Asylum and Immigration Tribunal

FM (FGM) Sudan CG [2007] UKAIT00060

THE IMMIGRATION ACTS

Heard at Taylor House
On 12 February 2007 and
Field House on 18 April 2007

Before

SENIOR IMMIGRATION JUDGE LANE
SENIOR IMMIGRATION JUDGE KING TD
MISS R I EMBLIN JP

Between

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms K Cronin, Counsel, instructed by Danielle Cohen Solicitors
For the Respondent: Mr P Tranter, Senior Home Office Presenting Officer

Significant action is being taken in Sudan, both within government and by NGOs, to combat the practice of female genital mutilation in all its forms. Legal sanctions are, however, unlikely to be applied where a woman has been subjected by her family to FGM.

There is in general no real risk of a woman being subjected to FGM at the instigation of persons who are not family members. As a general matter, the risk of FGM being inflicted on an unmarried woman will depend on the attitude of her family, most particularly her parents but including her extended family. A woman who comes from an educated family and/or a family of high social status is as such less likely to experience family pressure to submit to FGM. It is, however, not possible to say that such a background will automatically lead to a finding that she is not at real risk.

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The risk of FGM from extended family members will depend on a variety of factors, including the age and vulnerability of the woman concerned, the attitude and whereabouts of her parents and the location and "reach" of the extended family.

If a woman's parents are opposed to FGM, they will normally be in a position to ensure that she does not marry a man who (or whose family) is in favour of it, regardless of the attitude of other relatives of the woman concerned.

DETERMINATION AND REASONS

1. The appellants are citizens of Sudan, born respectively on 27 August 1959, 27 July 1997, 3 March 1985, 18 September 1988 and 20 January 1993. The first appellant is the mother of the other appellants. All of them arrived in the United Kingdom on 31 October 1999, with leave to enter until 31 January 2002 by reason of the employment in the United Kingdom of the husband of the first appellant. On 18 January 2002, the first appellant applied, on behalf of herself and the other appellants, for leave to remain in the United Kingdom. That application was refused by the respondent on 13 December 2002 and each of the appellants appealed against it. The bases of her claim to remain in this country were a fear that the third and fourth appellants would be subjected to FGM in Sudan, a fear based on the first appellant's political opinion and the generally adverse effect that removal would have on the family and its constituent members.

2. The appellants' appeals were heard at Hatton Cross on 12 October 2004 by an Adjudicator, Mrs D J Baker, who, by a determination promulgated on 20 October 2004, dismissed them. On 6 March 2005, permission to appeal to the Immigration Appeal Tribunal was granted to the appellants on the ground that the Adjudicator had arguably erred in law in her consideration of the ground relating to an asserted real risk to the third and fourth appellants of being compelled to undergo female genital mutilation (FGM), if returned to Sudan.

3. On 4 April 2005, the grant of permission to appeal to the Immigration Appeal Tribunal had effect as if it were an order that the Asylum and Immigration Tribunal (which came into being on that day) should reconsider the determination of the Adjudicator. On 29 September 2005, the Tribunal (Senior Immigration Judge P R Lane; Immigration Judge C H Bennett; Mr B D Yates) concluded that there was a material error of law in the Adjudicator's determination. Its findings on that issue (which form part of this determination) were as follows:-

   "*1. Although the grounds of appeal, upon which permission to appeal was granted, are plainly imprecise and unsatisfactory, the Tribunal on 29 September was satisfied that rule 62(7) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 could not be said to limit our reconsideration of the determination to the issue of FGM in Sudan, as it is set out in those grounds. This was because there is in the Adjudicator's determination an obvious error in the 'Robinson' sense (R v SSHD ex parte Robinson [1998] QB 929), which, if it had been raised in the grounds, would have had a strong prospect of success.*

   2. At paragraph 6 of her determination, the Adjudicator makes plain that she has misunderstood the nature of the evidence that must be considered in order to

determine whether the [first appellant's] *protected human rights would be violated on return to Sudan. Evidence as to that issue was not, as the Adjudicator thought, limited to what was in existence at the date of the decision or within 6 months thereof.*

3. The Tribunal agreed with Ms Cronin, Counsel for the appellant at the hearing on 29 September, that this erroneous approach infected the entirety of the determination. Thus, at paragraph 22, the Adjudicator found that the [first appellant] *had produced no evidence to show that she or her daughters are at particular risk if they return to Sudan. The* [first appellant] *had, however, produced evidence from* [named individual] *to the effect that the daughters were at risk of forcible circumcision if returned. Whether the Adjudicator accepted that evidence is not the point; it was evidence before her, yet she discounted it, either because of her error as identified at paragraph 2 above or for some other unvoiced reason."*

4. The Tribunal on 29 September 2005 considered that, at the adjourned reconsideration hearing, all matters (including credibility and the first appellant's alleged political activities in Sudan) should be at large. That was, by common consent, the approach which the Tribunal subsequently adopted at the hearings in February and April 2007. The other matter to note at this stage is that there was some doubt expressed at the hearing on 29 September 2005 as to whether the first appellant was the sole appellant, with her children as dependants on her claim, or whether each was an appellant in his or her own right. Upon analysis, the Tribunal has concluded that each of the children is an appellant. The application made on 18 January 2002 made it plain that the children were applying for an extension of stay (3.1 of the application form). The respondent, in form ICD.0503, specified each of the five appellants as such and the respondent's bundle contains separate notices of appeal in respect of each of the appellants.

5. In order to substitute a fresh decision to allow or dismiss the appeals, the Tribunal, on 12 February 2007, heard oral evidence from Mr Peter Verney, an expert on Sudan, and from the three female appellants. Closing submissions were heard on 18 April.

The evidence of Mr Peter Verney

6. Mr Verney spoke to his written reports of 15 November 2006 and 5 February 2007. Over some thirty years, he has had a special interest in Sudan. In his first report Mr Verney noted that the first appellant feared that, if returned to Sudan, her daughters, raised outside that country, would be subjected to FGM. Mr Verney considered that fear to be justifiable and the risk to be "very real". Mr Verney had direct knowledge of FGM, having married into the Sudanese community, and had also conferred with Dr Toubia, a leading Sudanese women's health specialist and Dr Jabrallah, a Sudanese female psychologist, as well as several members of the popular opposition to the Sudanese regime. Mr Verney was aware of the concern raised on behalf of the appellants regarding the risk of FGM from members of the extended family. He considered that there was considerable vindictiveness shown by Islamists within the regime in pursuing those progressively minded people, termed "leftists, communists and secularists". That had been

> *"well-established in recent years by human rights monitors. Moreover, the regime's agents display various sexual obsessions in their treatment of opponents. It is entirely possible that they might contrive to have the operation carried out, and it is almost certain that they would not prevent or pursue anyone who did carry it out"*

on the third and fourth appellants.

7. Although Mr Verney said that FGM had been illegal in Sudan since the late 1940s, enforcement of the law had been "minimal". Furthermore, the law did not apply to the "lesser" forms of FGM. The current Sudanese regime had "both encouraged the most retrograde attitude towards women and removed official protection for victims of harm within the family". The regime had, according to Mr Verney, taken various

> *"retrogressive steps which have resulted in an increase in frequency of the operation. The regime's propaganda has increased the social pressure to carry out the operation as a quasi-religious act, the obstruction of campaigners and medical workers opposed to the operation, and the arrest not of the circumcisers but of those dedicated to the protection of women."*

The government had interfered with

> *"the respected Ahfad University and the associated Ahfad Clinic because of antagonism to their teachings on women's rights. When the clinic gave family planning assistance and focussed on the eradication of FGM, this was regarded as engaging in 'anti-government activities'. In late 1997, the government confiscated all the equipment from the clinic and closed it for approximately one year."*

8. On 6 April 2006, Mr Verney received news of a "fatwa" on FGM from Dr Hassan, Executive Secretary of the Sudan National Coordinating Network on FGM and President of the FGM/HTPs Network, described by Mr Verney as "an authoritative source". The fatwa, said to be printed and distributed widely in Khartoum state as well as the northern states of Sudan, had led to girls being circumcised. Mr Verney also referred to a statement in the US State Department Report on Sudan (2002), that the government continued to resist the presence and activities of human rights groups in the investigation of human rights abuses and that violence and discrimination against women were problems. FGM was said to be "widespread".

9. The report also referred to a press release of 18 June 2002 from the Sudanese Women's Rights Group, stating that they were "gravely concerned about the intention of the government of Sudan to legalise female circumcision". This followed the holding, on 22 May 2002, of a workshop in Khartoum, organised by the Ministry of Religious Affairs and Endowment in collaboration with the Female Student Centre in Omdurman Islamic University. The title of the workshop was "Towards the legalisation of female circumcision and establishment of training centres for operators (excisors)".

10. According to the British Medical Journal of 15 September 2002, there was a growing clamp-down on the press in Sudan, which was affecting public health campaigns. According to the BMJ, articles regarded by the Sudanese government as "subversive" included those discussing female circumcision. The "crackdown" was said to be hampering the drive against FGM. On 24 August 2002, publication of a Khartoum newspaper, Al Ayam, was suspended for a day after it published an article on FGM.

North Sudan was said to have amongst the world's highest incidence of FGM, around 89% of married women were considered to have suffered it. The suspension of the Al Ayam newspaper was confirmed in a press report from Agence France-Presse.

11. The report also referred to an international and national NGO forum in Khartoum as having been raided by government security officers on 22 January 2006. This led to the detention of some thirty individuals. The incident was said to have recalled the "crude manhandling by Sudanese security officers of the US Security of State Condoleezza Rice and her delegation during her 2005 visit to Khartoum".

12. The report noted that the first appellant claimed to have been active, whilst outside Sudan, in groups that were regarded as being in opposition to the Sudanese regime. Mr Verney considered that such "dissident activities abroad are monitored closely" by the regime, particularly in the United Kingdom. In his opinion, the first appellant's activities in the United Kingdom, in expressing her opposition to FGM and her support for women's rights, would add significantly to the risk to her if she were forced to return to Sudan.

13. Regarding the position of women in Sudan, Mr Verney considered that the regime had "turned back the clock for Sudanese women in terms of rights and treatment, as part of its political agenda. Most civil society organisations which provided the checks and balances on the political system have been outlawed." This was in contrast to the position earlier in the 20th Century, when Sudan was

> *"relatively progressive among African and Arab countries in its treatment of women – allowing women to drive cars, for example. These embryonic freedoms had been removed by the current regime since 1989. The regime has affected the lives of women in numerous ways. Key issues include its refusal to accept a UN treaty on women's rights and the restrictions on travel and freedom of association, the resurgence of female circumcision, and the use of violent punishment for dress code infringements."*

The regime remained "openly scornful of international agreements on the rights of women, despite a few token appointments of women to government and judicial posts". Women who had decided to present evidence to the UN Special Rapporteurs on human rights in Sudan had been interrogated and threatened as a result of their actions. Sudan refused to sign a UN Treaty on women's rights because the country could do without "such strange practices", according to President Bashir on 14 January 2001. In September 2000, the Governor of the State of Khartoum issued a decree barring women from working in many public places, stating that this would uphold Islamic law and "maintain the honour of women". According to the Sudan Human Rights Organisation Annual Report, on 23 June 2001 security forces interrupted a workshop on "democracy and gender issues" organised by the Gender Centre in Khartoum. Mr Verney also referred to press reports from 2003, concerning the flogging of girls for adultery and "not wearing socks".

