

SK (FGM – ethnic groups) Liberia CG [2007] UKAIT 00001

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

Heard at Field House

On 17 November 2006

Determination

Promulgated

On 08 January 2007

Before

**Senior Immigration Judge Lane
Senior Immigration Judge King
Miss R I Emblin JP**

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C. Hinwood, Refugee Legal Centre

For the Respondent: Mr G. Saunders, Senior Home Office Presenting Officer

- (1) *Women in Liberia belonging to those ethnic groups (or sub-groups) where Female Genital Mutilation is practised are a particular social group for the purposes of the 1951 Geneva Convention. All uncircumcised women in Liberia are not as such at real risk of FGM. A woman will be at real risk if she comes from an ethnic group (or sub-group) where FGM is practised and the evidence shows she is reasonably likely to be required by her parents or others in a position of power and influence over her to undergo FGM. Those who practise FGM are not reasonably likely (particularly in urban areas) to seek to inflict it upon women from non-practising ethnic groups (or sub-groups).*
- (2) *Internal relocation will be available in Liberia to a woman who is at real risk of FGM in her home area if the evidence shows (i) she is not reasonably likely to encounter anyone in the place of relocation who would be in a position of power and influence over her and who would use that power or influence to*

require her to undergo FGM and (ii) she can reasonably be expected to live in that place, having regard to the general circumstances prevailing in it and to the personal circumstances of the appellant (paragraph 3390 of HC 395 (as amended)). In the case of a woman from a rural area in Liberia, internal relocation to Monrovia or some other urban centre will not be available unless her circumstances are such that she will be able to survive economically (see Januzi v Secretary of State for the Home Department & Ors [2006] UKHL 5) and resist pressure from any family or other members of her ethnic group who may be in that place. Such instances are likely to be rare. They cannot, however, be ruled out; eg. where the woman has a husband or other male protector.

- (3) *Individual credibility, as well as country information, will usually have an important part to play in determining whether a woman is at real risk of FGM. The subjective element remains relevant.*

DETERMINATION AND REASONS

1. The appellant is a national of Liberia, born on 24 July 1976. On 5 January 2005, she lodged an application for permission to appeal to the Immigration Appeal Tribunal against the determination of Miss M. Watt, an Adjudicator, who dismissed her appeal on asylum and human rights grounds against the decision of the respondent of 28 July 2004 to give directions for her removal from the United Kingdom.
2. On 27 June 2005, the Asylum and Immigration Tribunal refused the appellant's application. The appellant renewed her application to the Administrative Court. On 6 September 2005, Bean J ordered that the Tribunal reconsider its decision on the appeal. He stated that it was arguable that the appellant has a valid Article 3 claim based on a real risk of subjection to female genital mutilation (FGM) and that the judgment of the Court of Appeal in "Fornah (unless reversed on appeal) defeats her refugee claim" on this basis.
3. On 13 February 2006, the case was listed before the Tribunal, to decide whether there was a material error of law in the Adjudicator's determination. The Tribunal on that occasion comprised Senior Immigration Judge Gill, Mr D.R. Bremmer JP and Mr M.E. Olszewski. The appellant was represented then by Miss E. Storey of the Refugee Legal Centre. The respondent was represented by Mr B. Montilla, a Senior Home Office Presenting Officer.
4. The parties agreed (and the Tribunal found) that the Adjudicator had erred in law in failing to consider, in the light of the objective evidence and her findings of fact on the appellant's subjective fear, whether the appellant was at real risk of being subjected to FGM. The parties agreed that this issue related only to the Article 3 claim and that that was the sole issue before the Tribunal. The parties also agreed that the Tribunal would be able to determine the issue on the objective evidence. Miss Storey agreed that the appellant would not give oral evidence.

5. In normal circumstances, the Tribunal would not have adjourned part-heard where the sole issue was one which could be determined on the objective evidence. However, there were occasions when it is necessary to adjourn part-heard and the Tribunal considered that this was one such occasion. Mr Montilla did not have the file in the case and, although the Tribunal was able to provide copies of the documents, he did not feel able to argue the respondent's case. The Tribunal expressed itself as grateful to Miss Storey, who was conscious of Mr Montilla's difficulties and who agreed to an adjournment notwithstanding the fact that the appellant has been waiting some time for the appeal.
6. At this point, it is necessary to set out the nature of the appellant's claim and the Adjudicator's findings of fact in relation to it. The appellant said that she left Liberia in April 2000, travelling by train and lorry, proceeding to Guinea, where she boarded a plane. Having changed planes in Brussels, she arrived in the United Kingdom on 16 June 2000. She did so using a British passport to which she was not entitled. The appellant claimed asylum over three months later.
7. The appellant said that her family had been accused of supporting rebels in Liberia and that the militia had attacked the house and murdered the appellant's entire family. She said that she hoped to qualify as a nurse but could not do that if she were to return to Liberia. Interviewed on 29 April 2004, she said that her parents had been killed by rebel troops from the MPFL in March 2000 and that she had left in April 2000. She did not know that she was coming to the United Kingdom until the day before she was due to travel. She had been a student in Liberia and was of Krahn ethnicity. She had lived in Monrovia.
8. She further said that she had been attempting to trace her aunt and cousins through the Red Cross, but they had not been found. The Krahn had been accused of supporting the former president, Samuel Doe, and his party. She had not voted in elections in Liberia.
9. So far as FGM was concerned, she said her tribe practised it and that after the age of twenty-four it was not good for her health. It was meant to be done by the age of twenty but it had been delayed due to the civil war in Liberia. If returned, she asserted that she would 'have to do it' (paragraph 3.7 of the determination).
10. The respondent, in refusing the appellant's claim, noted the cessation of hostilities in Liberia and that the appellant had not shown that she would be of adverse interest to the government or any rebel group. As regards the issue of FGM, the respondent noted that the Krahn were a southern-based ethnic group. According to the US State Department, FGM was traditionally performed on young girls in northern, western and central ethnic groups in Liberia, particularly in rural areas. The view was therefore taken by the respondent that FGM would not be imposed on the appellant.
11. Before the Adjudicator, the appellant's credibility was comprehensively put in issue by the respondent. At paragraphs 12.1 and 12.2 of her determination, the Adjudicator set out her credibility findings. She noted that the appellant claimed at first that her family had been accused of supporting the rebels associated with Alhadji Kromah. His rebel group had undergone various splits. The Adjudicator set out the relevant history at paragraph 12.1(a) to (d). That history did not, according to the Adjudicator, fit with the accounts the appellant had given of the attack on her home.

