then speak to the parents, the threat of prosecution has today proven sufficient deterrent in cases where ONUCI has been involved. ONUCI believes that as under age marriages are not considered unusual therefore the legal systems are likely to get involved unless one party brings a complaint.
>
> I have been unable to find statistics for the number of divorces granted in Cote d'Ivoire. The ONUCI Human Rights Officer and the representatives of all LIDHO believe that legal divorces are rare. In part this is due to the small proportion of unions that are legalised. A civil marriage can be dissolved in a court of law. Either party may start divorce proceedings although, it is the impression of the LIDHO representatives that judges tend to set the burden of proof higher for women asking for

a divorce than for men. No court process is required to dissolve customary or religious marriages as they do not have legal status in Cote d'Ivoire.

According to the member of the Dioula community I spoke with, most Dioula marriages are blessed by an Imam. An Imam could be asked to dissolve the marriage but this is purely for religious reasons, it would not be necessary for legal ones. Should one party to a customary or religious marriage wish to remarry there is no legal obstacle, the other party would have no legal recourse to oppose the marriage. I was told by the Dioula community leader that it is straightforward for a man to repudiate a wife married under customary traditions. It is considerably more difficult for a wife to do this, because her family will try to keep the marriage together.

The Dioula community member and the representatives of the Association of Women Jurists stress the fact that families play an important role both in forming an alliance, settling any problems during a marriage, and in dissolving it. Families will endeavour to stop a marriage breaking down as it would dishonour the family. Parents may not accept the daughter back into their home if she leaves her husband and a woman who has left her husband may have difficulty finding a second husband in the same village. But this varies on a case by case basis.

Customary practices can vary from village to village in the area of handling a separation or infidelity. None of the people consulted had ever heard of any sort of traditional punishment for adultery. The NGO representatives pointed out that a legal charge of adultery would be difficult to defend in court when the marriage does not have legal status. The NGO representatives and the member of the Dioula community said that a common traditional marriage in Cote d'Ivoire would be for the father of a child born to another man's wife to apologise and settle the matter with the woman's family and/or her first husband. This would take the form of family representatives meeting to discuss the matter and usually settling damages (this could mean the return of dowry/payment of new dowry/payments relating to the maintenance of wife and/or child. These negotiations are usually undertaken by senior family members of all parties. They felt that it is highly unlikely that negotiations would be conducted directly by those involved. In addition my interlocutors from the Human Rights field said that as forced marriages are illegal (but happen) village community leaders would be reluctant to seek legal intervention as this would risk scrutiny of their affairs.

Under Article 391 of Ivoirian law both husbands and wives can be convicted of adultery and given a sentence between 2 months and one a year. Charges must be brought by the injured party. It should be noted that the law only applies to legally recognised marriages. No one I consulted had ever heard of women of Dioula ethnicity being subject to any form of ritual punishment if they have been accused of adultery or of having an illegitimate child. It is possible that traditions vary from village to village but this is not standard or widespread Dioula practice.

The representative of the Dioula community said that in Dioula society it is unlikely that a woman would be expected to speak for herself and would not be expected to undergo any sort of public ceremony or be tried by village elders. If a problem needed to be solved the normal course of action would be for families to meet to agree reparations if for example she was pregnant and the father was not her husband. None of my interlocators had ever heard talk of a purification ceremony in such a case. Purification ceremonies are limited to puberty and all FGM initiations. They are

conducted in private with no men involved. None of the cases consulted had heard of cases where a village would subject a woman with an illegitimate child to punishment or threaten the life of the child.

A woman who has left her husband may have difficulty being accepted by her immediate family. But this is unlikely to extend to being ostracised by all members of the community, or by the wider family living outside the village.

Although frowned upon in rural areas, the member of the Dioula community and the NGO representatives believe that it is common in Cote d'Ivoire for women to have illegitimate children. In towns, such as Abidjan, it is normal for couples only to marry after the birth of one or two children. This also applies in Dioula communities. According to the member of the Dioula community, a woman returning to her village with illegitimate children would be accepted although it would be preferable for her to be cohabiting with the father of the child or children. This may vary from village to village and family to family.

There are reports of children disappearing and unconfirmed rumours of ritualistic killing of children in Cote d'Ivoire. This is confirmed by media stories and children's NGOs. There is no evidence to suggest that this is in any way linked to the elections nor that this practice is widespread. The police and military in Cote d'Ivoire can be intimidating and many regularly ask for bribes but I am not aware of evidence to suggest that police target women with illegitimate children. None of my interlocutors raised this as a particular problem.

The Dioula live in a large area across the north east of Cote d'Ivoire around the town of Odienne. The Dioula also live in Mali, Burkina Faso and Guinea. According to the Dioula community representative they are seasonally nomadic, moving with their livestock although they have a paternal village to which they will return if the rains permit.

Communities in Cote d'Ivoire retain a distinct ethnic identity but there is much intermarriage and communities live side by side. According to the Dioula community representative a single Dioula woman with a child will be looked after by her community until she can stand on her own feet. She would also be able to live alongside other communities. According to the representatives of Women Jurists a single mother is vulnerable and may have problems being accepted by her family if she cannot support herself, but a single woman able to earn enough to look after herself and any children is unlikely to have difficulty to be accepted by her community."

219. This letter was a response to an earlier letter of 10 November 2008 which had been placed before us at the hearing of 24 November 2008. Mr Bedford had challenged the weight that should be attached to that earlier letter from the Embassy. Mr Bedford complained that the identity of the Political Officer was not known nor anything about his or her standing, educational background, experience, expertise or material on which he or she had relied. Mr Bedford complained that the points raised by the Political Officer could and should have been, if not put to the expert, dealt with earlier. The responses from the Political Officer clearly still had to be put to Ms Monekosso for her consideration.

220. Ms Kiss had accepted that her request to the Embassy was received after the earlier hearing in October 2008. It was on 8 October 2008 when the Home Office had received Ms Monekosso's second report and Ms Kiss thus raised questions of the Political Officer that needed to be answered.

221. It was for these reasons that the November 2008 hearing had been adjourned. We gave the following directions, amongst others:

> "1. The respondent to ask the Political Officer who authored the letter of 10 November 2008 to give his/her reasons for remaining anonymous or if not to reveal his/her identity.
> 2. To provide details of his/her standing, expertise and educational background (we do not see how the writers gender would be relevant).
> 3. To identify the sources of the information (where applicable) in the respective paragraphs of the letter.
> 4. Such information will be required from the Political Officer in writing to be served on the Tribunal and the appellant's solicitors no later than Monday 22 December 2008.
> 5. The appellant is at liberty to obtain and serve upon the Tribunal and the respondent any written response from the appellant's expert, Ms Monekosso, no later than Monday 12 January 2009.
> 6. The respondent must notify the Tribunal in writing no later than 22 December 2008 as to whether a video/telephone link with Abidjan is technically possible in order to secure the Political Officer's oral evidence and if so whether the Political Officer concerned is willing and able to give such oral evidence."