14. In conclusion, Mr Verney considered that the regime had

> *"only to a very limited extent allowed selected groups to campaign against FGM, usually when it wants to present a moderate face to the western world. But these periods of tolerance are short-lived and insubstantial. In all other respects, it has*

hindered such work and encouraged instead those who would legitimise FGM in the name of (unjustified) religious orthodoxy."

Those who campaign against FGM are, according to Mr Verney, "almost inevitably drawn from those who oppose the totalitarian regime on other grounds".

15. In his report of 5 February 2007, Mr Verney provided the following information regarding FGM:-

"*The act of female genital mutilation or cutting (FGM/C) co-involve the removal of all external genitalia (labia and clitoris) with the stitching of the vaginal entrance (known as infibulation or Pharaonic circumcision), or the removal of all or part of the clitoris and labia (misleadingly known as Sunna circumcision). In practice there is a spectrum of severity in which the degree of damage depends not only on the amount of nerve-bearing tissue removed, but also on how much additional harm is caused by untrained surgery carried out in unhygienic conditions.*"

16. The World Health Organisation classification of FGM/C is as follows:-

"***FGM I:*** *excision of the prepuce, with or without excision of part or all of the clitoris.*

FGM II: *excision of the clitoris with partial or total removal of the labia minora.*

FGM III: *excision of part or all of the external genitalia and stitching or narrowing of the vaginal opening (infibulation).*"

17. The Pharaonic form of FGM (FGM III) has been prohibited in Sudan since 1947. According to Mr Verney, there are reports of a trend "among educated urban Sudanese away from the Pharaonic towards the 'Sunna' (FGM II type)". Such reports, however, "only indicate that they are starting to obey a law established 16 years ago. They do not indicate any real progress or any fading of the danger" to the third and fourth appellants. Mr Verney considered that materials, such as that relied upon by the respondent, referring to such changes as just described, ignored the fact that FGM II in any event constituted a gross abuse of physical and mental integrity and was likely to lead to life-long trauma. Furthermore, it had to be borne in mind that there had been reversals in the campaign in Sudan against FGM, since the current regime came to power in 1989. Mr Verney considered that, in order to present an acceptable face to western critics, the regime had often "set up its own supporters in proxy 'non-government organisations,' while continuing to attack and undermine the activities of non-Islamist civil society bodies". Most Muslim Sudanese girls were brought up in a social milieu in Sudan which depicted FGM/C as necessary and portrayed normal un-cut girls as "unclean". Because the ceremony was often accompanied by gifts and by approving social attention, many young girls were encouraged to undergo the procedure. The third and fourth appellants, however, having been raised outside Sudan, in a society which did not carry out FGM/C, would regard the procedure as utterly alien and the trauma of the operation would have even more shocking psychological impact. According to BBC and BMJ reports noted by Mr Verney, it appeared that Sudanese girls from the United Kingdom had been sent back to the Sudan, ostensibly for holidays, in order to be subjected to the FGM/C operation. Mr Verney considered that this was a far more common phenomenon than the handful of cases where progressive Sudanese were seeking to protect their children from the practice.

18. Mr Verney said that he had met the first appellant at least once at public meetings relating to Sudan and he did not have any doubt that she had played a role in promoting Sudanese women's human rights:-

> "*In summer 2005 she attended a meeting at Friends House, Euston, to call attention to the plight of the people of Darfur. This was unusual in that many northern Sudanese have distanced themselves from the Darfur issue, and it indicated that her concerns were sufficiently strong for her to go against the mainstream of northern Sudanese thinking.*"

19. Mr Verney concluded his second report by stating that the instant appeal had three major aspects requiring consideration: namely, the risk in general faced by Sudanese girls returning to Sudan of being subjected to FGM/C; the added specific risk to the third and fourth appellants who, because of their long absence from Sudan, lacked any personal identification whatsoever with the practice and who, if they conducted themselves in a manner "reflecting their more progressive upbringing abroad", would attract adverse attention from hard-line conservative members of the extended family, who would use this as a pretext to justify carrying out FGM/C on the third and fourth appellants; and the added specific risk that the first, third and fourth appellants would be targeted "out of sheer political malice. This is highly important and is born out by the regime's track record."

20. In oral evidence, Mr Verney said that he did not consider that the appellants could relocate to the south of Sudan, in order to avoid the risk to them in the north, since the south was a "recovering war zone", which could not receive non-indigenous northern Sudanese people. So far as the risk of FGM to the third and fourth appellants was concerned, Mr Verney did not consider that any individual adult could guarantee protection. Mr Verney referred to Dr Ellen Gruenbaum (whose written report was subsequently adduced in evidence) as having produced the most thorough and best-researched analysis of FGM in Sudan. She was a specialist in that matter, whereas Mr Verney said that he himself was a Sudan generalist.

The Almroth Report

21. Mr Verney was asked about the report contained in the respondent's supplementary bundle entitled "Genital mutilation of girls in Sudan – community - and hospital-based studies on female genital cutting and its sequelae – Karolinska Institutet Stockholm, December 2005" (hereafter referred to as the "Almroth Report"). That report was based on interviews undertaken according to questionnaires with 119 randomly selected respondents (30 young mothers, 29 young fathers, 30 grandmothers and 30 grandfathers) in a village in the Gezira, south of Khartoum. To investigate adverse health effects, 255 girls between 4 and 9 years old, presenting to the Children's Emergency Hospital, Khartoum, were recruited. Detailed histories and full examinations were obtained. To investigate the association between FGM and primary infertility, a study involving 99 women was undertaken.

22. The results of the Almroth Report were that, where all the female respondents in the village had undergone FGM, 44% of the young respondents had decided not to let their daughters undergo it. That change of practice was confirmed by a clinical study,

where 22% of the girls had undergone FGM but a large share of the rest would have FGM later, leaving 26% of the girls allegedly without FGM in the future. The form of FGM was "under-reported in an anatomical sense", 39% of forms being reported as "Sunna", extending to the labia majora. For girls under the age of 7 there was a significant association between FGM and suspected urinary tract infection. Religious belief, education level and socio-economic status, significantly affected to what extent FGM was practised. Re-infibulation was widely practised, with the main motive said to be sexual satisfaction of the husband, although that was contradicted by the fact that male complications resulting from FGM, such as difficulty in penetration, wounds/infections on the penis and psychological problems, were described by a majority of the men. Most of the young men questioned would have preferred to marry a woman without FGM. As a result, young fathers were more involved in the decision process when decisions were taken not to perform FGM.

23. Almroth concluded that there "seems to be a trend towards abandonment and/or milder forms of FGM in Sudan, but a majority of girls still undergo severe forms of the practice". The results of the report challenged the most important marriage-related traditional motives for FGM, by exposing male complications arising from it and male negative attitudes towards it. Although, traditionally, FGM had been performed to "increase the chances of future marriage," Almroth's findings, by contrast, indicated "that genital mutilation of girls might have an opposite effect by destabilising marriages through its effect on sexual and reproductive health".

Mr Verney's evidence (continued)

24. Mr Verney regarded the Almroth report as "not in itself a bad little report", but he considered that it had little to do with the present appeal. The sample related to a small rural community; by contrast, the issue regarding the third and fourth appellants involved their returning from outside Sudan, having had a progressive education. Although the village studied by Almroth had 3,000 people, only 120 were surveyed. The fact that Almroth required an interpreter might have had an effect. Much of the questioning in the forms related to future intentions. Mr Verney did not consider the Almroth Report as being, in general, as reliable as the reports from UNICEF on FGM in Sudan. Those reports are set out at pages 178 to 233 of the appellants' bundle. The first is a country profile, which states that FGM/C is a widespread practice in Sudan, with 89% of women in the north having undergone "some form of cutting". Prevalence rates varied according to ethnic and regional lines. Levels of preference were significantly lower in Darfur (65%) and in the east (87%), indicating that the practice was not universal throughout Sudan's various ethnic groups. The Sunna form of circumcision was "prevalent among 22% of women", but varied significantly across religion. "Infibulation is most prevalent among Muslim women (83% compared with 27% among Christian women)." Sunna FGM was "predominantly practised by Christian [women] with a prevalence rate of 46%." In 1990, it appeared that 79% of ever-married women between 15 and 49 supported the continuation of FGM/C but, again, such support varied significantly according to religion, region and educational status. "Urban, Christian and higher-educated women were less likely to favour the continuation of FGM/C compared to rural, Muslim, and uneducated women." At that time, Khartoum, with 68% support amongst women, was one of the lowest areas, with the highest being women from central (86%) and Kordofan (90%) regions. Over 60% of circumcisions were said to

be performed by "traditional birth attendants" and less than 1% of women had undergone the procedure under medical care or attention. Trained midwives were twice as likely to perform the intermediate type of circumcision.

25. The second UNICEF document is from 2005 and is entitled "Changing a harmful social convention: female genital mutilation/cutting". This report covered FGM issues across the globe. It was estimated that 130 million girls and women alive today have undergone FGM/C. FGM/C prevalence in the countries of north-east Africa (Egypt, Eritrea, Ethiopia and Sudan) is said to range from 80-97%, although care was said to be required "when interpreting these figures, since they represent national averages and do not reflect the often marked variation in prevalence in different parts of a given country". Amongst the authorities cited in this UNICEF document is Dr Gruenbaum.

26. Mr Verney said that the Almroth Report was not looking at changes in attitude over a period of time and that it possibly involved a certain amount of wishful thinking on the part of the author. Although the male respondees were said not to be in favour of FGM, there was nothing to suggest that they would actually have prevented it from happening to any woman. Even if it could be said that there were changes in societal attitudes, Mr Verney considered that it had to be remembered that those changes had first begun some 25 years ago, only to be stifled by the advent of the current Sudanese regime. Around 1983, the National Islamic Front lifted the proscription on type III FGM and conducted something amounting to almost a war against women who were advocating human rights, including opposition to FGM. In Mr Verney's opinion, the position was now back to where Sudan had been some 25 years ago, which did not constitute real progress. Furthermore, the shift from infibulation to the "lighter" form of FGM still involved a gross abuse of a woman's physical integrity.

27. Mr Verney said that he knew the first appellant and had met her at an event at the Friends Meeting House in the Euston Road. She had been there the entire day and was clearly taking an active part in trying to raise the profile of the situation in Darfur. There was, in Mr Verney's view, "no doubt" that the first appellant would have been noticed and labelled as an activist. Although the regime was prepared to allow the establishment of some social society groups, including those involving women, in practice these only related to members of the National Islamic Front and excluded those who were anathema to the regime. The first appellant's long association with Sudanese human rights organisations meant that she was associated with groups that were regarded as an embarrassment. Indeed, they were regarded as real enemies of the regime.