Furthermore, the appellant did not appear to be aware that the National Patriotic Party of Charles Taylor was in power in Liberia in 2000.

12. In addition, the Adjudicator noted that, even with the benefit of hindsight, the appellant was unable to give an approximate date for the attack. There were also discrepancies regarding the timescale for her leaving Liberia and making her way to the United Kingdom. The appellant belatedly decided to claim that she had, in fact, worked as a prostitute in Guinea, earning \$1,500 to pay for her trip.
13. At paragraph 12.2, having considered all the evidence and in particular the core of her claim, which was the attack on her parents and the burning of her home, the Adjudicator was unable to find the appellant credible. The Adjudicator cited as reasons the vagueness of the evidence as to the event itself and the way it took place, inconsistencies in the evidence regarding the appellant's journey and the appellant's failure to apply for asylum for three months after arriving in this country, despite being a fluent English speaker. In short, the Adjudicator concluded that 'this is a fabricated claim'.
14. The Adjudicator then turned to the issue of FGM. The Adjudicator had before her a report of a journalist called Ticky Monekosso, who had spent three weeks in Liberia in 1997 in order to monitor the national election. Since then, she claimed to have regular contact with a number of UN staff members, social workers, friends and colleagues and journalists living in Liberia, 'from whom she can have first hand information' (paragraph 10.1).
15. According to Ms Monekosso's report, in Liberia a circumcised woman is considered part of the women's society – a 'clean' and 'proper' adult eligible for marriage and capable of child bearing, as well as being able to hold important societal offices. The report referred to information from the World Health Organisation that FGM reportedly affected about 50% of the female population in Liberia. Elsewhere in the report, however, Ms Monekosso asserted that FGM is 'quite common' in Liberia and is practised 'by an estimated 95% of all Liberian women'.
16. The appellant claimed to belong to the Sinoe branch or sub-division of the Krahn. Miss Monekosso's report had this to say:

'Sinoe is locate (sic) at the south-west of the country and it is a very popular place. The figure of 95% of the country women undergone (sic) FGM could not exclude that, some ethnic groups of the southern region of Liberia did not undergo FGM.'

Sarpo and other Krahn grass-root communities live in a profound respect of their culture and tradition compared to those from the urban cities such as Monrovia where colonisation and Creoles from America have changed people's life perception.

[The appellant's] family names and the names sound typically of the area, Sinoe and the ethnic groups Sarpo/Krahn she comes from. Sarpo is one of the most conservative communities and is strongly attached to traditional beliefs and customs. FGM is a

long standing traditional practice as I highlight in the section above.'

17. Later on, the report observed that while the practice of FGM has been part of the 'custom and tradition in the more remote areas' it was noted that 'among many of the educated and in the urban areas, the practice has not been as strong'. So far as initiation rights were concerned, it was difficult to obtain information on these as members were sworn to secrecy. Ms Monekosso considered that the appellant 'will be obliged to go through the whole traditional process before their community (sic) accepts her. And it is a shame if there is something wrong, according to the ancestor's guidelines'. Later in the report, it is stated that the President of the 'Association of Female Lawyers of Liberia' regarded FGM as 'a sticky issue because 85% of the population practice it'.
18. At paragraph 12.3 of her determination, the Adjudicator assessed future risk to the appellant as a single pregnant female (she has since given birth) and the widespread practice in Liberia of FGM. The Adjudicator accepted that the appellant's last address was in the capital, Monrovia, and 'that it is reasonably likely that her family is still there'. At paragraph 12.4, the Adjudicator accepted 'that the appellant ethnically as a Krahn' belongs to a tribe 'which is located in the south west of Liberia. The tribe is conservative and relies heavily upon the tradition of FGM.' The Adjudicator plainly took that information from Ticky Monekosso's report. She also noted from that report that 'in more urbanised and populated areas such as in Monrovia, whether or not [FGM] was practiced, depended on education and class and how close the family's ties were to rural life'. Drawing on information from the COI report on Liberia, the Adjudicator found that prior to the onset of civil war in that country in 1989, approximately 50% of women in rural areas between the ages of eight and eighteen were subjected to FGM, but that many experts believed incidents of FGM dropped to as low as 10% as a result of the secret societies performing it being undermined by the war. However, traditional societies were now re-establishing themselves throughout the country.
19. The Adjudicator's conclusion on the material relating to FGM was, as has already been found, legally inadequate. It amounted to this single sentence at the end of paragraph 12.4:-

'I am unable to find that the circumstances in Liberia are distinguishable from those in Sierra Leone to any degree that a social group exists which would include this appellant'.
20. The Adjudicator failed in particular to consider whether the appellant would be at real risk of Article 3 ill-treatment in undergoing FGM, whether or not she was a member of a particular social group. The reference in paragraph 12.4 of the determination to Sierra Leone is explicable by the fact that there was at the time of the Adjudicator's determination, case law dealing with FGM in Sierra Leone. As we shall later see, however, the position in that regard has changed, in the light of the House of Lords' opinions in *K and Fornah [2006] UKHL 46*.
21. Prior to the adjourned reconsideration hearing on 17 November 2006, the Tribunal gave directions to the parties. Those directions stated that the Adjudicator's findings of fact in relation to the appellant's account of her experiences should stand. For the

avoidance of doubt, those findings included that the appellant is a person of Krahn ethnicity who grew up in Monrovia. They excluded, however, the finding at paragraph 12.4 of the determination, that the Krahn originated from south-west Liberia. At what became an interlocutory hearing on 20 September 2006, it was agreed that that particular finding, which as can be seen was based on the evidence of Ms Monekosso, required to be revisited in the light of the US State Department Report : Liberia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC) of 1 June 2001. In that report it is stated that:

‘The major groups that practice [FGM] are the Mande speaking peoples of western Liberia such as the Gola and Kissi. It is not practiced by the Kru, Grebo or Krahn in the southeast, by the Americo-Liberians (Congos) or by Muslim Mandingos.’