222. The respondent's response was the letter of 19 December 2008.

223. The Tribunal subsequently received a letter dated 12 January 2009 from Peter Jones who described himself as Deputy Director, Migration at the Foreign and Commonwealth Office. The letter referred to the present case and stated as follows:

> "Following a request by the UK Border Agency, the British Embassy in Abidjan obtained information in relation to certain issues regarding customary marriage in d'Ivoire. This was provided in a letter from the Embassy dated 10 November 2009, which was subsequently submitted by UKBA as evidence in the above case.
>
> We understand that the Senior Immigration Judge in the case directed that the author of the letter should clearly identify the sources of the information provided. Accordingly, the letter has been re-cast, clearly attributing each piece of information to the source or sources it was obtained from. We hope that this would be of assistance. We understand that the Senior Immigration Judge also directed that the Political Officer who wrote the letter, should give reasons for remaining anonymous and provide details of her standing, experience and educational background; and that she should take part as a witness if practically possible.
>
> The author of the letter has indicated how long she has been in her current post. However, we would prefer that author did not provide further personal details or appear as a witness, for the following reasons:

- The author simply collected the information from the identified sources. She is not the source of the information herself and cannot expand upon the information supplied. She should therefore not be seen as an 'expert'.

- In our view, the authority of the letter lies in the fact that it has been issued by the British Embassy in Abidjan, rather than the personal credentials of the individual who provided it.

- Such letters are regularly provided by posts abroad to UKBA and often have input from senior/legal staff as well as the actual signatory. If embassy staff were to be routinely required to give evidence in cases where these letters are used in evidence, there would be considerable practical and resource implications, which would likely impact on the ability to provide this service.

I hope this is helpful. If any further information is required by the Tribunal, we will be happy to try to provide it on the same basis as the revised letter".

224. There was attached to Mr Jones' letter the revised letter dated 22 December 2008 to which he had referred. It read as follows:

> "I attach a copy the evidence supplied by the FCO in response to the Tribunal's directions at the hearing.
>
> The Political Officer has revised her document to enable specific identification of the sources of the information. However, the Political Officer would prefer not to be identified or take part as a witness as she has simply gathered the information from the identified sources and cannot add to the information supplied as she is not the direct source of that evidence. The Tribunal is respectfully reminded that the Asylum and Immigration Procedure Rules 2005 do not give it power to issue a summons outside the United Kingdom (Rule 50(1)). It is believed this restriction to its powers may well be a reflection of the major resource implications that would arise where FCO personnel abroad are to be required to participate in AIT hearings.
>
> Although the FCO Political Officer has noted that she has been at post since July 2007, having discussed the matter with COI Service, it is not considered appropriate to provide details of her 'standing– expertise/experience/educational background' as requested. It is held that the authority of 'FCO advice' lies not in the personal credential of the individual who has supplied it, but in the fact that the FCO has authorised that person to speak for them, often with input from other senior colleagues."

225. At the resumed hearing on 19 January 2009, Ms Monekosso had not replied to the observations of the Political Officer. Ms Kiss reminded us that the new evidence was served in November 2008 and that the respondent had followed the directions and provided more details of the sources of the Political Officer's information. That information had been provided to Ms Monekosso on 22 December 2008 and if Ms Monekosso chose not to respond then Ms Kiss invited the Tribunal to draw their conclusions from her lack of response; that there was no need for Ms Monekosso to attend any further and a statement would be sufficient.

226. We wanted to hear Ms Monekosso's response and the hearing was adjourned for her to attend.

227. At the resumed hearing, no further statement from Ms Monekosso was served upon the Tribunal. However, Ms Monekosso told us that she had read the report and properly analysed it. No doubt mindful of representations made by Mr Bedford in her presence, as to the weight the Tribunal should attach to the report, Ms Monekosso told us that she could not identify the person who wrote the report or the name and address. She was, however, reminded in that regard that the address was the British Embassy in Abidjan. Ms Monekosso continued that she was not aware of the credentials or titles of the organisations that had been mentioned or the identities of the informants.

228. Ms Monekosso made it clear that she had no personal knowledge of Douala but insisted that she had demonstrated in both reports her knowledge of Douala history and geographical location. She sought to demonstrate that she could simply not identify the specific rituals of the Muslim community in Odienne. Ms Monekosso had no other observations to make in relation to the FCO report.

229. The Political Officer did not attend before us. Mr Bedford accepted that it might not be reasonable for the officer to come to the United Kingdom but he maintained that the Officer's absence went to the weight to be attached to the material. Miss Kiss submitted that to ignore the evidence of the Political Officer would be to deprive the Tribunal of a proper objective assessment of the situation in the Ivory Coast.

230. Ms Kiss reminded us of what the Tribunal had said in LP (Sri Lanka) CG [2007] UKAIT 00076. The nature of work of British Embassy officers meant that they had connections with the countries which they worked in, as in the case of the Political Officer who had been in post at the Ivory Coast since July 2007. Although the persons to whom the Political Officer spoke were not named, a synopsis of the area from which those people came was given. These were relevant sources.

231. Mr Bedford began his closing submissions to us on 9 June 2009 and in the course of those submissions he made reference to the risk of rape to a lone woman without support and continued that:

> "… In such circumstances women are likely to be exposed to such risk. See for example the risk of such a person at roadblocks.
>
> If you have got a house in a community then the likelihood is that you can avoid places of extreme danger. These are matters relevant to the issue of internal relocation – because she can still be alone and without support in Abidjan – the appellant would be at risk for example at roadblocks and would not be able to avoid that risk. This is sure to be the position right up to the USSD Report of 2009."

232. Mr Bedford returned to his submissions in relation to "roadblocks" later in his submissions when he told us as follows:

> "Insofar as the Ivory Coast is concerned the fact of roadblocks is relevant to this issue because the appellant would be vulnerable to risk at such blocks given that she was homeless, unemployed and without community support. The objective evidence is that such women were at risk of being raped/sexually exploited and everyone is subject to extortion at these places, subject to the demands of bandits, police who man the roadblocks.
>
> The objective evidence does not say where the roadblocks are".

233. We asked Mr Bedford if he appreciated the importance of what he had just stated in terms of our assessment as to whether or not the appellant could safely relocate to Abidjan. Could he for example provide us with any material that indicated the prevalence or otherwise of such roadblocks in Abidjan? Were they for instance prevalent within the city or did they only exist at the entrance and exit of the city and other such cities? The Tribunal needed to have some information as to the prevalence of the roadblocks to which Mr Bedford referred so as to determine the level of risk to women that he sought to identify. Mr Bedford said that he was unaware of any background material that provided this information.

234. His comments elicited a response in a further letter from the Political Officer in Abidjan dated 30 July 2009 that we set out below:

> "This answer has been prepared by the FCO Political Officer who has been at post in Cote d'Ivoire since July 2007. It is based on my own experiences and observations from living the Cote d'Ivoire and travelling extensively both within the capital Abidjan and around the country, together with information gathered during conversations with Ivoirians in the past two years.
>
> Road blocks have significantly decreased over the period that I have been observing Cote d'Ivoire and they no longer pose a serious safety problem, although there are still instances of petty police corruption at roadblocks and checkpoints.
>
> Firstly, it is worth pointing out that the only roadblocks now seen in Abidjan are those mounted by uniformed men, who are now instructed to wear clearly visible identity cards. The roadblocks are better described as checkpoints and take the form of random vehicle checks, which often include a check on a passenger's ID papers. Passengers whose papers are in order do not usually encounter difficulties. If a passenger does not have ID with them the police will either accept a small bribe (between 1-2,000 CFA about 70p-£1.50) or will make the person wait for hours or take them to the police station until a 'fine' is produced. The main targets though are taxi drivers who will be asked to pay a 'fine' if there is anything wrong with their papers or their vehicle.
>
> Secondly the *Forces Nouvelles* and the Ivorian Army jointly agreed to reduce roadblocks and checkpoints across the country. There are now official checkpoints on the way into and out of the main cities. These are staffed by a mixture of police, military and customs officers depending on their location. They are busy areas and the officers

concerned do occasionally take advantage of their position to impose impromptu 'fines' or request bribes. But I am not aware of reports of violence targeting women at these checkpoints since the implementation of the Ouagadougou Accord in 2007. Prior to the Accord there were instances of violence targeting women as set out in the Human Rights Watch Report on sexual violence in Cote d'Ivoire in August 2007.