28. Cross-examined, Mr Verney said that he had assisted another person during the 1980s on a book regarding FGM and had direct personal experience as a result of being married into the community and through being in contact with doctors and others. He had not carried out any academic research into FGM since the 1980s but had researched women's rights in Sudan. FGM was in the majority of cases carried out on girls aged between 4 and 12 but there were "plenty of cases" of older girls and young women being subjected to the procedure. There was also re-infibulation, where those who had given birth were "stitched up" once more. Mr Verney's own sister-in-law, who was from south Sudan, was persuaded at the age of 19 by an Arab family from the north that she should undergo FGM. There were also incidences of

southern Sudanese women who had moved to Khartoum coming under pressure to have it performed.

29. Asked whether these women had been forced, as opposed to being persuaded, Mr Verney said it depended what one meant by forced. The decision depended upon the individual family, including grandparents, aunts and uncles. The parents of a girl were not necessarily to be regarded as being in control of the situation. Even a progressive parent could be overborne by a more hard-line relative. A girl's parents would be unable to protect her against FGM. The number of parents opposed to the procedure was very small and they faced pressures to conform. Another relative might just take the girl in question away, in order for her to have FGM.

30. It was put to Mr Verney that the Almroth Report suggested that the decision lay with the mother. Mr Verney said that that view was "superficial and wrong". It would only take an aunt or uncle to step in and the parents would have no ultimate control. There was a risk of abduction of the girl in question by the extended family. Mr Verney considered that to be the primary risk in the present case. It was not necessarily a question of the third and fourth appellants bowing to pressure. Furthermore, the risk would exist wherever they lived in Sudan. Their extended family would be able to find them in any place in which they might reasonably be able to live. It had to be remembered that most of Sudan was desert. In the populated areas, there was a "village-like" atmosphere, in which it was impossible to escape attention.

31. Asked about different attitudes emerging amongst the educated class in Sudan, Mr Verney said that this largely involved no more than a move from the severe to the less severe form of FGM, which was still a gross abuse.

32. The Sudanese regime's attitude towards FGM was caused in part by a desire on its part to stand up to western influences and pressures. The procedure would be unlikely to be carried out in a hospital but, rather, would be undertaken by a traditional birth attendant.

33. Mr Verney was asked about the passage in his second report about the likelihood that the Sudanese authorities would target the first, third and fourth appellants "out of sheer political malice". He replied that this did not mean that the Sudanese state itself would undertake the FGM of the girls but, rather, that they would be unwilling to protect them and might shield anyone who carried it out. No-one had ever been punished in Sudan for undertaking FGM. The first appellant had shown political opposition to the regime and so the latter would not stand in the way of those who wished to perform FGM on her daughters. The first appellant had an uncle who was an Islamist who worked in a military hospital. He might be a likely person to insist that the daughters were subjected to FGM. If so, the regime would not be concerned. On the contrary, Mr Verney considered that the regime would regard such an event as, in effect, punishing the first appellant for her political stance. The regime itself, however, would be at pains not to be seen to be actively involved.

34. Asked what the mother and father of a girl might do in order to protect her, Mr Verney said that there were no safe places to go. The family in the present case had powerful members, who were associated with the regime. As a result, the parents of the girls were likely to be completely overridden by overt opposition or, alternatively,

by persons operating by stealth. A girl might “disappear for an afternoon”. Mr Verney had experienced for himself such “underhandedness”.

35. Re-examined, Mr Verney was asked what form the pressure would take. He said that the girl appellants had adopted lifestyles that were not Sudanese and they would be regarded on return as “immodest and dangerously liberal”. This would lead to the assumption that they had not undergone FGM. The view would also be taken that, by subjecting them to it, the girls would be brought back “into the fold”. The degree of pressure would, Mr Verney considered, differ according to the nature and circumstances of the family involved, but it would be never-ending. He referred again to his sister-in-law, who underwent FGM at 19, at the insistence of her fiancé’s family, only to find that the fiancé then disappeared. When he was a lecturer at Khartoum University, Mr Verney said he had known intellectuals who were very aware of the risks but who were nevertheless subjected by intense social pressure to undergo FGM. The pressure was primarily social and familial.

36. In answer to a question from the Tribunal, Mr Verney said that he regarded the greatest influence as coming from the family (including the extended family). There was an uncle who worked at the military hospital and also an aunt. The uncle and aunt were the most likely sources of risk to the third and fourth appellants. Within any extended family, there would be key individuals who would be likely to be keen on FGM. Every family would have a “hard-line person” within its ranks. Mr Verney considered the risk in the present case to be real, based upon his decade and a half of being in Sudan and the profile of the appellants, together with the fact that their uncle was pro-regime.

37. So far as the Darfur meeting at the Friends Meeting House in Euston was concerned, Mr Verney said that numbers there during the day varied between 100 and 300. Mr Verney confirmed that, as far as he was aware, the first appellant had undergone FGM.

Evidence of the first appellant

38. The first appellant gave oral evidence. She confirmed and adopted her written statements. These are set out at pages 108-109 of the appellants’ bundle and pages 1-7 of the appellants’ supplementary bundle A. In summary, the first appellant said that she was involved in Sudan in the women’s rights movement and that, following her marriage to a Sudanese citizen who worked for Saudi Arabian Airlines, she lived with him in Pakistan, where her four children were born. Her husband was then posted to the United Kingdom and she came here with the children in October 1999, in order to be with him. The children attended local schools, learned English and mixed with the local community. The first appellant was employed from May 2000, eventually working in the hotel business.

39. The first appellant’s husband was transferred to Saudi Arabia, leaving her to look after, feed and educate the children. She regarded herself as separated from her husband, whose only contribution to the family was to pay the mortgage. The first appellant decided that she could not return to Sudan with her children, because her daughters would be subjected to FGM and because the children would know nothing about the culture, customs and language of that country.

40. In her second statement, the first appellant described her own experience of FGM. This occurred when she was 14 years old. All the girls in her school underwent the procedure and both the maternal and paternal sides of the family closely adhered to the tradition of FGM. The first appellant found it "the most traumatic and awful experience that I have ever experienced". Her family decided to subject her to it, when she was still recovering from an appendectomy. Her maternal grandmother "used a hot poker from the fire to control and restrain me and I suffered a burn to [the] inside of my left knee, from which I still have a scar. The circumcision was carried out at a midwife's house and she used a blade to cut me whilst two women held my shoulders down and my legs were tied with bandages to prevent me from moving." There was then "a celebration of singing and I was given gifts". She found it extremely difficult to pass urine and had to lie in bed because walking was painful and difficult. Thereafter, menstruation became "a monthly torture". Her periods lasted much longer because the blood could not flow naturally. She remained highly vulnerable to repeated infections.

41. The first appellant's feelings about FGM grew stronger through her late teenage years. She heard about the Sudanese Women's Union, who spoke out against FGM, and began to distribute leaflets for them. She officially joined in 1977. In 1979, she attended a WHO meeting in Khartoum on the subject of FGM. At that time, the first appellant was working as a school teacher. Shortly thereafter, she participated in a demonstration against FGM and violence against women. As a result of taking part in that protest, she lost her employment at the school. In 1982, following her marriage, she participated in a demonstration against FGM, again under the auspices of the Sudanese Women's Union. The police intervened and women were beaten and arrested. The first appellant was arrested and interrogated for five hours, as well as being beaten.

42. The same year, the first appellant's husband joined Saudi Arabian Airlines and in 1983 he was transferred to Karachi. The first appellant joined him there the same year. At that time, Sudan was ruled by President Nimeiri, who shortly thereafter proclaimed Shari'a law throughout the country. This increasing conservatism was an important factor in the decision of the first appellant to leave Sudan.

43. Whilst in Pakistan, the first appellant continued with her activities in respect of women's rights. Her husband fully supported her in this "and still does today". Both of her daughters attended English speaking private schools in Pakistan and their parents were "always…keen for them to live a liberal lifestyle and they began doing so in Karachi and continued with this in the UK".

44. The first appellant visited Sudan with her husband in 1991, as a result of the supposed illness of his mother. The first appellant's mother-in-law made comments to the third appellant, then aged about 6, which were designed to suggest to her the benefits of FGM. The mother-in-law had another granddaughter, aged 10, who was to undergo the procedure around that time. The first appellant said that the plan was for the third appellant and the latter's cousin to be circumcised together and that this was the reason why the first appellant and her family had been "tricked" into travelling to Sudan. In order to prevent this happening, the family left for Karachi.

45. In 1998, when the first appellant's husband left Karachi for his posting in the United Kingdom, the family had great difficulties in obtaining Sudanese passports for the

third and fourth appellants, as the first appellant did not wish them to cover their heads in the photographs needed for the passports. The Embassy officials insisted that they should and this led to "much disagreement" between them and the first appellant. Eventually, the first appellant acceded to the officials' demands. The passport applications were then sent to the Sudan but, according to the first appellant, the authorities there "would not issue passports to our daughters but agreed that they could be included on my passport after a long delay".

46. In the United Kingdom, the first appellant said that she continued with her political and human rights activities and joined the Sudan Human Rights Organisation. Later, she joined the Sudanese Women's Rights Group and continued to be active in both organisations. In January 2003, she joined the Darfur Centre for Human Rights and Development, for which she undertook voluntary work. She had attended many protests, meetings and activities, and supported other women who had had similar experiences to her. She particularly believed in raising awareness amongst Sudanese and West African women, so that they did not subject their daughters to FGM.

47. In 2005, the first appellant joined the Sudanese Solidarity Group, described by her as "a voluntary civil society organisation which criticises the government in Sudan and reveals corruption therein". She attended their monthly meetings.

48. Although both the first appellant and her husband objected to FGM, her own family in Sudan and that of her husband both supported the practice. Some members of the family held, or had held, positions of influence in the regime and the first appellant considered that she and her husband "could not resist their pressure on this issue". Her brother-in-law was said to be a medical doctor and a senior police officer in the police hospital in Khartoum. His sister had, over the years, contacted the third and fourth appellants by telephone and

> *"has pressurised them concerning the practice, telling them that they will not be respected or make a proper marriage if they fail to undergo the practice. She has even offered them her sons' hands in marriage. She is very hostile with me on the phone. She thinks that I have manipulated my husband and challenged the traditions of the family. Her pressure was so intense some years ago that I changed our home telephone number so that she could not contact us."*

49. Another brother-in-law was, according to the first appellant, Minister of Tourism in the Sudanese government and had strong political contacts and influence. Her own maternal uncle was the Director General of Khartoum Health Department. Both of these men were said to have

> *"very strong views about FGM and their daughters are all circumcised. My girls are viewed very negatively because they are the only uncircumcised girls in the extended family. The whole of my extended family enjoy a prominent position in Sudan because it is one of the prominent families in Khartoum."*

The appellant said that her half-brother was a

> *"senior lawyer and again his daughters are circumcised. I mention these particular family members to explain the social pressure that my daughters and I would be placed under. This pressure would be all the more intense because I am returning*

there as a separated wife and we will be without my husband's protection. He remains living in Saudi Arabia."