22. At the hearing on 17 November the appellant spoke to a short additional witness statement of 7 November 2006. There, she said that she understood that the respondent was saying that the Krahn tribe did not practise FGM. She had always believed the practice to be something that was undertaken by members of her tribe (Sinoe, which the appellant believes to be a subgroup of the Krahn). She said that she ‘just assumed this, as I know that my family practices it’. About the age of 10, the appellant was told by her mother about FGM, and that it had been done to her mother and to the appellant’s aunt, when they lived in a village in Sinoe. The appellant was told that the family had to take her there in the next few years in order to have it done. The family were living in Monrovia at the time. Having spoken to some of her school friends about FGM, the appellant discovered that some of them had undergone it. The appellant was told by her father, on one occasion, that she would have to have it done, as it was ‘necessary’.
23. A few years after she had been told that she needed to return to her village for the operation to be performed, the war started and thus the appellant never had the opportunity to go to Sinoe. The appellant now has a daughter and is expecting a second child. She fears that her daughter would be at risk of being forced to undergo FGM. She believes that she would still have to undergo the procedure herself if she were returned to Liberia. Even if her family were still alive, which the appellant says they are not, the appellant’s daughter and she herself would need to undergo FGM in order to be accepted and supported by that family. She said that this would be the case if the appellant were living in Monrovia, or if she were to return to her village: ‘We would not have a choice’.
24. Cross-examined, the appellant said that during the civil war the family moved from place to place and she never had a proper adult life. She did not, however, consider that the family had moved outside the area around Monrovia. The family would return to their home from time to time. When ‘army men’ arrived, the family would flee and then return when it was once again safe.
25. The appellant said that it was a girl’s mother who decided whether the girl should undergo FGM. The appellant could not remember how old she was when her parents spoke to her about FGM. It was put to the appellant that she was in Liberia until she was twenty-four years old. The appellant replied that she had been told by her mother that she needed to have it done by the age of fifteen. Asked who would force her to have it done now, the appellant replied that she would need to go to their

village. Asked who would force her to go there, the appellant said she believed it would be her family. This was because she would have to go to look for her extended family in Sinoe.

26. Asked what would happen if the appellant decided not to go to Sinoe to look for her extended family, she said that she would need to look for that family in order to obtain assistance for herself and her children. This was so, even though she feared FGM. Asked if anyone other than the family would force her to undergo FGM, the appellant said it would depend upon where one went and where one lived. Asked why, and who else would perform it on her, the appellant hesitated before saying that she did not know.
27. The appellant asserted that FGM occurred in Monrovia. She was asked about the report of Ms Efua Dorkenoo OBE, which had been submitted on behalf of the appellant in connection with the reconsideration hearing. The appellant was referred to paragraph 2.2 of that report, where it was stated that girls 'under' [presumably between] the ages of 5-18 years are forced by their parents to go through FGM. The appellant was asked why, in the light of this, she did not find herself forced to undergo FGM before 1991. The appellant replied that she was told that one had to go to a special person and she did not know the way to Sinoe, as it would have to be undertaken there. She did not know whether FGM could be inflicted on her by some other means in Monrovia.
28. The appellant said that the father of her daughter was 'no longer in the picture' but that the father of her unborn second child was present at the Tribunal. She did not, however, live with him. If she were returned to Liberia, the appellant was asked whether he would send her money. She replied that she thought he would but he could not go there because he had a kidney condition and could not live in a hot place. He was a British citizen but originally came from Ghana.
29. The appellant said that the decision on whether she would have to undergo FGM would depend on her condition at the time in Liberia. Such qualifications as she had obtained in the United Kingdom would not be recognised there. She might have to undergo FGM before she could become accepted but it all would depend on the circumstances.
30. Re-examined, the appellant said that she considered that people with her surname would be likely to be related as part of an extended family and that the surname originated from a particular district, where the inhabitants had rules. For example, in some tribes, one was not allowed to do anything on a Saturday, in others people would eat fish, and so on. The appellant said that 'I would not know if FGM is a rule of my tribe'.
31. In answer to a question from the Tribunal, the appellant said that she would seek her extended family by going to Sinoe and asking people, having given them her name.
32. During the civil war the appellant and her family considered it to be safer to stay in the Monrovia area than to travel further field; for instance, to Sinoe. She had had no contact with anyone in Sinoe whilst she was living in Monrovia. She had been living in her house with her family for some three months before the attack in 2000. During

the war the family would move between their house and the bush some three times a year.