There continues to be a degree of insecurity on rural roads with bandits holding up vehicles to rob a passenger; they usually target cash and cell phones.

FCO travel advice to British Citizens regarding Checkpoints states:

> *'Throughout the country, including in Abidjan, the army and police operate checkpoints, particularly after dark at city or town limits they target taxis and civilian vehicles. You should avoid confrontation with the police and security forces and co-operate politely if you need to pass through one. Police will request vehicle documents and passenger ID. The authorities have launched a crackdown on racketeering which appears to be reducing random demands for money (and making it harder for drivers to sidestep regulations). They have launched a hot line to report racketeering – TEL: 20 21 82 or 06 57 00 93. Police will frequently impose small fines. You should expect them to provide a receipt for any fine paid. If your car and papers are in order you should be able to pass through without paying although this may necessitate a long and patient wait.*
>
> *Some access roads to major roads are closed from midnight to 0600. This applies to the western approach road to Abidjan, Yamoussoukro, San Pedro and all other major towns in the south. You should seek local advice about whether a 'corridor' is in operation. Checkpoints will be more rigorous at night and it is better to avoid attempting to pass through after dark'."*

235. At the resumed hearing on 18 August 2009, Ms Kiss was able to further clarify to us that the Political Officer's recent letter was cross referenced to a UNOCI Weekly Report but that the respondent's attempts to access the document were abortive as UNOCI considered the document to be restricted and efforts by the FCO Legal Officer in New York in approaching UNOCI for permission to disclose the relevant extract relating to Freedom of Movement from their report had yet to be forthcoming. Ms Kiss had initially sought an adjournment to obtain this document but on reflection informed us that she withdrew that adjournment request but asked us to find and take note of the Political Officer's own experience based on over two years of her appointment at Post.

236. We have concluded that we can place significant weight on the clarificatory evidence submitted by the Political Officer in Abidjan in her letters of 19 December 2008 and 13 July 2009. In reaching that conclusion, we have also been assisted by the letter of explanation from Peter Jones the Deputy Director of Migration at the Foreign and Commonwealth Office to the Tribunal dated 12 January 2009.

237. It was Mr Bedford's submission, that the Political Officer's replies were compiled by an anonymous author citing anonymous sources whose identities were concealed and that there was no good reason given for withholding the identity of the author or indeed the identities of the various sources.

238. Mr Bedford prayed in aid, the principles enunciated by the House of Lords in R v Davis [2008] UKHL 36. However subsequently in his closing submissions to us, Mr Bedford accepted that their Lordships in Davis were dealing with criminal law evidence in which they made reference to the case of Murphy [1990] NI 306 where it was held that the criminal courts could take steps to protect witnesses in certain circumstances. Issues arose as to the use of anonymous witnesses and whether that as such would contravene the provisions of Article 6 of the European Convention. Their Lordships were thus concerned with the possible fairness or unfairness of any trial in the light of Article 6. It was, however, recognised by their Lordships that the Strasbourg jurisprudence properly understood did not condemn the use of protected measures.

239. We have concluded that Davis concerned issues relating to where proof 'beyond reasonable doubt' was required and that as such, it is distinguishable from the present case, where the requisite standard of proof is lower than the balance of probability. With great respect to Mr Bedford, and in fairness to him, he did not in any event seek to pursue his reliance on this case further, with any particular vigour.

240. We do however find most persuasive the helpful guidance of the Tribunal in LP (LTTE area – Tamils – Colombo – risk? Sri Lanka) [2007] UKAIT 00076. Although this was a country guidance case relating to the safety of return of Tamils to Sri Lanka, in particular on arrival at Colombo Airport, a challenge arose in that case to letters provided by the British High Commission (BHC) from Colombo. In that regard the Tribunal observed at paragraph 204 that such letters:

> "… appear to be an innovation on the part of the respondent for such country guidance cases. Whilst on the odd occasion there are reports provided by High Commissions and diplomatic representatives in many of the countries where we have to assess risk for applicants on return, this is perhaps one of the first times where a series of letters on topical issues have been provided. We note however that in other countries and for other situations much of this material may in fact be passed to the COIR and is sourced and attributed. However, we did find this new practice to be a particular use in the careful balancing task we have to undertake. We would strongly endorse the comments made by Buxton LJ in AH, IG and NM (Sudan) v SSHD [2007] EWCA Civ 297, at paragraph 55, that whilst the onus of proof is clearly on the applicant 'it does mean that the content of primary evidence going towards the wider situation in the country in question depends on what experts are known to and readily to give evidence on behalf of the applicants' he then rightly states:
>
> > 'But it is the Secretary of State who is likely to have the most comprehensive knowledge of the conditions in foreign countries, not least through diplomatic and consular channels and if decisions with enhanced status of country guidance cases are to be made about those countries it might seem appropriate for the Secretary of State directly to contribute to that knowledge'."

241. The Tribunal continued at paragraph 205 as follows:

> "Mr Mackenzie challenged the weight that should be given to BHC or like information if it is not sourced in a similar manner to that expected from expert witnesses and other reporting authorities. Whilst this on the face of it has some obvious validity, we consider that the advice and information provided in such letters must be given significant weight as it is compiled by professional diplomats we consider are skilled and trained in the observation and acquisition of knowledge in the countries where they are based. Unless there are significant reasons why such evidence is to be treated at biased or unreliable, as appears to be the case with some of Dr Smith's evidence, we do not consider that omissions from sources should of necessity negate the value of such reports. Often they may arise from sources that cannot be disclosed and also often they will be well informed opinion based on lengthy experience and observation by the diplomatic post. It should also be noted that these are reports from a permanent diplomatic post and thus must be compared with a temporary or occasional procedure of a researcher. Their opinion should be given equal value to that of a well-informed, balanced country expert who provides sources and evidence of his or her expertise. Such BHC/diplomatic post reports or information, in the interests of balanced determinations, should therefore, in our view, be encouraged as much as the information coming from expert witnesses, with the objective of obtaining the highest quality of country guidance determinations".

242. We thus attach weight to the letters provided by the Political Officer at post in the British Embassy in Abidjan, for like reason. Fact finding mission reports often contain information where the identity of the source was often not disclosed and this appeared to raise no difficulty. It is in the nature of country information that the Tribunal has to take into account information sourced in a variety of ways. The Tribunal is entitled to attach weight to the fact that a British Embassy has vouchsafed that one of its staff has furnished information in good faith. (See also for example, BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098). As part of its consideration, the provenance of the information has to be considered. In the end, however, it is a matter of judgment as to the weight that should be attached to the material.

243. We do not accept Mr Bedford's invitation to select only those parts of the FCO's evidence that are consistent with the evidence of Ms Monekosso. That would not advance the evidence and would emasculate its effect to an extent that would not provide us with material that might assist us.

244. We can appreciate the FCO's position that the authority in their letters, lies in the fact that they were issued from the British Embassy in Abidjan rather than the personal credentials of the individual who provided it. As Mr Jones, the Deputy Director of Migration, pointed out in his letter to us of 12 January 2009, such letters were regularly provided by posts abroad to the UKBA and often had input from senior/legal staff as well as the actual signatory. If embassy staff were to be routinely required to give evidence in cases where those letters were used in evidence, there would be considerable practical and resource implications that would likely impact on the ability to provide this service.