50. The first appellant said that she could not join her husband in Saudi Arabia, as his status there depended on him being a single man and she and her family could not obtain residency. Furthermore, Saudi Arabia was unsafe for children and was "easily accessible to members of the extended family because of its proximity to Sudan and easiness for pilgrimage and 'umrah' religious visits".

51. The first appellant considered that her sons, now 10 and 14 years old, would not be able to adapt to a Sudanese life. They had never lived in Sudan and, although they spoke some Arabic, they were not fluent. Neither of them could read nor write Arabic. The fourth appellant was said to be a member of Amnesty International.

52. The first appellant's second statement ended by saying that, although her primary fears on return to Sudan were for her children, she knew that she herself was at risk because of her political activities on women's rights, in respect of the Sudanese government's activities in Darfur and as a result of her opposition to their general human rights abuses. Whilst in Karachi, the family was well known to Sudanese Embassy officials, who were aware of her lectures and meetings on women's issues. One of those officials is now posted to the Sudanese Embassy in London, where they had seen each other "at different political events where he is presumably observing for the Embassy". As a result, the first appellant expected that the London embassy would alert the authorities in Sudan, if the first appellant were to be returned, and that she would be detained and interrogated by those authorities.

53. Cross-examined, the first appellant said that she came to the United Kingdom as a result of her husband being posted here. Although she knew about the problems that would face the family in Sudan, she did not know when her husband was going to be posted elsewhere. Nor did she know about the law of the United Kingdom. She was asked why she could not go to live with her husband in Saudi Arabia. She said that it was a condition of his contract, when he first became employed, that he would be a single person and so he travelled to Saudi Arabia on his own. Asked why she had not gone to Saudi Arabia in 2002, when her husband was posted there from the United Kingdom, she said that it was again a condition of his contract that he should be a single person, whilst in Saudi Arabia. There were, furthermore, fears that she had about the position of her children in Saudi Arabia, including the risk to the daughters of FGM.

54. The first appellant was asked why she had not raised the FGM issue in her application for variation of leave. She said that the children had been born in Karachi and educated there and she did not have any knowledge of the laws of the United Kingdom and she merely thought that a person like her could have a profession in the country in which she lived. She also thought that she would have protection, as a person who had bought a house here. The appellant was further pressed on the point, it being pointed out that, by the time her husband was posted to Saudi Arabia from this country, the first appellant was concerned about the FGM issue. The first appellant replied that she had in fact mentioned the issue to her first solicitor. She denied that she was refusing to answer the question put to her.

55. The first appellant reiterated that she had been involved with the Sudanese Women's Union and had participated in demonstrations, while in Sudan. She lost her job on 30 May 1980 as a result of these activities.

56. The first appellant mentioned her uncle, as a person in Sudan who would bring pressure to bear to have her daughters circumcised. He worked with the Health Ministry. Her husband's uncle was the manager of a military hospital and he too was in favour of FGM. Of all the female members of the extended family, only the third and fourth appellants had not suffered FGM. She then named three further family members, who were in what the first appellant described as high positions in the Sudanese regime. She was asked why she had not referred in her statements to these other members. She said that the uncle in the military hospital would be the one who would bring pressure to bear on the other family members.

57. The first appellant confirmed that she was known to the Sudanese Embassy in Islamabad and that she had also played a role amongst Pakistani women, in making them aware of the issue of FGM.

58. Asked why she could not protect her daughters in Sudan, she said that there was no court in that country to which she could go and there was no specific law in respect of which she could make a complaint in the courts. As a result, anyone from the family could take the daughters and force them to undergo FGM. They might possibly be abducted. There were lots of ways in which the daughters could be taken for this purpose, short of outright seizure in the streets. Girls were often enticed to undergo FGM by being offered presents. She feared that the daughters could be taken and persuaded to undergo FGM, without her knowledge. Not having lived in Sudan, the daughters would not understand the traditions and customs of that country. Social pressure would be placed on them, rather than outright force. Her husband would not be able to protect the girls as the issue of FGM was dealt with by family members such as grandmothers and aunts. The husband would, in any event, remain in Saudi Arabia.

59. The first appellant was asked whether she and her children could not move to a different part of Sudan. She said that her children were educated in Karachi and could not speak Arabic. Their place of shelter was in the United Kingdom.

60. Re-examined, the first appellant was referred to the document set out at page 17 of the appellants' bundle. This is an undated letter to the respondent's Integrated Casework Director, written in manuscript, in which the writer states that she did not want to take her daughters to Sudan because they were facing the prospect of female genital mutilation. The first appellant confirmed that she wrote the letter and gave it to her former solicitor. She wrote it before she got a Home Office letter about registering the appellants' passports with the police. At page 159 of the supplementary bundle A, there was a letter of 1980 addressed to the first appellant, which she received when she was sacked from her employment in Sudan. She brought that letter, and other documents, with her from Sudan to Pakistan and, later, to the United Kingdom.

61. In answer to a question from the Tribunal, the first appellant confirmed that she eventually got permission from the Sudanese authorities to have her daughters put on her passport, even though they could not have their own passports. Her brother-in-

law was no longer the Minister of Tourism but still had strong links with the government. At present, he was working in the army. The maternal uncle was still in charge of the military hospital. Her half-brother was a senior lawyer. All the individuals in question were well-educated and held senior positions, as well as strictly adhering to Sudanese customs and traditions.

62. The first appellant considered that a woman in Sudan could have sexual intercourse only in an "illegal way" if she had not undergone FGM. Her own political background meant that she would be unable to protect her daughters in Sudan and, indeed, she might be subjected to an "extreme type of punishment in Sudan".

63. The first appellant said that she had been in a group of five people, who were selected from a crowd of about 1,000 in order to present a petition to the Greek Embassy in London about the dumping in Sudan of toxic waste from Greece. At the December 2006 protest rally in London, there were around 250-300 people present.

64. The first appellant said that she communicated with her children at home in English and they spoke very little Arabic.

65. In answer to further questions from Ms Cronin, the first appellant said that the rally in December 2006 was to support the British government over its stance regarding the situation in Darfur. The first appellant was known to the Sudanese Embassy in the United Kingdom. A particular official who had known her in Karachi was now in London and he had attended the December 2006 demonstration and been present at other meetings on Sudanese issues, which the first appellant had attended. The first appellant then named the official concerned.

66. The first appellant was asked whether her well-connected family members in Sudan would help her, if she ran into difficulties with the Sudanese authorities regarding her political activities. The first appellant said that they would do so, if at all, only on the condition that her daughters were subjected to FGM.

Evidence of Dr Ali

67. Dr Omar Ahmed Ali gave evidence. He confirmed as correct and adopted his written statement (pages 17 and 18 of supplementary bundle A). In that statement, Dr Ali recorded that he was a Sudanese medical doctor, who had been recognised in the United Kingdom as a refugee. He knew the first appellant and her family in Karachi, where he studied medicine in Sindh Medical College 1991-1997. He first met the first appellant at a social occasion in late 1991. As his acquaintance with the family grew, the witness noticed that the first appellant was interested in issues regarding Sudanese society in general and Sudanese women in particular, such as violence against women, FGM and early or forced marriage. The first appellant attended forums organised by the Sudanese Students' Union – branch of Karachi, in order to consider those issues. The first appellant would go to Sindh Medical College to meet Dr Ali and his fellow students, in order to gather information about FGM and its related complications, including fistulae, chronic infections, sex phobia and frigidity. These activities, which included criticising the Sudanese government, were open ones and were monitored by the Sudanese Embassy in Islamabad.

68. After graduation, the witness returned to Sudan and worked as a doctor. He had first-hand experience of the suffering of women, between the ages of 7 and 30, who were subjected to FGM. In those rare cases where women had escaped the ritual, many were nevertheless compelled to undergo it after marriage, as a result of pressure by their husbands. FGM, according to the witness, was still widely practised in Sudan, primarily in the north, east and west of the country. The witness had treated five cases of newly married women who needed surgical intervention, as well as counselling, after FGM, before consummation of the marriage could take place.

69. The witness said that he did not know the first appellant personally, whilst she was in Sudan. He did, however, know the person who was the Director of the military hospital. The witness named that person. The witness knew of the appellants' family, as being a well-known one in Sudan. The witness was asked whether her family could protect the first appellant, if returned. The witness replied that, although the first appellant's family was well-known socially, in particular, in Khartoum, they could not provide protection because the present regime did not pardon or forgive any activities carried out against it.

70. The witness said that he did not see any FGM being undertaken in the hospitals in which he had been employed in Sudan. The procedure was known to be performed by midwives and, sometimes, by less well-trained nurses. The witness said that he was aware that adult women in Sudan had been subjected to FGM against their will. He considered that this happened often. The witness considered that any member of the family could play the role of instigator of FGM; for example, a grandparent, aunt, or even more distant family member.

71. Cross-examined, the witness said that he knew about the procedure being carried out on adult women as a result of his work in hospitals. In the Obstetrics and Gynaecology Departments, he had seen cases transferred to hospital, following complications, including birth-obstructed labour caused by FGM. The patients would talk to the witness and his colleagues about such things as when the operation was carried out and how old the patient was at the time. Such instances occurred whilst the witness was working in the Khartoum Teaching Hospital between July 1998 and 2000. He worked in the Urology Department of a hospital in Khartoum from 2001 to 2002.

72. In answer to a question from the Tribunal, the witness said that the person identified as the first appellant's maternal uncle worked in the health sector, within the government's health ministry.

Evidence of third appellant

73. The third appellant gave evidence. She adopted her written statements at pages 152 to 153 of the appellants' bundle and pages 10 to 13 of supplementary bundle A. In the first statement, the third appellant confirmed her birth and initial schooling in Pakistan, and subsequent schooling in west London. The third appellant described persistent telephone calls from her aunt in Sudan, attempting to convince the girls that FGM was "an inevitable destiny". The third appellant said that her mother had had to change the house telephone number in Hounslow in order to prevent the aunt from making further telephone calls. The third appellant spoke fluent English and

little Arabic. She said that she wore western clothes, had friends of both sexes and had been raised according to western and secular values, as opposed to Islamic values and the prevalent culture in Sudan. The third appellant was fearful of being subjected to FGM at the instigation of her extended family, were she to be returned. In her second statement, the third appellant said that she did not remember the trip she had made to Sudan, when a young child, but had been told about the trickery involved in getting the family to make the trip there. The third appellant had had an "intimate relationship with my boyfriend". She was currently working for Morgan Stanley as an administrator. She was also studying for a degree. She understood that her paternal uncle, described as a well-respected police doctor in Khartoum, was strongly in favour of FGM.