33. We have already referred to the written report of Ms Dorkenoo. She describes herself as a bio-social scientist in public health, a gender expert and a researcher. She has acted as adviser on FGM to several United Nations agencies and government bodies. She has also held positions at the World Health Organisation in Geneva. She is the author of books entitled '*Cutting the rose. Female genital mutilation. The practice and its prevention*' and '*Genital mutilation. Politics and prevention*'.
34. Paragraph 1.1 of the report notes that evidence-based data on FGM in Liberia is scant, as the country has had no national surveys that provide detailed data on the distribution of FGM and the circumstances surrounding it. Based on a limited survey, the national prevalence of FGM in Liberia is assessed (according to an unpublished 1984 study) at being between 50-70%. Many believe that the civil war disrupted the social structure and traditional institutions, including the secret societies that performed FGM, thereby bringing about a reduction in its practice. It is, however, known that these institutions have returned, following the civil war in Liberia, and Ms Dorkenoo considers the practice to be 'very much alive today'. The most common type of FGM is that known as Type II, involving the ablation of the clitoris and the labia minora.
35. Turning to the issues of the ethnic groups practising FGM and the circumstances surrounding its practice, Ms Dorkenoo states that African tribes constitute 95% of the Liberian population. There are twenty-eight ethnic groups, but three main groups: the Mande people in the north and far west; the Kru tribes (including the Krahn) in the east and south-east, and the Mel in the north-west. The Krahn are amongst the largest of the ethnic groups. Americo-Liberians, descendants of former slaves from the USA, account for about 2.5% of the population. Finally there are the Mandingos, itinerant Muslim traders, and the Fanti fishermen from Ghana.
36. Mention has already been made of paragraph 2.2 of the report, where it appears Ms Dorkenoo considers that girls between the ages of five and eighteen are forced by their parents to go through FGM, usually at the hands of the Sande society, a female secret society, traditionally found among the Bassa, Gola, Kapelle, Loma, Mano and Vai tribes. Older women who refuse to be part of the Sande or oppose it can be forcibly humiliated by Zoes, described as soothsayers, herbalists and leaders of the Sande. A case in Monrovia is recorded of the forced FGM by a Zoe of a Grebo girl from a non-practising ethnic group. The Zoe in question was taken to court and fined \$500.
37. Ms Dorkenoo has no actual knowledge of the Sinoe, but believes that they may be a small ethnic group which is, as the appellant asserts, part of the Krahn. Sinoe County is adjacent to Grande Gedeh County in the south-east of Liberia. On this basis, it is considered possible that the Sinoe referred to by the appellant as her tribe is a subset of the Krahn who extend into Sinoe County from Grande Gedeh County, where Western Krahn is spoken. Having undertaken a telephone conversation in October 2006 with Mrs Kimba, Programme Manager of the National Committee on Harmful Practices, Monrovia, Ms Dorkenoo learned that Mrs Kimba considers it likely that there is a small group by the name of Sinoe. The language which the appellant

claims to speak, Sarpo, is an alternative name for the language Sapo, which is one of the indigenous languages spoken in Sinhoe and Grande Gedeh County.

38. The report then turns to the question of whether FGM is practised by the appellant's ethnic group in Sinoe County. Ms Dorkenoo refers to the US State Department Report of June 2001, relied upon by the respondent (see above), which states that the Krahn are one of the ethnic groups that do not practise FGM. Ms Dorkenoo notes that there is no source for this information given in the US State Department Report. Paragraph 2.4 of Ms Dorkenoo's report then continues as follows:

'Given the limited scientific information on FGM in Liberia, it is difficult to be categorical that all the sub-sets under the Krahn ethnic group do not practice FGM as there is no large survey of FGM in Liberia that includes a representative sample of the ethnic [groups] and their subgroups. The literature ... notes that there are twenty-eight indigenous ethnic groups but only the largest groups which include the Krahn group of people are mentioned [in the 2001 US State Department Report]. A wide number of dialects are spoken by the Krahn speaking people (Gorbo, Kanneh, Konobo, Tchien (Chiehn), Sarpo and Central Guéré, Gbo, Gbaeson, Plo, Biai, Gbarbo, Gborbo (Gbobó), Kpeaply). Apart from the lexical similarity between Gorbo and Konobo, there is minimal intelligibility between some of the dialects which suggests that there are sub-sets amongst the Krahn with possibly sub-cultures. Data on FGM from other countries corroborates the fact that there is a variation of the practice within practicing ethnic groups. For example, the Yoruba's who are a large ethnic group in the South of Nigeria practice FGM, whereas the Ijebus which is a subset of the Yoruba, do not practice FGM. Equally in Ghana, the Akan ethnic group, which is composed of a number [of] sub-groupings, do not generally practice FGM but the practice has been reported amongst a pocket of the Akan ethnic group in the Banda Ahenkro area of Brong Ahafo Region. No explanation is given as to why this occurs except that the practice could be introduced through intermarriage of non-practising groups with practising groups. It is noted that in Liberia because of intermarriage and an aggressive national unification program in Liberia, tribal divisions are rapidly becoming less distinct, especially around capital towns although there is a strong tendency among the indigenous people to preserve their tribal identities. It is also known that practitioners of traditional indigenous religions among the Grebo and the Krahn ethnic groups who are concentrated in the southeastern counties most commonly engage in ritual killings that involves removal of body parts that includes the genitals. This suggests that the concept of FGM is not a totally alien concept to some indigenous Krahn people.'

39. At paragraph 2.5, Ms Dorkenoo turns to consider the risks to the appellant of having to undergo FGM in Monrovia or in Sinoe County. She notes that Monrovia, as the capital of Liberia, 'is cosmopolitan and mixed'. Reference is made to the US State

Department Report on FGM which notes that in the more urbanised and populated areas such as Monrovia, whether or not FGM is practised ‘depended on education and class and how close the family’s ties were to rural life. One well-educated female lawyer in Monrovia underwent the procedure just before she married because she came under strong pressure from an upcountry grandmother.’ Ms Dorkenoo considers that away from the direct pressure from the extended family in Sinoe County, it would be much easier for the appellant to avoid FGM than if she were to live with relatives in her village in Sinoe County. However, the appellant’s

‘ability to live in Monrovia will depend on whether she is able to economically fend for herself independent of family or if she has well off family in Monrovia to support her. The former is possible if she is professionally qualified to attract a regular job in the capital. Regarding the latter, during the Liberian civil war, the Krahn ethnic group became a hated group as the late Mr Samuel Doe, a former president of Monrovia was a Krahn. Many Liberians of the different ethnic groups felt that he gave privileges to members of his ethnic group, the Krahn. Many Krahn were killed or they fled the country during the civil war to avoid persecution under the rule of Mr Charles Taylor, an American-Liberian who seized power from Mr Doe. If [the appellant] cannot attract a job and has no relatives left in Monrovia to support her, her main avenue for survival will be prostitution or sex work as poverty ... is high; and gainful employment for women in the informal sector in Monrovia is hard to find. If she does not want to engage in prostitution, she has no choice but to go and live with her extended family relatives in her natal village in the Sinoe County where she will no doubt have to conform to traditions such as FGM i.e. if it is practiced by her group.’