245. It was asserted that the appellant would be persecuted on the basis of her adultery by her family, her tribe and the authorities. It was common ground that the appellant

was forced into a customary marriage, not marriage by ordinance. Consequently the contention that she would be subject to prosecution or persecution by the authorities is a matter that we do not accept. Although those who commit adultery following marriage by ordnance might be subject to penalties under Articles 391 of the Penal Code, penalties apply to both men and women but it simply cannot be applied to a woman within a customary marriage. Paragraph 9 of the original FCO letter supports this conclusion. Article 391 does not apply to the appellant.

246. Paragraph 11 of the FCO letter accepts that a woman who has left her "customary" husband might have difficulties being re-accepted by her immediate family.

247. Further the appellant claimed that she was forcibly married in a customary ceremony but the FCO letter stated that:

> "An Imam could be asked to dissolve the marriage but this would be for purely religious reasons not legal ones. Should one party to a customary marriage … wish to remarry there is no legal obstacle, the other party will have no legal recourse to a person's marriage. It is straightforward for a man to repudiate a wife married under customary traditions. It is considerably more difficult for a wife to do this because her family will try to keep the marriage together".

248. It follows that if the appellant's family forced her into a customary marriage whilst she was a minor (in contravention of the law), they cannot prevent the appellant repudiating the marriage.

249. The appellant also claimed that she would be persecuted by her Dioula tribe on the basis of her adultery. The FCO letter accepted that Dioula live in large areas across the North East of the Ivory Coast and that they were seasonally nomadic but the allegations submitted by the appellant and her expert, Ms Monekosso, regarding customary punishments of adulterous women was rejected. Ms Monekosso wrote at paragraph 11 of her second report that she had '*no personal knowledge of the rituals or punishments observed by the Muslim community in Odienne*'. Her evidence regarding violent ritual punishments and purification ceremonies was, as it turned out, based upon a combination of her 'Pan African' knowledge and responses from the Dioula Advocate Ms Diabate, to an undisclosed question obtained without that person's awareness of the purpose to which her responses were to be put.

250. At paragraph 57 of Ms Monekosso's first report she quoted a source that asserted:

> "In secular matters most cases are (dealt with) in informal hearings, often convened by the village chief but in any event family and community members may also apply disciplinary procedures, even trying and torturing individuals for serious violations of norms such as adultery".

251. The document she quoted from related to Uganda and she had not since submitted alternative written objective evidence demonstrating such practices in the Ivory Coast.

252. In contrast, the FCO Political Officer contacted four apparently reliable sources and in paragraph 20 of the Officer's first letter stated:

> "If a problem needed to be solved the normal course of action would be for families to meet to agree reparations … None of my interlocutors had ever heard talk of a purification ceremony in such a case … None of the sources consulted had heard of cases where a village would subject a woman with an illegitimate child to punishment or threatening the life of the child".

253. This is information of significantly greater breadth. We have also noted that the USSD 2007 Report also states that '*dispute resolution was by extended debate with no known incidence of resort to physical punishment*'. Such an observation correlates with the December FCO letter.

254. The appellant's assertion that she would be ostracised on the basis of her adultery and being a single mother with an illegitimate child was not supported by the Political Officer in her letter of 19 December 2008 where she stated:

> "Although frowned upon in rural areas, the member of the Dioula community and the NGO representatives believe that it is common in Cote D'Ivoire for women to have illegitimate children. In towns, such as Abidjan, it is normal for couples to only marry after the birth of one or two children. This also applies in Douala communities. According to the member of the Dioula community, a woman returning to her village with illegitimate children would be accepted although it would be preferable for her to be co-habiting with the father of the child or children. This may vary from village to village and family to family".

255. Thus whilst it was accepted that a single woman with an illegitimate child may be '*frowned up in rural areas* 'it was not accepted by the respondent, that treatment of this nature was reasonably likely to bring the appellant within either Convention. In any event, the evidence from the Political Officer was that in towns, it was considered the norm for couples to marry only after the birth of one or two children.

256. The Tribunal in the present case have been presented with evidence effectively from two sources, Ms Monekosso and by the FCO. We prefer the evidence of the Foreign and Commonwealth Office. Thus the risk faced by the appellant is limited to the personal animosity felt by her husband and his family towards the appellant's conduct in Odienne, a place where she would not have others to support or protect. We are not satisfied this ill-will will result in violence but we do consider that it is likely to result in ostracism and marginalisation.

Assessment – General

257. Mr Bedford relied upon the comparison between the 21st Progress report all the Secretary-General on the United Nations Operation in Cote d'Ivoire and the earlier reports. In the 20th report of 13 April 2009, for example, it is said:

> "The overall security situation in Cote D'Ivoire has remained stable, with largely unhindered freedom of movement of people, goods and services throughout the country, although several incidents during the reporting period highlighted the continuing fragility of the security situation in the country".

258. He relied upon this passage as evidencing deterioration in the security position of the country compared with that of 7 July 2009. The equivalent passage in the 19th progress report of a January 2009 also speaks of the fragility of the security situation and refers to the overall improvement in security on the one hand and other destabilises events on the other, such as the continued existence of armed militias and violent youth groups, the incomplete cantonment of former combatants of *Forces Nouvelles*, the difficulties encountered by the government to pay allowances and other factors.

259. Taken together, we do not regard the obvious differences that exist in the phraseology in the reports between January 2009 and July 2009 as establishing a general deterioration in the security situation. Even if the reporting of events appears to put the progress back, the overall picture is one of continuing stability.

260. Mr Bedford relied upon a statement dated 24 April 2006 from the Secretary General's Representative on the *Human Rights of Internally Displaced Persons* (pub. 25 April 2006). In it the Representative spoke of the fact that the Ivory Coast was then facing a protection crisis due to the lack of an adequate response to the needs of internally displaced persons. He spoke of the state of destitution in which many of the displaced persons were forced to live and the difficulties created by the lack of access to food, education and healthcare. These difficulties were particularly felt by children and had resulted, in some cases, in their exploitation.

261. The statement of April 2006 must, however, be read in the light of the later material to which we have earlier referred.

262. By July 2007, generally, UNHCR considered that conditions in the Ivory Coast had continued to improve and a framework for lasting peace was in place. Nevertheless, as the position paper highlighted, violent incidents and inter-communal tension remained a cause of some concern in certain parts of the country. Those areas had to be monitored and their concerns addressed by the new Government, but it was and remains UNHCR's position that the current conditions can no longer be characterized as a situation of generalized violence.

263. Ms Kiss produced the Operational Guidance Note (OGN) of 13 February 2009.

264. We are of the view that this document should not be regarded as country information. The Country Information and Policy Unit of the Home Office last prepared an Assessment in October 2001. These were followed by a series of Bulletins, the last of which was published in June 2005. Since then, the Home Office's own material has been in the form of Operational Guidance Notes. These OGNs are not produced by the Country of Information Service. The current COIS reports are a

selection of background material provided from sources other than the Home Office and without comment or analysis. Whilst the editorial selection of the passages is a matter of choice for the editor of the Report, (and therefore potentially liable to subjectivity), he comes from a part of the Home Office, RDS, that is independent of policymakers and caseworkers. The Research, Development, Statistics section of the Home Office describes itself as made up of specialist staff, communication professionals and scientists. The selection of material is subject to peer review and the overall scrutiny of the Chief Inspector of the Border Agency acting through the Independent Advisory Group on Country Information, formerly the Secretary of State's Advisory Panel on Country Information, (APCI).