74. Cross-examined, the third appellant said that she could not recall any family members from Sudan visiting them in the United Kingdom. She last spoke to her aunt on the telephone about 2004. She could understand a few words of what the aunt was saying but the usual practice was for the first appellant to be on an extension telephone, when the aunt was calling, and she would translate as necessary. The aunt would stress that the girls would enjoy a party and gifts, which the third appellant understood were provided when a girl underwent FGM.

Evidence of fourth appellant

75. The fourth appellant gave evidence. She confirmed as true and adopted her written statements at pages 150 to 151 of the appellants' bundle and pages 14 to 16 of supplementary bundle A. In her first statement, the fourth appellant confirmed her birth and initial schooling in Pakistan and subsequent education in west London. She said that she spoke English fluently (a fact confirmed by the Tribunal, both in her case and that of the third appellant). She also had been raised according to western and secular values, wore western clothes and mixed with friends of both sexes. The fourth appellant remembered the time when, aged about 5, the family went to Sudan as a result of what turned out to be false information about the severe illness of her grandmother. The fourth appellant discovered that the real reason was that the family in Sudan wished her to be circumcised on the same day as her cousin. The immediate family left at night, so as to avoid this happening.

76. The fourth appellant described receiving persistent telephone calls from her aunt, who wished to convince the fourth appellant that FGM was her "inevitable destiny". The fourth appellant was considerably disturbed as a result of these conversations, which ended when the first appellant changed the telephone number in Hounslow.

77. In her second statement, the fourth appellant gave more detail about the telephone calls from the aunt. They concentrated upon going to Sudan for what was described as a "big celebration", which would result in the fourth appellant and her sister becoming women. The aunt also talked of the third and fourth appellants being married to cousins. The fourth appellant was at a loss to know how to reply and said that the aunt should speak to the first appellant about these matters. The fourth appellant confirmed that the first appellant attends weekly meetings in the United Kingdom, regarding political activities. The first appellant had told her daughters a great deal about her own experience of FGM.

78. Cross-examined, the fourth appellant said that her Arabic was "not too good" but that she could understand it to an extent. The first appellant would translate, after the aunt's telephone conversations had ended, things which the fourth appellant had not understood at the time. The fourth appellant said that part of her second statement might be incorrect, insofar as it suggested that she was able directly to understand details of what the aunt was saying to her.

79. In answer to a question from the Tribunal, the fourth appellant said that the telephone calls could be as regular as twice a week. The fourth appellant said, however, that the family in Sudan would not remember the fourth appellant's birthday.

The Gruenbaum report

80. On 18 April 2007, the Tribunal heard closing submissions on behalf of the parties. Prior to that date, the appellant had served a written report (described as an affidavit) from Dr Ellen Gruenbaum, Professor of Anthropology at California State University, Fresno. Dr Gruenbaum earned her PhD at the University of Connecticut in 1982. The focus of her research in the field of anthropology is the treatment of women and women's health, with specific focus on female genital cutting or mutilation in Sudan. She is the sole author of *The Female Circumcision Controversy: An Anthropological Perspective*, published by the University Pennsylvania Press in 2001. That work draws on her personal research experiences, interviewing women in Sudan, in order to describe and analyse the cultural, religious and historical factors that influence the practice of FGM in Sudan.

81. Dr Gruenbaum lived in Sudan from 1974 to 1979 and taught at the University of Khartoum from 1974 to 1978. She has also worked at the Economic and Social Research Council in Khartoum and worked on her dissertation in the city of Wad Medani from 1978 to 1979. She spent six weeks in Sudan in 1989, following up on research on women's health issues in rural areas. In 1992, she visited Sudan for two months and in 2004 she undertook two separate visits to the country, spending approximately five months there. Those visits involved her being a visiting lecturer at Ahfad University for Women in Omdurman and acting as a Research Consultant for UNICEF on the knowledge, attitudes and practices of FGM in two separate regions of Sudan, as well as conducting research on FGM for the organisation known as CARE in north Kordofan state.

82. Dr Gruenbaum has authored numerous articles regarding Sudan and FGM. She is currently Secretary of the Society for Medical Anthropology within the American Anthropological Association. In 2005, she presented a paper in Toronto at the annual meeting of the Sudan Studies Association. In March 2007, she attended a UNICEF Task Force meeting in Ethiopia on "Research on the social dynamics of abandonment of harmful practices", which included a report on Sudan.

83. Dr Gruenbaum's report indicates that she had read the statements of the first, third and fourth appellants. She understood the nature of the appellant's claims.

84. Dr Gruenbaum described two primary forms of FGM in Sudan: infibulation (known as Pharaonic circumcision) and "Sunna" circumcision. Infibulation involves:-

> "*Cutting off the clitoris, the prepuce above the clitoris, the labia minora and the labia majora, followed by the stitching together of the remaining edges of the labia over the urethral and vaginal openings, such that, when healed, only a single tiny opening remains for the passage of urine and menstrual flow. Infibulation has serious negative health consequences for women, making first intercourse at the time of marriage extremely difficult, which often requires surgical incision. In addition to the incidence of infections, haemorrhage, shock, and occasional deaths, first intercourse becomes extremely difficult, childbirth is risky and obstructed labour can cause the development of fistulae (internal openings) that result in urinary incontinence and associated negative social consequences. The 'Sunna' form of FGM is less mutilating, though still considered quite harmful. Usually the prepuce of the clitoris and all or part of the clitoris is removed (clitoridectomy), but the vaginal and urethral openings are not occluded. This form can also have negative health and social consequences for women. Research supports that about 80 per cent of women in Arab and Muslim portions of Sudan have undergone the most severe form of infibulation; most of the remaining women in central and northern Sudan have undergone at least the 'Sunna' form of circumcision.*"

85. Dr Gruenbaum considered that the Sudanese government had issued "conflicting statements" in relation to FGM. Recently, it has become the official position of health officials that FGM "should not occur in any form". By contrast, President Al-Bashir has made comments in favour of the practice, according to press reports. Although some members of the government had later "disavowed these comments" the government has nevertheless declined to issue a law against the practice in order to replace a previous law against infibulation that had been on the books (but never in force) from 1946 to approximately 1993. Dr Gruenbaum considered that, as a result of the statements of the Ministry of Health against FGM, "it has become rare for doctors to openly participate in performing FGM, although there remains some who continue to advocate it despite disapproval from their professional colleagues". As a result of the Ministry of Health's ban on performing the procedures, it would be unlikely that FGM, whether coerced or voluntary, would be performed by doctors in hospitals. Instead, the procedures are most often performed in homes, in what Dr Gruenbaum described as a non-sterile environment by either a traditional midwife or a trained midwife.

86. Those who practise FGM consider it important, according to Dr Gruenbaum, for the protection of morality, family honour and the avoidance of shame. A Sudanese girl is expected to remain a virgin until marriage and any failure to do so is a source of shame for the family concerned. Infibulation is considered to prevent a girl from having premarital sex by reducing her desire and blocking penetration. So vital is FGM to family honour, that family members will often have it performed, even in the face of opposition from one or both of the girl's parents. The procedure takes only a few minutes and can be, and often is, performed in the absence of a parent.

87. Against that background, Dr Gruenbaum considered it credible that the first, third and fourth appellants genuinely fear coerced circumcision of the girls. In the light of the family circumstances outlined in their statements, Dr Gruenbaum considered that the third and fourth appellants could not be "guaranteed protection from having FGM performed on them if they are living with or near either family, since both the families and the community support FGM". The extended family's pursuit of conformity to cultural values would create a "significant risk to their safety, leading to intense social

pressure and possible use of force to make sure they are circumcised". According to Dr Gruenbaum, a family in Sudan without the protection of a father is

> *"usually subject to a degree of authority from other male relatives, including grandfathers, uncles or adult sons. Married women separated from their husbands and lacking in social protection from a husband are generally expected to live with or near their parents or a brother or other kinsman, and a woman living separately cannot offer the protection and social authority equal to that of a home with a resident father."*

88. FGM is considered essentially the purview of women, although some reform-minded fathers have, according to Dr Gruenbaum, successfully prevented their daughter's circumcision in the face of family pressure. But more often, FGM is arranged and undertaken by women on their own "with little or no consultation with the father or other men". If a father should disapprove, the procedure can easily be done in his absence. Once done, any attempt to prosecute on the part of the father would bring shame on the family. Even when the law against infibulation was on the statute book, no known court cases had been successfully brought under it.

89. In Sudanese culture, it is generally unacceptable for unmarried young women, even if adults, to live independently or to engage in sexual activity. For a woman to engage in sex prior to marriage would be likely to ruin prospects of that marriage. Sudanese women who marry are subject to the authority of their husbands, rather than the extended family. The wearing of Islamic dress in Sudan has increasingly become expected of young women and those who do not conform "are at risk of severe social criticism of their morality". Young women from Muslim families who do not conform to expected dress have, according to Dr Gruenbaum, "experienced public sanctions such as loss of employment, being denied entrance to schools or offices, and in certain time periods, even more severe physical punishments".

90. Looking in detail at what were said to be the circumstances of the instant case, Dr Gruenbaum considered that a woman who is known to be a human rights activist and who is known to be opposed to FGM, who chooses to live independently or allow her daughters freedom to dress and associate freely, faces the prospect of the extended family playing "an even more active role in attempting to persuade, pressure, or act by force to assure the circumcision of daughters of the family".

91. So far as the first appellant's political activities are concerned, Dr Gruenbaum believed that, if she were returned to Sudan, the first appellant would be taking "significant risks to her safety, freedom, and dignity, possibly resulting in detention and harassment, to continue to engage in the political activities she describes for herself in the UK". The first appellant would also be "even less able to protect her daughters from the extended family, since she might be separated from them for sufficient time for pressure or forced FGM to take place".

92. As adults, the third and fourth appellants would not be likely to be able to be forced into an arranged marriage, according to Dr Gruenbaum, "since increasingly women with education and resources have access to Muslim courts that insist that a woman must consent to her marriage in Islam". However, Dr Gruenbaum considered that there is very strong social pressure to marry one's patrilineal first cousins, which is precisely what was proposed in the case of the third and fourth appellants. That

cultural expectation, whilst very strong, is, however, "not absolute, and the wishes of the girls' father are a major factor in protecting them from or enforcing this social expectation".

93. The report then turns to the prevalence of FGM and, in particular, the significance of the Almroth Report. Dr Gruenbaum considered that FGM in Sudan "continues to be very high, despite declines in prevalence (i.e. the percentage of women and girls ages 15-49 who are altered) in some areas of the country". Large scale surveys in several states of northern Sudan over the past 20 years have found the prevalence to be "consistently about 90%, with the most severe type of the operations being most common by far. A recent survey of six out of 25 states, not yet published, shows a decline to approximately 70% in those areas. These surveys are based on self reporting, not physical examination."

94. Turning to the Almroth Report, Dr Gruenbaum noted that this demonstrated serious health and psychological problems associated with FGM, including problems that had not received much attention in previous studies, for example, difficulties and injuries experienced by men with infibulated wives. The single village selected for the study lay in "one of the most advantaged areas of the country, the Gezira, where there have been many anti-FGM campaigns over the years, where there are higher rates of education including girls' education, and where there has been more exposure to the media".