40. Ms Dorkenoo’s report ends by referring to the dual system of statutory law, based on Anglo-American common law, and customary law, based on unwritten tribal practices for indigenous peoples, both of which exist in Liberia. Customary law is said to be the law which is pervasive in women’s lives, particularly in rural areas. It relegates women to minors within the extended family household which is the family form that persists amongst the indigenous people in rural Liberia. Ms Dorkenoo stresses that there is no specific law against FGM in Liberia although section 242 of the Penal Code, which refers to ‘mayhem’, can be used to deal with FGM.

41. The 2001 US State Department Report also has this to say:

‘Many poor families did not engage in [FGM] because they could not afford for their daughter(s) to remain six months (and in some cases up to a year) in a secluded traditional school where girls were prepared and initiated into adulthood by older female members of the secret societies.

Many believe the civil war has caused a reduction in this practice, estimating that the incidence has dropped to as low as 10 percent. The war caused most of the population to flee to

neighbouring countries or become internally displaced. Social structures and traditional institutions, such as the secret societies that often perform this procedure as an initiation rite, were also undermined by the war.

With the civil war ended and traditional societies re-establishing themselves throughout the country, practices such as FGM/FGC are expected to increase again in rural areas for those groups for who it has been a significant and important rite of passage. The extent to which these practices might be revived to pre-war levels is yet unknown.'

42. Also of relevance is the following passage:

'The practice of FGM/FGC has been a part of custom and tradition in the more remote areas. However, among many of the educated and in the urban areas, the practice has not been as strong. It is performed during initiation rites into womanhood by older trained members of secret societies. It is difficult to obtain information on the actual rights as members are sworn to secrecy. Some girls have said they looked forward to the procedure and becoming a full member of society, while others have expressed their fear when learning that close friends have bled to death after the procedure was performed.

Because of the civil war in Liberia, it was not possible to hold special schools and initiation rites in rural areas as before. From 1990-92, however, a large school operated in Monrovia on Bushrod Island behind the brewery. The school was destroyed in 1992 during a major attack on the capital.

Today there are three such small schools, reportedly the only ones in Liberia, operating periodically in Monrovia. Instead of six to twelve months in the schools, female initiates reportedly spend a weekend in a Sande house. It is reported that the age of initiation into womanhood, which used to occur when a child was between eight and fourteen years of age, has dropped to between three and seven years of age. Children younger than three have sometimes been initiated.'

43. The report, which we note was prepared by the Office of the Senior Coordinator for International Women's Issues, ends by stating that 'we are unaware of any cases where women have sought protection from being subjected to this procedure'.
44. The US State Department Report on Human Rights Practices for 2005, published on 8 March 2006, lists FGM as one of a number of human rights problems reported in Liberia. So far as FGM is concerned, no new information is set out in the 2005 report, except to say that the government 'took no action against FGM during the year'.

45. The issue of ritualistic killings has been mentioned by Miss Dorkenoo in her report as suggesting that FGM is not a 'totally alien concept' to the Krahn. The 2005 US State Department Report has this to say on the matter:

'Incidents of ritualistic killings were reported during the year. Little reliable information was readily available about traditions associated with the practice in which body parts used in indigenous rituals were removed from the victim. The number of such killings was difficult to ascertain, since police often described deaths as accidents or suicides even when body parts were removed. It was believed that practitioners of traditional indigenous religions amongst the Grebo and Krahn ethnic groups concentrated in the southeastern counties most commonly engaged in ritualistic killings. The victims were usually members of the religious group performing the ritual, and often included women and children. Body parts removed from a family member whom the group believed to be powerful were considered to be the most effective ritually.'

46. In assessing the likelihood of the appellant and/or her daughter being subjected to FGM, if returned to Liberia, it is necessary to consider the issue of the camps for internally displaced persons, which exist in that country. According to the 2005 US State Department Report:

'Relief agencies estimated that as of December, approximately 272 thousand IDPs have returned home since the end of the war, and approximately 54 thousand were awaiting repatriation in camps, settlements, and communities throughout the country. Conditions at most IDP camps were fair, but food, sanitation, and security was sometimes inadequate. During the year the government worked with international organisations to return IDPs to their homes and planned to resettle 15 thousand to 20 thousand IDPs per month. However, road conditions, elections and intermittent funding gaps temporarily halted the return process and angered thousands of IDPs who planned to return home before the elections. Some IDPs chose to stay in camps because conditions were better than in the communities from which they came, while others remained to see whether peace would be sustained after the elections. Unlike in the previous year, there were no reports that former government and rebel combatants subjected IDP populations to rape, battery, arbitrary arrest, extortion, and theft. However, there were reports of rape in IDP camps, primarily committed by other IDPs or members of the surrounding community.'

47. Amnesty International's 2006 report on Liberia, in its synopsis of problems affecting that country, makes no reference to FGM. Instead, it refers to sporadic outbreaks of violence continuing to threaten prospects for peace and to the fact that those responsible for human rights abuses during the war continued to enjoy impunity. Under the hearing 'Violence against Women', AI noted that a law on rape, sponsored by women's groups, was debated in parliament and passed. The definition of rape

was broadened and bail was to be denied anyone charged with raping a minor. Penalties for the most serious offences were increased, allowing life imprisonment to be imposed. A press report from 25 June 2006, however, described alleged child rapists as paying their way out of jail, whilst court officials and police officers demanded bribes from families of child rape victims who wished to see their attacks arrested and prosecuted.