265. Operational Guidance Notes fall into a different category. They are, in essence, policy statements. On many occasions, the Operational Guidance Notes will be supported by references to background material and may have sought assistance from RDS, as well as Tribunal case law taken from reported decisions. Insofar as they include background material, the background material is to be regarded like any other background information, subject to the fact that its selection may not have the same objectivity and is not independently scrutinised.

266. In the case of the Ivory Coast Operational Guidance Note, much of the contents are supported by references to key documents and the FCO Country Profile and other background material. Such background material must be evaluated in the normal way. Insofar as its contents are a statement of policy, it should be regarded as the Secretary of State's submission. It should not be regarded as country information in the normal sense but as the caseworker's own assessment of that material. As such, it is to be assessed on its merits but should not be treated as if it were an expert report or having greater authority solely by reason of its coming from the UK Border Agency.

267. Ms Monekosso considered that in practice the State failed to protect women generally from domestic violence and spousal rape and in that regard Ms Monekosso referred to a 2006 US State Department Report that stated:

> "The law does not define domestic violence which was a serious problem. Female victims of domestic violence suffered severe social stigma and as a result often did not report or discuss domestic violence".

268. In our consideration we prefer to rely on the 2008 report, (in similar terms) to which we have referred above.

269. In some areas of the Ivory Coast, the practice of FGM is almost universal. In contrast, it cannot be said that all women in the urban areas face FGM. Once again we do not say that there will be no-one at risk in an urban area because this will depend on the specific dynamics of the community in which an applicant finds herself. It is unlikely that the pressure is anything like as great amongst well-educated sections of society or among the well-off. Where the parents of a child are against the practice, we see no mechanism by which their wishes will not determine the issue. No

evidence of physical coercion against parents in order to effect circumcision on their daughters was produced before us. In other words, there is no evidence that the non-circumcised are abducted in order to effect FGM in the face of parental opposition.

270. The most we can say is that amongst a traditional community there is likely to be social pressure exerted to conform to the *mores* of the community and, depending on the attitude and fortitude of the individuals concerned, the pressure may or may not be capable of being withstood. In practice, this will not arise in the majority of cases in a traditional community because most will willingly adopt the practice as a rite of passage for whatever reasons they may have. Social pressure to conform, however, does not inevitably lead to parents succumbing to it if they are set against the practice.

271. For the purposes of this determination, it is necessary to consider the risk on return to those parts of the Ivory Coast where traditional practices are much more pervasive. The Multiple Indicator Cluster Survey Programme developed by UNICEF provides a valuable insight into the substantial variation that exists between traditional rural areas, particularly in the north, the central region and urban areas. There is, for example, evidence that the practice of FGM is as high as 88% in some areas but as low as 13% in others. Perhaps not surprisingly, attitudes towards domestic violence are similarly variable. In rural areas, some 72% treat wife-battering as acceptable and the figure reaches as high as 94% in some parts of the north but significantly less in urban areas. In Abidjan, the survey indicated less than one-half (44%) of respondents considered a husband had a right to use violence upon his spouse.

272. Literacy rates also demonstrate substantial variations. 98% of women aged 60 and over receive no education according to information obtained in 1994. As we set out in paragraph 94, between the ages of 21 and 24, male students accounted for some 19% whereas women, a mere 4%.

273. A traditional society is likely to hold conservative views in relation to FGM, a woman's role in society, education for women, the value of arranged marriages, a wife's duty of obedience to her husband, female chastity outside marriage and female fidelity within marriage, amongst other things.

Sufficiency of protection

274. We have already set out the problems faced by women in the Ivory Coast. It is as well to recall that in Fornah, Lord Bingham when considering the definition of a particular social group in the case of women in Sierra Leone, chose the broadest classification on the clear evidence that women shared a common characteristic because they were forced into a position of social inferiority compared with men. If FGM afforded a means by which a woman was accepted into Sierra Leonean culture,

it did so on the basis of institutionalised inferiority as paragraph 31 of his opinion makes clear:

> "FGM is an extreme expression of the discrimination to which all women in Sierra Leone are subject, as much those who have already undergone the process as those who have not."

275. This inferiority is seen in many other ways and we have probably only referred to some of them. Hence the prevalence of domestic violence, discrimination in levels of education between men and women, the discriminatory treatment of women in the legal system as it affects women guilty of adultery compared with men and the pervasive influence of traditional practices which perpetuate the stereotypical image of women as socially inferior are all examples of the methods by which women are discriminated against. To this might also be added the informal resistance to the employment of women in some areas of the job market. We may have fallen short of agreeing with Ms Monekosso that these techniques are coercive in the sense that they are backed by sanctions or punishments but they remain a pervasive influence.

276. Whilst the prevalence of these attitudes varies from area to area, the fact that such attitudes survive is evidence of the State's reluctance or inability to stamp them out. It seems to us unlikely that the arm of the state operates with consistent force throughout the country. Indeed, it cannot do so if the law provides for the criminalisation of a particular form of conduct and yet the incidence of the practice suggests in some areas it is almost universal. Once again, however, we would caution about making generalisations about the sufficiency of protection.

Internal Relocation –General

277. If a person who has been found to be a refugee in her home area seeks to relocate to another part of the Ivory Coast, the normal destination will be Abidjan but it may also be one of several urban centres. Abidjan will be able to offer opportunities for a returning refugee by way of accommodation, work and a variety of ethnic cultures. A single woman will be confronted with the difficulties attendant upon her status but she will not be at risk of persecution or serious harm for that reason alone. As a matter of common sense, the difficulties will be greater for a single woman with a child but we are satisfied Abidjan is able to provide an environment where those without a network of male or family support are able to lead a relatively normal life without the risk of destitution or being forced, through want, into beggary or prostitution. Nevertheless, such cases will require consideration on a case-by-case basis, paying particular attention to the support mechanisms that are likely to exist in a mixed urban area without significant evidence of fierce racial or ethnic divides.

278. There is a wide variation in attitudes towards women in different parts of the Ivory Coast. In particular there is a strong contrast between traditional rural communities, particularly in the North or Central regions when compared with Abidjan, a relatively cosmopolitan city of mixed ethnicity along with other urban cities.

279. This attitude impacts upon the risk faced by women of FGM, forced marriage, domestic violence, the effects of adultery and discrimination.

280. If in a particular area, a woman faces one of those risks, the state is unlikely to offer a sufficiency of protection in that area, in which case internal relocation may be possible without undue hardship.

281. We have said that there is a big variation from place to place and that a decision-maker must look at, on a case by case basis, the specific community from which the appellant comes to make an assessment of risk in the home area.

Conclusions on risk of persecution and Article 3

282. We have concluded that women in the Ivory Coast are capable of being members of a Particular Social Group and that the risks they may suffer from FGM, domestic violence and forced marriage are sufficiently serious to amount to persecutory treatment in the absence of a sufficiency of protection, but the risk is not universal and in particular is very much less likely in an urban area such as Abidjan.

283. There is the option of seeking protection by relocating in another part of the Ivory Coast.

284. We have already found that women are at risk of treatment serious enough to warrant the description, persecutory and crossing the threshold of Article 3.