95. Having said this, Dr Gruenbaum noted that, nevertheless, all the females interviewed had undergone FGM. Dr Gruenbaum considered that the Almroth research confirmed what much recent research indicates, "that there is evidence of gradual changes in social attitudes towards the practices, with some courageous families refusing to circumcise their daughters despite the social criticism they may endure or dangers to their marriageability". However, Dr Gruenbaum considered that a reply to a questionnaire that one was intending to change was "clearly not the same as actually permanently making that change of behaviour". That discrepancy between intention and actual practice was evident in Almroth's statistics. Almroth himself projected that only some 26% of girls of the study might "allegedly" escape FGM. As an advocate for stopping FGM, Dr Almroth "strives to demonstrate that although Sudanese hope to improve marriage by doing these operations…they are in actuality causing harm in a significant number of cases". Dr Gruenbaum considered that the intention behind the research was to "help in the efforts to convince people to stop the practices, because the research can demonstrate that their goals (of supporting honourable marriage) may be thwarted by the medical complications, occasional infertility, and other harmful effects that actually result".

96. Dr Gruenbaum believed that the Almroth Report "does not address the question of whether FGM could be inflicted on an unwilling adult young woman". In Dr Gruenbaum's experience, it would be rare for a person in a city unaffected by the war to be physically assaulted as an adult and circumcised but it would nevertheless be unwarranted to say that there would be "no chance" of this happening. Dr Gruenbaum noted that there had been reports of forced "virginity checks" of suspected political dissident women, carried out under the direction of security police, although most middle class women, if not involved in activism, might not be at risk of such violations. Young women, who, by their dress and appearance, can appear as feminist or westernised activists, would put themselves at risk by living out

their political views and western lifestyle practices. Circumcision "is also considered important if there is any risk that a woman has engaged in premarital sexual activity, thereby endangering family honour. The process of infibulation…is considered a means to restore the appearance of virginity, which could be a major issue if the woman is suspected of dishonouring the family through pre-marital sexual activity."

97. Dr Gruenbaum considered that although the Almroth Report suggested that fathers can play an important role in determining whether their daughters are circumcised, he would nevertheless be wrong to assume that an absent father could "hold sway in this matter". Her own ethnographic research suggested that absent fathers are not necessarily obeyed in such matters. Dr Gruenbaum knew anecdotally of one case where a girl had been circumcised against the wishes of her father, who then made a legal complaint, but subsequently withdrew it after a few days, following family pressure not to shame them by continuing with it. Indeed, Dr Gruenbaum considered that an absent father who was outside Sudan would not even necessarily be informed prior to FGM taking place. Dr Gruenbaum also witnessed a circumcision in Sudan in 2004, in the Gezira area, the same region as that of the Almroth study. In this case, the father was opposed to FGM but absent. The operation was performed by a government-trained midwife on a 10 year old girl. Dr Gruenbaum learned that the absent father had prevented his daughter being circumcised at age 8 but on this occasion had not been informed that the girl's mother and aunt had decided to go ahead with it.

98. Dr Gruenbaum felt that it would be a misinterpretation of the Almroth study to conclude that there are no problems for girls who do not undergo FGM, in that the majority of males want their partners not to have had it. There was no national survey that suggested that high percentages of Sudanese men do not want their wives to have FGM. The Almroth study did not involve interviewing young men who were seeking wives. There was, furthermore, the fact that the Almroth sample was from a relatively advanced area of the country – the Gezira – and was not in any sense a national one.

99. Dr Gruenbaum further considered that it was incorrect to suggest that marriage reasons were not behind the pressure for FGM. On the contrary, such reasons were pivotal, in that the parental generation, which was choosing or approving marriages for their children, would be averse to allowing a marriage with an uncircumcised girl, unless the family were already supporters of abandoning the practice. Almroth hoped to provide data that would be used by activists promoting such abandonment "to demonstrate to a reluctant society that there are previously unrecognised risks both to marriage outcomes and reproduction". Dr Gruenbaum considered that, whilst Almroth' data was helpful to that end, the information in question had not yet been widely disseminated to Sudanese society and attitudes, whilst improving, had not experienced a wholesale shift.

100. Dr Gruenbaum agreed that in Sudan "young women of higher status are less likely to have FGM/C". However, whilst that might be generally true, it did not logically follow that

> *"a family that strongly supports FGM would cease to do so because of their higher social status. Since [the appellants'] family has continued to pressure the parents to*

circumcise the daughters, it is by no means guaranteed that they as individuals are 'less likely' to be subjected to it simply because of level of social status."

101. Overall, Dr Gruenbaum considered that, whilst there is significant but slow social progress in Sudan towards ending FGM, the risk continues to be high, even for women whose parents are against it or who themselves are against it. Even if a family opposed to FGM succeeded in stopping a girl from being subjected to it prior to marriage, and although such a family could be expected to withhold approval for marriage to a man with whose views they did not agree, once the girl was married, control passed to the husband. Accordingly, "marriage with a man from a family that supports the practice might result in pressure to carry out the practice after marriage". Although the woman in question could resist, she could be subjected to the following powerful social deterrents:-

    (a) She could experience the social pressure of being shamed by divorce;

    (b) She could lose custody of her children (the law being that from the age of 7 (boys) or 9 (girls) custody lies with the family of the father); and

    (c) She could be left "in limbo – partially divorced and not free to remarry".

102. The report concluded by stating that, based upon her knowledge of the country conditions in Sudan and the statements of the appellants, Dr Gruenbaum believed that the first appellant

    "is correct in fearing that her daughters have a very high likelihood of facing a risk of female genital mutilation if she returns to Sudan. In addition, the daughters' values and lifestyles described in their statements are distinctly at odds with social expectations for a Muslim middle-class family, in terms of personal freedoms expected, manner of dress, language and education, and expectations concerning freedom and marriage."

Closing submissions

103. Mr Tranter relied upon his document entitled "Skeleton argument on behalf of the Secretary of State for the Home Department". At paragraph 12, the respondent accepted that, if the third and fourth appellants could show that they were at real risk of FGM in Sudan, then they would fall within a particular social group "analogous to one of those identified by their Lordships in K and Fornah [2006] UKHL 46, in the context of FGM in Sudan". So far as the first appellant's political activities were concerned, the respondent accepted that she had been involved in such activities in the United Kingdom. Nevertheless, her claim to fear the Sudanese authorities as a result was not credible. Instead of arising from a genuine and entrenched hostility towards the Sudanese regime, the first appellant's activities were "an opportunistic device designed to enhance the appellant's chances of remaining in the UK". Reliance was placed upon the findings regarding *sur place* activities in the Tribunal's determination in HGMO (relocation to Khartoum) Sudan CG [2006] UKAIT 00062 and upon paragraph 305 of HGMO, where the Tribunal found that the Sudanese authorities would not be adversely interested in a female returnee in her own right. Such a returnee would not be at real risk unless there was reason to believe her to be

associated with a man who was of adverse interest to the authorities. The same point could be made in relation to the first appellant's children.

104. So far as FGM was concerned, Mr Tranter acknowledged that the documentary evidence appeared to show that the first appellant had raised the issue of FGM with her former solicitors in October 2002, prior to the respondent's immigration decision that was the subject of the appeal. Furthermore, the respondent accepted that the first appellant had a history of opposition to and activism in respect of FGM and that this was shared by her husband. However, the attitude of the first appellant and her husband towards FGM meant that, if there were any risk to the third and fourth appellants from their extended family in Sudan, the parents would be in a position to protect their daughters.

105. The respondent placed considerable reliance upon the Almroth Report. This showed that, of those questioned, 50% of young women and 38% of young men had decided not to let their first daughter undergo FGM. Only two of the young men and four of the young women had let their eldest daughter undergo the procedure, which had been carried out between the ages of 4 and 7. Whilst the mother of the girl in question was said to be the decision maker in most cases of FGM, the father was more involved when there was a decision not to perform it. So far as social attitudes were concerned, whilst most of the interviewed men thought that it would be socially very difficult for a Sudanese woman who had not undergone FGM, 24% thought that it would be no problem at all. 86% of young men would have accepted a woman without FGM to be his son's or grandson's wife, compared to 57% of old men. 55% of young men would have preferred to marry a woman who had not undergone FGM. There was no difference in response, by reason of level of education in the group of young men. However, those who have or would let their daughter undergo FGM had significantly lower socio-economic status and significantly fewer years in school, compared with those who had not or would not. Most young men would have preferred to marry a woman without FGM. Almroth concluded that "not only…the attitudes of men have changed, but also…there is a change in the attitudes in the whole society".

106. In the village surveyed by Almroth, there were girls who had undergone FGM and also those who had not, but who had passed the normal age for the procedure, and thus probably would not have to face it.

107. The respondent submitted that the Almroth Report showed that not all females in Sudan were at real risk of FGM. It was only girls (at best) between 1 and 12 years old whose parents (mother in particular) desire that the girl should undergo FGM who would be at such risk. Accordingly, the respondent contended that there "is no evidence that can possibly support the proposition that an adult female whose parents are opposed to FGM faces such a risk".

108. The respondent pointed to other documentary evidence, which showed a "growing momentum of public opinion against FGM in Sudan". At pages 1 to 4 of the respondent's supplementary bundle, there is a document from the Foundation for Women's Health, Research and Development (FORWARD), an international non-governmental organisation that works to advance the sexual and reproductive health and human rights of African girls and women. This document records that, on 6 December 2005, a 4 year old Sudanese girl lost her life, following an FGM procedure.

As a result, on 14 December "a group of Sudanese civil society organisations led by the Sudanese Nurses' Union took to the streets in Khartoum to protest against [the girl's] death. They marched from the hospital in which she died to the Ministry of Justice, in order to demand a law specifically banning all forms of FGM in Sudan."

109. The respondent also particularly relied upon the UNICEF report at pages 60 to 62 of the respondent's first bundle. This recorded that "a number of religious leaders are questioning deeply-held convictions on FGM/C in their communities and urging other leaders to support an end to the practice". At pages 63 to 66 of the respondent's first bundle, there is a UNICEF report of 6 February 2006, in which it is stated that throughout Sudan a "social movement is unfolding to end FGM".

110. As an alternative submission, the respondent contended that internal relocation would be available to the appellants, particularly since the husband of the first appellant was clearly willing to continue to support his family.

111. On the issue of Article 8 of the ECHR, the respondent drew attention to the five questions identified by Lord Bingham in paragraph 27 of Razgar v Secretary of State for the Home Department [2004] UKHL 17. There was no evidence before the Tribunal that private or family life could not be carried on by the appellants in Sudan. There were no exceptional factors, so as to render removal disproportionate. However, Mr Tranter informed the Tribunal that the respondent acknowledged that the policy known as DP5/96 was relevant in the present case. Under that policy, there is a general presumption that the respondent would not usually proceed with enforcement action in cases where a child, having come to the United Kingdom at an early age, had accumulated seven years' or more continuous residence. Although the policy had not been considered in detail in relation to the appellants, Mr Tranter acknowledged that there were no doubts which he could properly raise in relation to the application of the policy to the appellants.