48. The Home Office's Operational Guidance Note on Liberia (5 May 2006), after noting how the civil war 'saw appalling human rights abuses by all sides,' recorded that President Charles Taylor stood down from office and left Liberia in August 2003, following which a National Transitional Government of Liberia was established. A comprehensive peace agreement came into being in 2004 and Liberia's first peacetime Presidential elections occurred in October 2005, when Ellen Johnson-Sirleaf was elected President. She was sworn in in January 2006, stating her intention to pursue reconciliation and make efforts to address the various ethnic disputes still festering since the end of the civil war in 2003. The human rights situation, however, remained precarious as a result of frequent criminal acts in the face of inadequate police and civil authorities; striking deficiencies with the judicial systems; financial short falls; and continued regional instability.
49. At paragraph 5, the Guidance Note made reference to the UNHCR maintaining its position (as at August 2005) that although not all Liberian asylum seekers should be granted refugee status, they should be considered favourably for other forms of protection. Whilst acknowledging that the UNHCR's position 'provides a broad assessment of the situation in Liberia and we do not dispute that it presents an accurate overview of the general humanitarian situation and the social and security problems inherent in a country which, until recently, was dominated by civil war,' the Guidance Note pointed out that 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 do not therefore accept UNHCR's conclusion, based on the overview of the general situation in Liberia, that all persons originating from Liberia are in need of some form of international protection.'
50. Since the reconsideration hearing on 17 November, a new Operational Guidance Note on Liberia has been published (30 November). No fresh matters relevant to the present appeal arise from that Note.
51. It was common ground at the hearing on 17 November that the question to be decided by the Tribunal on reconsideration was whether, on the issue of FGM, the appellant is to be regarded as a refugee or a person whose return to Liberia would violate Article 3 of the ECHR. Humanitarian protection did not arise because there was no dispute that, if the appellant was at real risk of undergoing FGM, the Geneva Convention would be engaged, with the result that a grant of humanitarian protection could not be made (see paragraph 339C(ii) of HC 395 (as amended). Conversely, if the appellant was not at real risk of persecution, she would not be eligible for humanitarian protection (or an Article 3 finding in her favour) because there would be no substantial grounds for believing that she would, if returned, face a real risk of serious harm (paragraph 339C(iii)).

52. Although the Tribunal, at the reconsideration hearing on 13 February 2006, did not consider refugee status to be relevant, the position has changed since the delivery of the opinions of the House of Lords in *K and Fornah*. Those opinions lay to rest the difficulties that had beset the jurisprudence relating to membership of a particular social group, in the context of the Geneva Convention, which arose from what was perceived to be a definition of such a group that was arguably not independent of the feared persecution. A group that could only be defined by reference to the persecution of its members was thought not to be capable of being a particular social group for the purposes of Article 1A(2) of that Convention. But as Baroness Hale stated:-

'113. This is a peculiarly cruel version of Catch 22: if not all the group are at risk, then the persecution cannot be caused by their membership of the group; if the group is reduced to those who are at risk, it is then defined by the persecution alone. But the reasoning is fallacious at a number of levels. It is the persecution, not the fear, which has to be "by reason of" membership of the group. Even if the group is reduced to those who are currently intact, its members share many characteristics which are independent of the persecution – their gender, their nationality, their ethnicity. It is those characteristics which lead to the persecution, not the persecution itself which leads to those characteristics. But there is no need to reduce the group to those at risk. It is well settled that not all members of the group need be at risk. There is nothing in the Convention to say that all members have to be susceptible. It should not matter why they are not at risk. If the authorities of a particular state have a policy of mutilating all male members of a particular tribe or sect by cutting off their right hands, we would still say that intact members of the tribe or sect face persecution because of their membership of the tribal sect rather than because of their intactness. ...

114. For these reasons, the particular social group might best be defined as Sierra Leonean women belonging to those ethnic groups where FGM is practised: then it is quite clear that the reason for the persecution is the membership of that group. But it matters not whether the group is stated more widely, as all Sierra Leonean women, or more narrowly, as intact Sierra Leonean women from those ethnic groups. For all of them, the group has an existence independent of the persecution.'

53. As we have already indicated, in the present case, Mr Saunders for the respondent did not seek to suggest that, if the appellant could show that she was at real risk of FGM in Liberia, she would not fall within a particular social group analogous to one of those identified by their Lordships in *K and Fornah*, in the context of FGM in Sierra Leone. Whilst the position of women in Liberia is, we find, improving in many respects, in particular as regards the action being taken to punish those who commit rape, there is nevertheless sufficient evidence of societal discrimination against

women to make them a particular social group in Liberia. The Tribunal, however, prefers to categorise the particular social group in the present case in the way in which Baroness Hale did at paragraph 114 of the opinions: namely, women in Liberia belonging to those ethnic groups where FGM is practised. Either way, however, the appellant has to show that *she* faces a reasonable likelihood or real risk of having to undergo FGM, if returned.

54. In the present case, the evidence plainly shows that not all women in Liberia are at real risk of FGM. It is only those from the ethnic groups which practise such mutilation who face such a risk. That is the clear implication of Ms Dorkenoo's report and of the 2001 US State Department Report. In so finding, we are aware of what Ms Dorkenoo says at paragraph 2.4 of her document. Whilst it can generally be said that some ethnic groups do not practise FGM and others do, there is the possibility of exceptions arising within small sub-groups; for instance, as a result of inter-marriage. Given the significant lower incidence of FGM in urban, as opposed to rural, areas, the Tribunal considers Ms Dorkenoo's comments about intermarriage and an aggressive national unification programme in Liberia, as a result of which 'tribal divisions are rapidly becoming less distinct,' indicate that anomalies in the correlation of FGM with particular ethnic groups are, in the Liberian context, far more likely to take the form of pockets of persons not practising FGM, who might otherwise be expected to practise it, rather than the reverse.
55. It is against this background that we must assess the appellant's assertion that, even though as a general matter the Krahn tribe may not practise FGM, she comes from a small sub-set known as the Sinoe, who do practise it. On this issue, the Tribunal does not consider that any significant weight can be placed upon the report of Ticky Monekosso. Ms Monekosso's description of where Sinoe (the place) is located is accepted on behalf of the appellant to be wrong. Furthermore, the passage of her report in which she deals with Sinoe generally lacks coherence.
56. Ms Dorkenoo's report is, on the other hand, more balanced and plainly well-informed. Her conclusion, that it is possible that a Sinoe sub-group of the Krahn exists, is tentative. At paragraph 2.3 of the report, she considers that, because there are numerous small groups in Liberia which are not documented, the appellant could be right in asserting that the Sinoe are one such small group. Ms Dorkenoo also has regard to the language spoken in Grande Gedeh County as being Western Krahn. Her conclusion in this regard, however, does no more than confirm that the Sinoe (if they exist as such) are a sub-set of the Krahn; not that they have the unusual characteristic of practising FGM, unlike the rest of the Krahn. The same is true of Ms Dorkenoo's conversation with Mrs Kimba.
57. Towards the end of paragraph 2.4 of Ms Dorkenoo's report (paragraph 38 above), a possible connection is sought to be drawn between FGM and ritual killings. However, as can be seen from the passage in the 2001 US State Department Report cited at paragraph 45 above, the Krahn's approach to ritual killing appears to regard as significant the taking of body parts from a family member who is viewed by the rest of the community as powerful. FGM is profoundly different. As the opinions in *K and Fornah* expose, behind the supposed justification of the practice as a path to adult status and the false parallels with male circumcision, the reality is that FGM "powerfully reinforces and expresses the inferior status of women as compared to men" (paragraph 7 (Lord Bingham)). At paragraph 93, Baroness Hale found that the