Assessment of the appellant's evidence

285. We have the task of assessing the credibility of the appellant's further evidence before us and in so doing, we of course have given her credit for the fact that her account of her experiences in the Ivory Coast has been found to be credible. Even so, we do not accept that the appellant has been unable to maintain contact with her mother's best friend. She travelled there herself after leaving Odienne and must have acquired the means of locating her mother's friend. Nor are we satisfied, even to the lower standard of proof that she forgot to take the means of contacting her mother's friend. Indeed, the friend herself would have been anxious to know that the appellant had reached her destination safely. Whilst the appellant's own safety would have been of paramount importance, she remained there for three months and her departure was arranged during this period. There was therefore no precipitous departure when minds were so overwrought as to forget the obvious. The appellant's travel arrangements were orderly and planned. It is not likely that such an important point of contact would have been overlooked. If the appellant had realised she did not have the means of contacting her mother's friend whilst she travelled to the United Kingdom, we see little difficulty in the agent being asked to make contact.

286. This finding as we later explain, is not without its significance for it goes to the way in which people maintain links with the country from which they have fled and

which provide them with a means of making arrangements for their safe return. We are satisfied that the appellant was well aware of the significance of having friends to whom she might turn. She spoke of having only been able to turn to this particular friend of her mother but we also remain unpersuaded that there are not other friends or relatives on her mother's side or whom the appellant has befriended over the years she spent in Abidjan who were and remain sympathetic to her and who, like us, would immediately see the injustice of her father's conduct and would not wish to prejudice the appellant by revealing her presence in Abidjan to him or her husband's family. To do so would be highly dangerous to the appellant – as they would immediately recognise - and we do not think they would even contemplate doing so.

287. In paragraph 2.4 of Dr Perera's report, the doctor recorded the appellant as saying that she had nothing in Liverpool, no friends and that nobody came to see her. In her evidence to us, the appellant stated that this was not correct and that it was mistranslated. In 2008, she was attending college and had acquired a group of friends. We see no reason to doubt her evidence that, as a student, she is likely to have surrounded herself with friends and acquaintances.

288. During the course of the evidence, the appellant confirmed that she continued to see Dr Perera at two monthly intervals and that she also saw Ms Doocey once or twice a month. In her evidence to us she maintained that she has suicidal ideation and that she had told this to Dr Perera. It is apparent that this is contrary to Dr Perera's report and his conclusion that she had never expressed suicidal thoughts to him. We do not consider it remotely likely that Dr Perera would have omitted to mention this, had it been said by the appellant.

289. Nor do we consider that any misunderstanding can be attributed to the error on the part of an interpreter. In this context, we are talking about the appellant's thought processes. The conversation would not have been confined to a single word, even one of a technical nature, which an interpreter may have misheard or misunderstood. If Dr Perera had asked the appellant to talk about her feelings, the appellant would have been required to provide an answer. It does not seem to us that it is likely the answer would have been omitted in its entirety without someone realising a misunderstanding had arisen. We are sure that the reference in Dr Perera's report to the appellant expressing no suicidal ideation to him was because she did not do so. We do not accept that she did so and that her efforts were mistranslated.

290. The appellant confirmed that her dosage of sertraline had been increased to 150 mg per day. She also accepted that, although she had told Dr Perera that she was frightened of going out because of her feelings of paranoia, she had, since September 2007, been going to college on her own three or four times a week. Her son goes to school between Monday and Friday which he started in January 2009 but, before that, he attended the College Nursery. She was asked about Dr Perera's comments that she had told him there was nothing for her in Liverpool and that she had no friends. She accepted that she had said this to Ms Doocey just after she had arrived in Liverpool but denied she had repeated it to Dr Perera years later. She attributed the

error to the interpreter or to the possibility that the information had come from Ms Doocey. We do not consider either explanation to be likely. In our judgement, Dr Perera was reporting the appellant's own conversation with him, as his report suggests. We are satisfied that the appellant has exaggerated her sense of isolation when describing her life to Dr Perera.

Findings and conclusions

291. Our task is to determine:

(i) whether or not having regard to all of the evidence, the appellant can establish that she is a member of a particular social group, namely women in Ivorian society and that she is at risk of persecution for that reason – this will include a consideration of women who are victims of domestic violence and/or forced into marriage and the level of state protection available.

(ii) and/or whether she is at real risk of Article 3 level ill-treatment in her home town and if so, whether there is a sufficiency of protection available there or internal flight coupled with sufficiency of protection is a viable option.

The home area

292. Although the appellant was born in Daloa, as a result of the family's opposition to her parents' marriage, her parents settled in Abidjan where the appellant was brought up. This was, in a sense, their own way of resolving the effect of a marriage that did not meet the expectations of the community in which they lived. Following the death of her mother on 9 April 2003, the appellant, then aged 15, moved back to the area in which she was born. This was approximately 4 months after her mother's death. It was here that she was circumcised and where, some five months later and against her consent, she entered into an arranged traditional marriage with a 70-year old man. This would suggest the marriage took place at the beginning of 2004 or thereabouts. The appellant left her elderly husband in June 2005.

293. Accordingly, apart from the short period immediately following her birth, the appellant has only spent about two years in a traditional rural community. The first 15 years of her life or so were spent in Abidjan. When she left the village after the disaster of her marriage, the appellant returned to Abidjan where she remained with a family friend for 3 months and from where arrangements were made for her to travel to the United Kingdom.

294. By that time, B (the father of her child) had also returned to Abidjan and his current whereabouts are unknown.

295. Thus, Abidjan is the place of her upbringing but also the place where she would return. Notwithstanding the unhappy interlude during which she returned with her father to Odienne, this is not her home area in any real sense. Her father continues to live in Abidjan and, as far as we are aware, there would be no reason for her to return to Odienne. She has no relatives there whom she would wish to remain and the father of her son does not live there.

296. Whilst much of the evidence has been directed towards conditions in Daloa and Odienne, we do not regard these places as the home area in any meaningful sense when considering her asylum claim. Her home area is Abidjan and has been for almost her entire life. The exception is, of course, the period preceding and immediately after her marriage.

The risk of FGM

297. The appellant herself has undergone FGM and does not therefore face any further risk of the same. However, the background material demonstrates that, notwithstanding the government's attempts to outlaw the practice, it remains a common practice, particularly in the northern sections of the country. We would note, however, that the practice is variable and assessments of risk must properly take account of the wide variations that exist between the various parts of the country and, in particular, between, urban and rural areas. Although this appeal did not develop the distinctions between different religious or ethnic groups, it is likely that there will be cases where these differences are also significant. Ms Monekosso is likely to be correct when saying that the Muslim social and community structures, in particular, are highly traditional.

298. Thus, the appellant's actions in rejecting traditional values by demonstrating her reluctance to participate in the practice of FGM, or to comply with the demands made upon her in her arranged marriage and to form a relationship outside marriage and to desert her husband are likely to have aroused the antipathy of the community as a whole but only in the locality where these actions took place.

Domestic violence

299. For reasons that we explain later in this determination, we have concluded that there is no prospect of the appellant returning to Odienne or suffering traditional punishment as result of her conduct anywhere in the Ivory Coast. However and for the sake of completeness, we find that if the appellant were to return to Odienne and were she to be subjected to physical violence, the police would be unlikely to intervene if they classified the violence as domestic violence. However, we see no reason why they would not intervene where the offending conduct was unlikely to be viewed in this light.

300. We do not consider the same would apply in Abidjan where the incidence of domestic violence is much less, signifying less social acceptance of it and accordingly less tolerance towards those who perpetrate it.

301. The appellant will not be relocating because Abidjan is the area from whence she comes.

Abidjan

302. Abidjan is the principal city in the Ivory Coast (although not its capital) and some estimates suggest it has a population of about 3 million people. The appellant described the area in which she and her family lived as a mixed community in which there were many ethnic groups. To her knowledge, most districts comprise mixed communities and the Dioula people live alongside other ethnic groups. The family compound was in a predominantly Dioula area but the various clans were otherwise evenly spread.