112. For the appellant, Ms Cronin submitted that the assertion that the first appellant's claim based upon a fear arising from her political activities was opportunistic had not been put to her in cross-examination. In any event, Mr Verney had seen the appellant at the all-day meeting in London on Darfur. There was also the evidence of Dr Ali, regarding the first appellant's political activities in Pakistan. The first appellant was known to a Consul in the Sudanese Embassy in London, who had previously become aware of her whilst serving in Pakistan. The fact that the Sudanese authorities undertake surveillance operations within the Sudanese diaspora was recognised in the UN "ACCORD" Seminar Report which was considered in detail by the Tribunal in HGMO. So far as paragraph 305 of HGMO was concerned, Ms Cronin submitted that the first appellant's case was one of the no doubt small minority, where a woman would be at real risk by reason of her own (as opposed to her husband's) political activities. So far as turning to well-connected family members for protection was concerned, Ms Cronin asserted that, whilst that might be possible in the case of a "benign" state, the proposition was no more than speculative in the case of a "rogue" state, such as Sudan. It was reasonable to infer in such a case that the relatives concerned would not want their reputation to be besmirched in any way by association with the first appellant. The family might wish to "trade off family loyalties" in order to enhance their own reputations with the regime.

113. The “political” and FGM risks were, Ms Cronin submitted, effectively inter-twined and also extended to the fact that the third and fourth appellants would exhibit a westernised non-submissive attitude, which would be regarded as hostile in Sudan. Although a young woman could change her clothing, so as to reduce the risk of offence, her manners and general attitude could not so easily be altered. In the present case, what would be required would be no less than the total renunciation of the characters which the third and fourth appellants had developed. At paragraph 7 of her written submissions, Ms Cronin observed that Amnesty International have stated that, although the Sudanese government had made numerous gestures towards human rights promotion, the fact remained that virtually every kind of human rights violation had been perpetrated by the political and security establishment. The public order law allowed the arrest of women in order to enforce dress or behaviour codes.

114. As to FGM, Ms Cronin submitted that the general run of statistics showed that the procedure was carried out in respect of around 90% of women. Whilst that figure did not necessarily mean that every woman was at real risk, it showed that the “societally-sanctioned norm” was persecutory in nature. Dr Gruenbaum was internationally recognised with a wealth of field research in Sudan. Considerable weight should be given to her views. UNICEF’s demographic and health surveys and multiple indicator cluster surveys, which showed a 90% rate in northern Sudan, also indicated that the rate in urban areas was higher than that in rural ones. Although a mother’s education could contribute to the reduction in FGM, this was not sufficient to lead to its abandonment and Sudan had shown no real change over recent decades. The US State Department’s FGM/C Report contained unsourced commentary notes that only 50% of university graduate mothers had undergone any form of FGM and that many educated urban families did not practise it (appellants’ bundle page 234). That data should nevertheless be considered with caution in view of the UN ACCORD Seminar Commentary, which cited a 2004 survey at Khartoum University as demonstrating that 98% of female students had been subjected to FGM (mostly Sunna cutting (appellants’ bundle page 281)).

115. The essence of the risk to the third and fourth appellants arose from the extended family members, exacerbated because of the political activities of the first appellant and the “manifest westernisation” of the girls themselves. Although Mr Tranter had sought to expose a contradiction in the evidence of Mr Verney and Dr Gruenbaum regarding the likelihood of abduction of the third and fourth appellants, there was in substance no contradiction. The evidence of both was that FGM was often carried out in the absence of a parent. Even if the girls eventually consented, that would be as a result of fear of social stigma. In any event, consent to such an act would not be such as to prevent it being regarded as a serious crime. It was also to be observed that Dr Gruenbaum thought that another motivation for FGM in the case of the third and fourth appellants would be to mask any ruptured hymen, caused by pre-marital intercourse.

116. Even if there were doubts about the nature of the telephone calls to the United Kingdom allegedly made by the third and fourth appellants’ aunt, the extended family would view the girls, upon arrival in Sudan, as having inappropriate tendencies. There was also the risk of FGM, at the instigation of a husband or his family, after marriage had taken place.

117. Ms Cronin submitted that the size of the Almroth study was such that it could barely support the statements made in the report. Internal relocation in the present case was out of the question. The suggestion from the respondent that the family could relocate to southern Sudan was inappropriate. That was an area which was still struggling to recover from the effects of the civil war and where society was still largely dysfunctional. Having regard to the judgment of Buxton LJ in AH (Sudan) and Others v Secretary of State for the Home Department [2007] EWCA Civ 297, relocation to the south would be unduly harsh in the circumstances of the present case.

118. Ms Cronin submitted that the appellants' appeal should be allowed on asylum grounds and also by reference to Article 3 of the ECHR. So far as Article 8 was concerned, she relied upon the seven year child policy (DP5/96). In the circumstances of this case, the Tribunal could and should apply the policy itself (Tozlukaya, R (on the application of) v Secretary of State for the Home Department [2006] EWCA Civ 379; Baig v Secretary of State for the Home Department [2005] EWCA Civ 1246). The appeal should, accordingly, be allowed under Article 8.

(1) Women in Sudan

119. Article 32 of the draft Interim National Constitution states that the equal rights of men and women to the enjoyment of all civil and political rights and all social, cultural and economic rights, including the right of equal pay for equal work, shall be ensured. According to the Refugee Studies Centre of Oxford University, however, cited at paragraph 19.02 of the COI Report on Sudan (January 2007), women do not have legal access to land or resources due to discrimination in Sudanese statutory and customary law. The US State Department Report on Human Rights Practises in Sudan (8 March 2006) states that violence, including spousal abuse, against women was common, although there were no reliable statistics. Women who filed claims were subjected to accusations of lying or spreading false information. However, the government in November 2005 launched a "Violence Against Women Action Plan", with a programme that included awareness posters and a media campaign of zero tolerance for violence against women. The number of female police officers was increased. The same report noted that some aspects of the law discriminated against women. In accordance with Islamic law, a Muslim woman has the right to hold and dispose of her own property without interference and women are entitled to inheritance from their parents. However, a widow inherits only one-eighth of her husband's estate; the majority going to sons. It was easier for men than women to initiate legal divorce proceedings (COI Report 19.05).

120. The US State Department Report noted that women could not travel abroad without the permission of their husbands or male guardians, although this was not enforced strictly for NCP members. Although women generally were not discriminated against in the pursuit of employment, they were not legally permitted to work after 10pm. Women were accepted in professional roles, with more than half the professors at Khartoum University being women.

(2) FGM in Sudan

121. The report and oral evidence of Peter Verney has already been summarised (paragraphs 6 to 37 above). So too have the Almroth Report and the Gruenbaum report (paragraphs 21 to 23, 81 to 102 and 105 to 107 above). It is, however, necessary also to mention the following materials, contained in the bundles submitted by the appellants and the respondent. The UNICEF Country Profile on FGM/C in Sudan (November 2005) (appellants' bundle page 178) stated, as has already been noted, that 89% of ever-married women aged 15-49 in northern Sudan had undergone some form of FGM/C. Prevalence rates varied across regional and ethnic lines, with the level of preference being significantly lower in Darfur and in the eastern region. Over 60% of circumcisions were performed by traditional birth attendants and less than 1% of women had undergone the procedure under medical care or attention. The UNICEF "Innocenti Digest" Report: Changing a Harmful Social Convention: Female Genital Mutilation/Cutting (2005) also noted that in Sudan the national prevalence of FGM/C was 90%. Looking at a range of African countries, the report identified three significant trends. First, the average age at which a girl is subjected to FGM is decreasing in some countries. The countries cited do not include Sudan. Secondly, "medicalisation" of FGM/C, whereby girls were cut by trained personnel rather than by traditional practitioners, was on the rise. The report considered that this "may reflect the impact of campaigns that emphasised the health risks associated with the practice, but failed to address the underlying motivations for its perpetuation" (appellants' bundle page 195). Thirdly, the importance of the ceremonial aspects associated with FGM/C was declining in many communities. That trend was considered to be related, in part, to the existence of legislation prohibiting FGM/C.

122. The US State Department Report on Sudan: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC) (2001) referred to a 1991 survey of women in northern Sudan, in which it was found that 89% practised one form or another of FGM. That survey would appear to be the same as that referred to in the Innocenti (UNICEF) Report. Reference was also made to a study conducted by SNCTP and Save the Children Sweden, which found that in urban areas 87.6% of female students and 89.5% of mothers had been circumcised. In rural areas, the figures were 90.8% and 91.3% respectively. A very high prevalence of infibulation was found throughout most of the northern, north-eastern and north-western regions. According to the report, many educated urban families did not subject their daughters to this practice and the numbers of those who did not were increasing. The SNCTP study found that, in the case of women born after 1980, 57% were infibulated, while nearly 43% were subjected to the "Sunna" form. Reference was made to the fact that in northern Sudan "an elaborate ceremony generally surrounds the procedure". A young woman subjected to it would emerge marriageable; whilst a younger girl would receive gifts of special food and clothes. The ceremonial aspect was, however, "disappearing in most groups".

123. According to the same report, with the weight of the present government behind it, an intensive campaign against the practice of FGM had been launched. "Religious groups, the media and women's organisations have joined forces to eradicate this damaging practice. The government has made limited efforts to educate health personnel on this issue and to introduce information about this practice into the school curricula." An organisation known as the Mutawinat Group held a workshop in 1997 that brought together governmental and non-governmental organisations and

was pursuing a study that would document the status of women who had not undergone the procedure and who were working to get information about the practice into school curricula. In addition, "Members of the medical profession are starting to involve themselves in the issue. People are discussing the issue openly. While few have abandoned the practice altogether, many have opted for the milder 'Sunna' procedure."

124. So far as legal status was concerned, the report stated that "The government of Sudan publicly opposes type III or infibulation. Although today there is no law against FGM/FGC, Sudan is the first country in Africa to have a record of legislating against it. As early as 1930 an article appeared, written by a medical student, about the harmful effects of the practice and urging that it be abolished." Reference was then made to a medical committee having been established in 1943, followed by a radio and media campaign, although this resulted in nothing being done. Finally, type III FGM was outlawed in the 1946 amendment to the 1925 penal code. The law provided for imprisonment of up to seven years and a fine for those who carried out the procedure. "There were violent demonstrations after the first arrests." The law was ratified again in 1956, after Sudan became independent but was finally dropped in the 1983 penal code. In 1991, the Sudanese government affirmed its commitment to the eradication of type III FGM. "It claims it was against Islam and a crime punishable under the penal code. The 1991 penal code, however, does not mention any of these forms. There is currently no law that forbids this practice per se." Other provisions of the penal code might, however, cover injuries inflicted by FGM. "There are reports that some practitioners have been arrested but no further information is available." Although in 1992 a case involving FGM/C was brought under the general physical injury law, the outcome was unknown. The report concluded by stating that, "Despite a massive effort to eradicate the more severe form of FGM/FGC and a law that prohibited it, there has been little effort over the years to enforce it."