underlying purposes of FGM are “to lessen the woman’s sexual desire, maintain her chastity and virginity before marriage and her fidelity within it, and possibly to increase male sexual pleasure”. In short, ritual killing, as pursued by the Krahn, and FGM are so different in nature and purpose as to preclude the drawing of any inference that a tribe which practises ritual killing has shown itself predisposed towards FGM. Indeed, such evidence as there is on the Krahn suggests the contrary.

58. The only independent support that Ms Dorkenoo’s report gives the appellant’s assertion, that the Sinoe is a sub-group which practises FGM, lies in the description at paragraph 2.4 of the report of what might be described as cultural fluidity. But, as we have already observed, when Miss Dorkenoo goes into detail about the possible reasons for such fluidity, her comments suggest that it is a process which is more likely to result in a reduction in FGM, rather than the opposite.
59. But even if this is not the case, all Miss Dorkenoo’s report shows is that it is *possible* that the appellant is telling the truth. At its highest, the report is not one which compels the conclusion that the appellant, who (as we have already seen) was found by the Adjudicator not to be a witness of truth, is nevertheless reasonably likely to be belong to a sub-group of the Krahn, which practises FGM.
60. No challenge has been made to the adverse credibility findings of the Adjudicator, concerning the appellant’s account of her experiences in Liberia. In the light of *AH (Scope of s103A reconsideration) Sudan* [2006] UKAIT 00038, and *Ahmed Saeed Mukarkar v SSHD* [2006] EWCA Civ 1045, we are entitled to reach our findings as to the real risk to this appellant, on return, having regard to those credibility findings. We also have had regard to what the appellant said in oral evidence to us. In particular, although she sought to make it a main plank of her claim that she would be compelled by economic vicissitude to go to find her extended family in Sinoe, and subject herself and her daughter to FGM at their hands, the appellant said in re-examination that she would not know if FGM was a rule of her tribe.
61. The chronology given by the appellant, both to us and to the Adjudicator, also does not fit with the expert and other evidence. If the appellant’s parents had been members of a sub-group of the Krahn that practises FGM, and who wished her to go to Sinoe in order to be initiated by a secret society, which would perform the mutilation upon her, her parents would have had ample opportunity to take her there before the onset of the civil war in 1989, rather than waiting several years from the point when they had told her of their intentions, and when according to the objective evidence she was within the age range for undergoing FGM.
62. Accordingly, whilst women who belong to ethnic groups in Liberia that practise FGM may be at real risk, this appellant has not shown herself to be at such risk. Further, even if it were reasonably likely to be true that the Sinoe exist as a sub-group and that they undertake FGM, it is not reasonably likely that the appellant would find herself having to travel to that part of south-eastern Liberia, through economic vicissitude, in order to throw herself upon the mercy of whatever extended family she might be able to locate there. The first reason we say this is because, like the Adjudicator, we do not believe that the appellant’s family in Monrovia has disappeared. Given the adverse credibility findings regarding the appellant, there is no reason to accept this aspect of her account. If, as we consider highly likely, the appellant’s family remains alive, they are not reasonably likely to subject her to FGM. That is so, even if (which we do not

accept) her parents came from a background where such a practice was common. If they did come from such a background, then the fact that the appellant remained intact long after she reached the age for FGM, at a time when travelling to Sinoe would not have been impracticable, shows that, consistently with Ms Dorkenoo's report, the appellant's parents had become urbanised Monrovia who, as a result of the 'aggressive national unification programme in Liberia', placed little weight upon tribal divisions and the practices of the those in rural areas.

63. Even if, however, the appellant's family in Monrovia has disappeared, the Tribunal does not accept that she would be driven by economic necessity to make the journey to Sinoe. As has already been noted, camps for internally displaced persons exist, where the evidence shows that the appellant and her children would not be reasonably likely to face serious harm, which crosses the Article 3 threshold. The US State Department Report of 2005 paints a picture of the camps which, whilst clearly not without problems, shows that they generally provide reasonable living conditions. In so finding, the Tribunal is aware of the comments regarding rapes within the camps. Whilst these may occur, we are unaware of any evidence that suggests that in general, lone women within such camps are as such at real risk of rape.
64. The evidence indicates, however, that the appellant is not reasonably likely to go to live in such a camp. Although not professionally qualified as a nurse, as she would like to be, the appellant is a healthy and obviously resourceful woman of some intelligence. Notwithstanding the difficult employment position in Monrovia, we do not find that she faces a stark choice between having to work as a prostitute and subjecting herself to whatever awaits her in Sinoe County. In so finding, we also take account of her oral evidence, in which she said she thought that her current (non-cohabiting) partner, who is the father of her unborn child, would send her money, if she were to go to Liberia.
65. Finally, we need to say something of the position regarding FGM in Monrovia. The US State Department Report of 2001 refers to three small schools, which hold initiation rights involving FGM, operating periodically in Monrovia. We have no reason to assume that those schools have ceased to exist since 2001. Looking at the documentary evidence as a whole, however, we find that it is plain that in the capital and its environs, attitudes towards FGM are in general different from those which prevail in the rural areas. The schools' presence in Monrovia is, we consider, evidence that persons from Liberian ethnic groups living in that city, who practise FGM and who wish to have their daughters undergo that mutilation, are able to do so by making use of such a school in Monrovia, instead of having to return to their tribal homelands. The presence of the schools is in no way to be equated with a real risk to a woman living in Monrovia, regardless of ethnic group and of familial disposition towards FGM.
66. The incident in Monrovia involving the forced FGM of a Grebo girl by a Zoe soothsayer (paragraph 2.2 of Ms Dorkenoo's report; paragraph 36 above) is sourced from Rahman and Toubia's book *Female Genital Mutilation. A guide to the laws and policies worldwide*, published in London in 2000. We do not know when the incident in question occurred or in what circumstances, but if it were regarded as anything more than an unusual and isolated occurrence, we would have expected someone to have said so. The Tribunal does not regard the incident as in any way showing that there is a real risk to women from non-practising ethnic groups. On the contrary, the