303. She described how conditions were different in Abidjan for a young Muslim woman. She could dress as she wanted. She did not wear a headscarf. This was not because she was a child but, as she expressed it, because Abidjan is *'modern'*. She was allowed a considerable degree of personal freedom. She was not required to be accompanied when walking outside her father's compound and the only restrictions on her movements were the normal limitations placed by any parent that she should return home before midnight.

304. The appellant, however, said that she would not be safe there whilst her father lived there and that it would not be easy to find a place to live. She spoke of how, on return to the airport or if she attempted to rent property, the information would filter back to her father.

305. We do not consider there is a real likelihood of the appellant's father who is a lorry-driver operating between Abidjan and Odienne ascertaining the appellant's whereabouts were she to return to the Ivory Coast. The information of passengers returning to the country is not accessible to him and he is not described as a man of influence. The appellant suggests the information will filter back to him but this suggests an almost parochial system of information exchange that lies uneasily with the population of a large modern city. We are not satisfied the appellant's father has the means or the ability to ascertain the fact of her return or where she might settle.

306. Were he able to locate her, we are not satisfied the appellant has established what he might then do. We do not consider that the appellant has committed a criminal offence for which she is liable to be prosecuted; nor that her father has the means of adducing evidence to support such a charge were it possible to make it. Were he to do so, it would appear his only motive in making the attempt would be revenge or vindictiveness. We would not lightly conclude that a father would pursue his estranged daughter for so little purpose. A customary marriage does not have the

force of the law to protect it and it is not therefore likely the appellant's 'husband' would have the right to require her return to Odienne, were he alive or were that his wish.

307. Both husband and father are powerless to take effective steps to impose sanctions. There is insufficient evidence to support the claim of customary punishment for adultery in the area around Odienne. There is no evidence of customary punishment in Abidjan. The evidence does not suggest who might initiate the process, or prosecute it to a conclusion, or carry out the sanction or punishment. Although the appellant said that her father and husband would kill her for bringing shame and dishonour upon the families, there is scant evidence of a system of 'honour killings' and even less evidence that her father or her husband has the means to effect the appellant's death. Thus, we are satisfied that the appellant's fear is not objectively well-founded. We are not even persuaded that her fear is subjectively well-founded. Were she to have held such a belief, we are certain she would have explained to us why, if only in an effort to persuade us of the objective risk. We are not satisfied that the appellant holds a subjective fear that her father or her husband can or will harm her.

308. For these reasons, we are not satisfied that the appellant has established that she is at risk of harm in Abidjan as a result of her forced marriage and her adultery.

309. She is not, therefore at risk of ill-treatment sufficiently serious to amount to persecutory treatment; nor such as to violate her Article 2 or 3 rights. The corollary of this is that she has not established a risk of serious harm such as to engage the positive duty to afford her humanitarian protection.

310. There remains the consideration of whether she is at risk of other types of harm on a return to Abidjan where she has spent the bulk of her life and where she was educated. In order to succeed, the appellant would have to establish the real likelihood that Abidjan offers her no means of survival, other than destitution or prostitution; in other words that for a lone woman without parental support and with a young child, she is unable to lead a life there that would not. As the Tribunal has said before, although not all prostitutes are destitute, the risk of prostitution represents the most degrading form of destitution and one that is alien to universal principles of human dignity. Prostitution, destitution and their associated risks of damage to health and dignity are the result of an individual's failure to find survival techniques in the community in which he or she is living.

311. She is now aged 22 and is the mother of a child born 16 December 2005, now aged 4. She has no male protector. She has no family or extended family to whom she can turn. However, she is returning to a city with which she is familiar and where, in the past, she was able to turn for help to others. The appellant spoke of limited employment prospects for non-graduates or for those poorly educated or qualified and of the relative ease with which she could find a job in the United Kingdom, particularly at the conclusion of her education here. She spoke of the difficulty of

obtaining a job and how the income would be insufficient to support her and her son. We are satisfied however that the appellant attends college three or four times a week and that her son is currently attending school. There is therefore compelling evidence that the appellant is able to juggle the commitments of study and looking after a son.

312 We have prefaced this passage by reference to Abidjan but the same consideration would apply in relation to any other urban centre.

The risk in Odienne

313. We are not satisfied that the appellant's actions will result in a prosecution for adultery. This was a traditional marriage and not a legal one. This was a polygamous marriage which the Marriage Act 1964 does not recognise. This effectively bars criminal proceedings against the appellant. In practice prosecutions against women for adultery do not occur save in the rarest of circumstances.

314. Nor are we satisfied that the appellant will suffer traditional punishment as a result of her conduct wherever she may go in the Ivory Coast. We have considered the source of Ms Monekosso's opinion that such consequences are certain to occur and we are not satisfied that she is able to establish this in relation to a Muslim community in the north of the Ivory Coast. Whilst there may be parallels that can properly be drawn between traditional African societies, we would not consider that we can infer that evidence of practices in one society establishes the practice in another. In our judgment, we should be slow to make inferences of this nature unless supported by evidence that bears rigorous academic scrutiny.

315. The appellant left Odienne in 2005, nearly 5 years ago. Her husband was already of an advanced age and may well no longer be alive given a lower life expectancy in the Ivory Coast. The appellant's father is in Abidjan. Nevertheless, in view of our findings of fact in relation to the animosity that a traditional society may express towards a person who transgresses the social norms, we consider it likely that the appellant would face isolation and ostracism were she to return to Odienne. As Odienne was not the place in which the appellant was brought up, the appellant might even be in a worse position in that she does not have the school friends and acquaintances she would have developed had it been her home for any years and who might have protected her against the ill-will of the community at large.

316. Were the appellant to relocate to Odienne, we think it unlikely that she would be able to draw upon the assistance of the police because a course of conduct that would result in her being marginalised or isolated is unlikely to amount to a criminal offence.

317. We are satisfied that there is no prospect of the appellant wishing to return to Odienne but we are also satisfied that there is no reason for her to do so as it is neither her home nor the place where she will find support and protection. Were the

appellant, however, to do so, we are satisfied that she would suffer isolation and stigmatisation to render her life there intolerable such as to amount to serious harm.

Internal relocation

318. Internal relocation does not arise in the case of this appellant because she will be returning to her home area.

Article 8 ECHR

319. We have summarised the medical evidence in paragraphs 39 to 45 and 287 to 290 above. The appellant suffers from depression and has suffered headaches and was prone to becoming severely distressed. Her distress was centred upon a fear of a return to the Ivory Coast. Her fear had inhibited her ability to move therapeutically beyond her trauma. There have however, been a number of significant advances. She successfully attended an ESOL course. She has required significant psychological support and the evidence speaks of the destabilising effect upon the appellant of a return to the Ivory Coast. In June 2008, the appellant was receiving 100 mg a day of sertraline as an antidepressant and was diagnosed as suffering from a Depressive Disorder, moderate in severity with somatic syndrome. She had also experienced irrational fears about her father taking her back from the United Kingdom to the Ivory Coast with paranoid associations. The appellant had never expressed suicidal thoughts to Dr Perera. The sertraline had been increased to 150 mg per day. Although she had told Dr Perera that she was frightened of going out because of her feelings of paranoia, she had, since September 2007, been going to college on her own three or four times a week. Her son goes to school between Monday and Friday which he started in January 2009 but, before that, he attended the College Nursery As we said earlier, the appellant had exaggerated her sense of isolation when describing her life to Dr Perera.