unusual nature of the incident is likely to be the reason why it was specifically recorded. The Zoe who committed the act was, moreover, punished.

67. The 2001 US State Department Report (as recorded in paragraph 2.5 of Ms Dorkenoo's report and paragraph 39 above) states that whether or not FGM is practised in Monrovia and other urbanised and populous areas of Liberia depends on education, class and the closeness of family ties to rural life. The example of a lawyer in Monrovia who underwent the procedure as a result of strong pressure from an upcountry grandmother suggests that family ties may be important in individual cases. However, the evidence from all the reports before us shows that a woman from an ethnic group that does not practise FGM will not face community or societal pressure to submit to mutilation. This is so whether the woman is living in an urban environment or amongst her ethnic group in the countryside. In the case of a woman living in an urban area who is from an ethnic group that traditionally practises FGM, the risk will depend on an individual assessment of her particular circumstances, taking account of how far both she and those who are in a position to bring pressure to bear on her have become distanced from their cultural roots.
68. On the evidence and our findings, it is clear that the appellant's daughter (or daughters, should her unborn child be female) will not be at real risk on return to Liberia. The appellant, as their mother, will have control over whether they undergo FGM. There is no reasonable likelihood of the appellant being compelled by any third party to subject her daughters to mutilation.
69. The Tribunal's conclusions may be summarised as follows:
 - (1) Women in Liberia belonging to those ethnic groups (or sub-groups) where FGM is practised are a particular social group for the purposes of the 1951 Geneva Convention. All uncircumcised women in Liberia are not as such at real risk of FGM. A woman will be at real risk if she comes from an ethnic group (or sub-group) where FGM is practised and the evidence shows she is reasonably likely to be required by her parents or others in a position of power and influence over her to undergo FGM. Those who practise FGM are not reasonably likely (particularly in urban areas) to seek to inflict it upon women from non-practising ethnic groups (or sub-groups).
 - (2) Internal relocation will be available in Liberia to a woman who is at real risk of FGM in her home area if the evidence shows (i) she is not reasonably likely to encounter anyone in the place of relocation who would be in a position of power and influence over her and who would use that power or influence to require her to undergo FGM and (ii) she can reasonably be expected to live in that place, having regard to the general circumstances prevailing in it and to the personal circumstances of the appellant (paragraph 339O of HC 395 (as amended)). In the case of a woman from a rural area in Liberia, internal relocation to Monrovia or some other urban centre will not be available unless her circumstances are such that she will be able to survive economically (see *Januzi v Secretary of State for the Home Department & Ors* [2006] UKHL 5) and resist pressure from any family or other members of her ethnic group who may be in that place. Such instances are likely to be rare. They cannot, however, be ruled out; eg. where the woman has a husband or other male protector.

(3) Credibility will usually have an important part to play in determining whether a woman is at real risk of FGM.

70. For the reasons we have given, the appellant has not shown that she falls within paragraph 69(1).

71. The Adjudicator's determination contains a material error of law. We substitute a determination of our own, dismissing the appellant's appeal on asylum and human rights grounds. For the reasons we have given at paragraph 51 above, the appellant is not entitled to the grant of humanitarian protection.

Signed
Senior Immigration Judge Lane

Date

Appendix

Background materials considered by the Tribunal

US State Department (Office of the Senior Coordinator for International Women's Issues):
Liberia: Report on Female Genital Mutilation (FGM) and Female Genital Cutting (FGC) (1 June 2001)

Amnesty International Report: Liberia, covering events from January to December 2003 (2004)

Amnesty International: Female Genital Mutilation in Africa: Information by Country (2004)

Liberia: Major effort needed to address gender-based violence (16 January 2004)

UN Security Council: Third Progress Report of the Secretary-General on the UN Mission in Liberia (26 May 2004)

Liberia Press: Liberian girls face rape, abuse despite war's end (3 June 2004)

Letter from UNHCR, re: UNHCR position on return of failed asylum seekers to Liberia (28 July 2004)

Liberia: One year after Accra – immense human rights challenges remain (18 August 2004)

Health Action in Crises Monthly Report, Issue 35, Afro West Africa Sub-Region (September 2004)

BBC News: Mass arrest after Liberian riots (1 November 2004)

Amnesty International Report: Liberia (2006)

All Experts Free Encyclopaedia: entry on Krahn (2006)

Human Rights Watch Events of 2005: Liberia (January 2006)

International Crisis Group Update Briefing, Liberia: Staying Focused (13 January 2006)

Inter-Parliamentary Union: One out of five parliamentarians elected in 2005 is a woman (27 February 2006)

US State Department Report: Liberia – Country Report on Human Rights Practices (8 March 2006)

Home Office COI Report: Liberia (April 2006)

Home Office Operational Guidance Note: Liberia (5 May 2006)

UN Population Fund: Liberian men and women unite to fight rape (21 June 2006) IRIN:
Liberia child rapists walk free for a few dollars (25 July 2006)

Home Office Operational Guidance Note: Liberia (30 November 2006)

Political map of Liberia

Tribal map of Liberia