320. The medical evidence has to be assessed with reference to the steps the appellant has taken in the United Kingdom to make progress in her social and private life. She has completed educational courses, she has managed to bring up her child. We do not accept that she has experienced the degree of isolation and marginalisation of which she spoke to those assessing her medical condition. Nevertheless, we accept she suffers from depression and her mental health is impaired by her past experiences.

321. It is necessary to evaluate the appellant's Article 8 claim on the proper structured basis as set out in particular by the House of Lords in Razgar and further explained in subsequent decisions. In Beoku-Betts [2008] UKHL 39 their Lordships held that the direct impact on other family members could be considered in an appeal under Article 8 against an immigration decision. The right to respect for the family life of one necessarily encompassed the right to respect for the family life of others with whom that family life was enjoyed. We bear in mind that decision makers should indeed avoid restricting themselves to looking at the circumstances of family life and

should also take into account the significant elements of the much wider sphere of private life.

322. Applying that guidance to the facts as found in the present case, we find that there is of course a family life enjoyed between the appellant and her child, but we do not find that their removal to the Ivory Coast would involve an interference with that family life as they will of course be returning together.

323. In terms of the appellant's private life she has of course been undergoing a course of study whilst her child has been attending nursery school. In that latter regard, we have borne in mind that the appellant's child is of an adaptable age.

324. Although we find that the appellant has understated her links with the community and emphasised her isolation we think that she has integrated herself more fully into the community than she herself would admit. We therefore find that the appellant's removal from the United Kingdom would cause an interference with her private life.

325. However, mindful of the guidance in Razgar and in the particular circumstances of the appellant and her child, we find that their removal would be a proportionate response to the legitimate public end sought by the respondent, namely the maintenance of effective immigration control

Humanitarian Protection

326. In that we have earlier reasoned our findings that the appellant is not at risk of ill-treatment sufficiently serious to amount to persecutory treatment; nor such as to violate her Article 2 or 3 rights, it follows that she has not established a risk of serious harm such as to entitle her to the grant of humanitarian protection.

Decision

327. The making of the previous decision involved the making of an error on a point of law.

328. We set aside the previous decision.

329. Our decision is that the appeal is dismissed on asylum, humanitarian protection and human rights grounds.

Funding

330. We order that the appellant's costs in respect of the hearing (including the application for reconsideration and the preparation for it) shall be paid out of the relevant fund (within the meaning of rule 33 of the Asylum and Immigration Tribunal (Procedure) Rules 2005).

Signed

Senior Immigration Judge Goldstein
(Judge of the Upper Tribunal)

APPENDIX: LIST OF DOCUMENTATION CONSIDERED

	Document	Date
1	Allafrica.com: 'Cote d'Ivoire: Ahead of polls, security council extends UN force by six months'	30/07/2009
2	United Nations Security Council: 'Twenty first progress report of the Secretary-General of the United nations operation in Cote d'Ivoire'	07/07/2009
3	United Nations Security Council Report: 'Cote d'Ivoire'	07/2009
4	US Department of State: 'Trafficking in Persons Report 2009 - Cote d'Ivoire'	16/06/2009
5	IRIN humanitarian news and analysis West Africa: 'Regional bodies, Governments gear up H1N1 influenza response'	06/05/2009
6	World Health Organisation Crisis Management Team Report: 'Cote d'Ivoire'	01/05/2009
7	Health Systems 20/20: 'Cote d'Ivoire Minister of Health visits health systems 20/20 headquarters'	30/04/2009
8	United Nations Security Council: 'Twentieth progress report of the Secretary-General of the United Nations operation in Cote d'Ivoire'	13/04/2009
9	UMNS Report: 'Malaria initiatives join for 1st time in Cote d'Ivoire outreach'	01/04/2009
10	UNICEF: 'Cote d'Ivoire: UNICEF and partners mobilize to eradicate polio in Cote d'Ivoire'	03/03/2009
11	UN News Centre: 'UN backed workshop to boost the status of policewomen in Cote d'Ivoire'	02/03/2009
12	US Department of State: Human Rights Report: Cote	25/02/2009

	d'Ivoire 2008	
13	UKBA: Operational Guidance Note for Ivory Coast	13/02/2009
14	Health Systems 20/20: 'From health labour market analysis to result based financing: Insights from a post-conflict Country, Cote d'Ivoire'	28/01/2009
15	Daily brief on Cote d'Ivoire: www.ounci.org	27/01/2009
16	Humanitarian Appeal: 'Cote d'Ivoire: Critical humanitarian needs 2009'	22/01/2009
17	United Nations Security Council: 'Nineteenth progress report of the Secretary-General of the United Nations operation in Cote d'Ivoire'	08/01/2009
18	IPSNews.Net: 'Cote d'Ivoire: Rural Women in need of a helping hand'	02/01/2009
19	Family Health International (FMI): 'Supporting life under the shade of the cocoa trees'	2009
20	US Department of State: 'Cote d'Ivoire: Report on female genital mutilation (FGM) or female genital cutting (FGC)'	06/10/2008
21	IRIN: 'Report on election process'	01/10/2008
22	United Nations Security Council Resolution 1826	29/07/2008
23	United Nations - Executive board of the United Nations development programme and of the United Nations population fund	28/07/2008
24	United Nations Security Council: 'Seventeenth progress reports of the Secretary-General of the United Nations operation in Cote d'Ivoire'	10/07/2008
25	Security Council Report: 'Women, Peace and Security: Sexual violence in situations of armed conflict '	11/06/2008
26	Human Rights Watch: 'UN: Africa trip should focus on human rights'	28/05/2008

27	Amnesty International: 'Amnesty International Report 2008: Cote d'Ivoire'	28/05/2008
28	United Nations Security Council: 'Sixteenth progress report of the Secretary-General on the United Nations operation in Cote d'Ivoire'	15/04/2008
29	US Department of State: 'Country report on human rights practices: Cote d'Ivoire'	11/03/2008
30	Human Rights Watch: 'Cote d'Ivoire Country Summary'	01/2008
31	Embassy News: 'Embassy of the United States Abidjan - Conference on development and gender equality'	2008
32	UK Home Office Border and Immigration Agency: 'Ivory Coast: Operational Guidance Note'	02/08/2007
33	Human Rights Watch: 'Cote d'Ivoire: Peace Process fails to address sexual violence'	02/08/2007
34	Amnesty International Report 2007: Cote d'Ivoire	23/05/2007
35	Worldwide Guide to Women in Leadership: 'Female ministers of the republique de Cote d'Ivoire/ Ivory Coast'	09/04/2007
36	US Department of State: 'Cote d'Ivoire: Country Reports on Human Rights Practices'	08/03/2007
37	Manisuli Ssenyonjo: 'Women's Rights to Equality and Non-discriminatory family legislation in Uganda and the role of Uganda's Constitutional Court'	2007
38	Update of UNHCR's position on the international protection needs of asylum-seekers from Côte D'Ivoire	07/2007
39	Department of Justice Canada: 'Polygamy and Canada's obligations under international human rights law'	09/2006
40	Republic of Cote d'Ivoire: Report of Cote d'Ivoire on the implementation of the African Union's "Solemn declaration on gender equality in Africa"	10/08/2006
41	Womenwarpeace.org: 'Gender profile of the conflict in Cote d'Ivoire'	2006

42	The Multiple Indicator Cluster Surveys (MICS) Report	2006
43	Ministry of Family and Social Affairs Report	2006
44	UNICEF: 'Early Marriage Report: A harmful traditional practice'	2005
45	Center for Reproductive Rights: 'Women of the World - Laws and Policies affecting their reproductive lives'	2003