125. At page 237 of the appellant's bundle there is a copy of a 2002 Article from the Ahfad Journal, published by the Ahfad University for Women, Omdurman. The article, written by a Professor Ahmed Magied and others, describes FGM as being widely practised in all regions of Sudan, with some variations in the prevalence and types of circumcision performed according to the indigenous local customs and traditions of the area. The article concerned a study, whose specific objectives were to explore the attitudes of men towards FGM; to obtain more information from men about the reasons behind re-circumcision of women and to find out the impact of the level of education and socio-economic status of the male respondents towards FGM. Fifty males were randomly selected from the El Muhandiseen area and fifty males from the Al Fitehab area in Omdurman. In the El Muhandiseen sample, 58% of the respondents preferred the uncircumcised state. In the Al Fitehab sample, 58% preferred the Sunna form. 75% of the El Muhandiseen sample, however, supported FGM "because of traditions". In the El Muhandiseen sample, 32% said that re-circumcision had a positive effect on sexual enjoyment, whilst 12% stated that it had a negative effect. In the Al Fitehab sample, the figures were 62% and 14%. In the El Muhandiseen sample, 36% would let their wives free to do what they want, whilst 24% would divorce their wives if they refused to practise re-circumcision. In the Al Fitehab sample, the figures were 56% and 26%.

126. The study stated that the majority of respondents from El Muhandiseen were "highly educated, compared with the majority (72%) of the respondents from the Al Fitehab

area who had lower levels of education". 98% in the Al Fitehab study were of low economic status, whereas the respondents in the El Muhandiseen sample were of high economic status with high living standards. The writers concluded that the study showed that, "Some of the male respondents (32% from El Muhandiseen and 62% from Al Fitehab) are in favour of their wives becoming re-circumcised, completely ignoring the feelings or consent of the female spouse. This may be indicative of the selfishness of Sudanese males and dominance in sexual matters." Re-circumcision was considered to be "a complex social problem which is mainly connected with some repugnant traditions and by far lesser extent connected with erroneous religious beliefs".

127. At page 244 of the appellant's bundle, there is a copy of a Voice of America news item of 19 November 2005, concerning FGM in Sudan, which, though "widely condemned", is said to be "still rampant". The article focussed on a young woman named Asma, who was circumcised, despite her mother's opposition, because Asma's grandmother insisted upon it. Asma herself, however, was adamant that she would not have her own daughter circumcised.

128. At page 31 of the appellants' supplementary bundle A, there is an article by Dr Gruenbaum, which was published in the Medical Anthropology Quarterly. Entitled "The Cultural Debate over Female Circumcision: The Sudanese are Arguing this One Out for Themselves", the article, which dates from December 1996, "critiques medical ecological analysis of female circumcision as a 'maladaptive cultural pattern' and argues that this highly controversial procedure must be analysed within the larger contexts of women's lives in under-developed countries. International efforts to eradicate female circumcision, while often couched in seemingly progressive feminist rhetoric, inadvertently serve to mask the negative health effects of the economic exploitation of poor countries such as Sudan. Reproductive histories and ethnographic data are used to argue that though female circumcision is not maladaptive, cultural discourse about it is resulting in changes in the meaning, techniques and frequency of this practice." Dr Gruenbaum sought in the article to confront what she regarded as simplistic or arrogant criticisms of FGM:-

> "*Although women are harmed and men are benefited by infibulation, we cannot conclude that the practice is simply a matter of male exploitation of subordinated women. We must first understand how various interest groups conceptualise and justify the practice. Western critics often utilise western values and feminist consciousness in their analysis of infibulation (a common enough reaction especially for feminists schooled in 'consciousness-raising' groups of the 1960s). As a consequence, these analyses portray Sudanese cultural values as examples of 'false consciousness'. Values relating to morality and honour that require Pharaonic circumcision are dismissed. They similarly dismiss as 'unnatural' or perhaps 'maladaptive' the aesthetics of infibulation, that the labia and clitorises are the 'ugly', 'masculine' parts of girls, and removal results in beauty and cleanliness.*
>
> *Such responses strike many African women scholars as arrogant, especially because western culture has its own aesthetically motivated medical disasters such as silicone breast implants and useless cosmetic surgeries. The ethnocentric views of outsiders fail to recognise the dynamic nature of cultural patterns, imagining 'the other' perhaps as frozen in time, bound by 'traditional' ways of doing things, and as 'prisoners of ritual' who are not rational makers of their own history. But as Edgerton makes clear in his discussion of customs such as Sati in India as well as female circumcision in*

Africa, insiders to such cultures often have widely differing opinions and disagreements about them (1992:139). Culture, in fact, is far from static, as the cultural debates now raging in Sudan over the issue of female circumcision illustrates."

129. The article went on to note how Dr Gruenbaum had herself observed changes in female circumcision practices, since her first fieldwork in Sudan in 1974. In the 1970s, many rural and urban women believed that infibulation was part of being a Muslim and that "their way of life" was synonymous with their religion. By the 1970s, numerous individuals and organisations within Sudan had already spoken out against female circumcision. Some supported the modified Sunna type over the Pharaonic, whilst others supported total abandonment of all its forms. It appeared that efforts for change were poised to take off after the 1979 Khartoum conference and the renewed commitment of doctors and the Ministry of Health to pursue a policy against all forms of FGM. However, Dr Gruenbaum's observations and interviews in more recent times indicated that "although much has changed in the past decade, including some reduction of the incidence and a shift towards less severe forms, Pharaonic circumcision has still not been displaced as the operation of choice among the majority of families. Still there is every reason to believe that the cultural debates that have been stirring for the last several decades have accelerated, and that a fairly dramatic process of change is underway."

130. Dr Gruenbaum considered that the ideological struggle "is quite vehement at present and often focuses on women's roles". Islamists are seeking to overturn many Sudanese cultural practices, including Pharaonic circumcision, which they regard as pre-Islamic or non-Islamic. Those in opposition to the Islamists view this criticism of Sudanese cultural practices as a new form of cultural imperialism from the Middle East. Dr Gruenbaum considered that the implication of these struggles for female circumcision were that the serious interest in religious study and practice evident among so many of the younger educated people will reinforce the public health effects to modify or abandon the practice of circumcision and, secondly, that cultural arguments favouring the practice as part of "Sudanese heritage" will become less acceptable under a hegemonic interpretation of Islamic heritage. "However, it is unfortunate that the term *Sunna* has been associated with any form of the surgeries, since the role of religion in the ideological debates might lead some to feel that they *ought* to do the *Sunna* type rather than none at all." Dr Gruenbaum's article concluded by stating that her data was intended to underscore the advice of others "to look to Sudanese and Egyptian women to lead their own struggle on female circumcision: it is…something for Egyptian and Sudanese women 'to argue out for themselves'".

131. In the respondent's first bundle there is set out the protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (July 2003) to which the government of Sudan was a signatory. Article 4 provides that every woman shall be entitled to respect for her life and the integrity and security of her person and that all forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited. Contracting parties are required to take appropriate and effective measures to (inter alia) enact and enforce laws to prohibit all forms of violence against women.

132. At page 60, there is the article, to which reference has already been made, concerning the speaking out of Sheikh Ali Hashim Al Siraj, the Director of the Population Enlightenment Programme in the Ministry of Guidance and Endowments, against the practice of FGM/C. At page 63, there is a UNICEF press release of February 2006, applauding "the women and men who are working together to end the practice of female genital mutilation/cutting…and to respect the right of girls to grow to womanhood without harm to their bodies". The article stated that throughout sub-Saharan Africa "and in Egypt and Sudan a social movement is unfolding to end FGM/C. In Sudan, religious leaders are using their authority to affirm that FGM/C is a violation of spiritual and theological principles. On Monday, government officials, the National Council for Child Welfare and UN agencies will hold a commemorative event that will include an exhibition, religious and secular songs on abandonment of FGM/C and children's performances. The exhibition will include images of girls who died of FGM/C."

133. At page 68, there is a Sudan Tribune press article of 17 June 2006, referring to the African Union as having urged member states to put an end to the practice of FGM and quoting the African Union as describing the procedure as an "atrocity".

134. At pages 69 to 111, there is a selection of papers from the Sudan National Committee on Traditional Practices (October 2006), relating to the health of women and children in Sudan. At page 83, reference is made to a "Training of Trainers Workshop" on FGM religious views, held in Red Sea State. Participants included "midwives, religious leaders, decision makers, teachers and women union" members. At page 84, there is a description of organised monthly community based sessions on FGM etc. in Sinnar state. At page 86, there is a photograph of women attending a three day workshop on HIV/AIDS and FGM in White Nile state. At page 87, reference is made to Training of Trainers Workshops on gender-based violence in relation to FGM "zero tolerance" in western Kordfan State. At pages 92 to 95, there is a summary by Dr Amna Hassan of the Sudan National Committee on Traditional Practices, regarding recent research findings on FGM, psycho-social-sexual consequences and attitude change in Khartoum North and East Nile provinces (July 2000). Factors which contributed to the continuation of FGM were regarded as being related to "faulty socialisation" and the absence of scientific and legal information. Amongst university graduates, the incidence of infibulation was put at 50%, with a "marked transformation of the tradition from the infibulation to the so-called 'Sunna'". The SNCTP's future vision was said to be focussed on an approach to "eradicate FGM" involving the proper sensitisation of "youth, fathers, religious leaders and legislators in order to put great pressure on the mothers, grandmothers and health workers who perform the practice". The Ministry of Health and Ministry of Education were said to have "put considerable efforts in injecting the above matter in the education curricula. Successfully it is becoming reality in the basic and secondary education in the Sudan since the academic year (2000/2001)."

135. At page 103, there is a description of an SNCTP "FGM International Day Celebration" held on 6 February 2005, during which drama, music and poems against FGM were performed. During what appears to have been a football match between teams from Al-Salama and Kurkog, watched by 1,800 spectators, messages were broadcast about the elimination of FGM. In the evening, there was a debate amongst 200 people on the relationship between the Islamic religion and FGM, which concluded that there

was "no linkage of FGM with Islam and they urged the attendants to discourage the deadly practice".

(3) Risk of FGM in Sudan

136. The large-scale statistical evidence regarding FGM in Sudan, cited by UNICEF and others, whilst not particularly up-to-date, remains generally valid. From this and many of the other materials to which we have referred, it is plain that FGM in Sudan as a whole, and the north in particular, is widely practised. That includes both type I (infibulation) and type III (or "Sunna" form), both of which plainly constitute serious harm and persecution. That is the backdrop against which any particular claim to international protection must be analysed. Most girls and young women in Sudan are, today, still likely to undergo one or other of these forms of FGM.

137. Nevertheless, it is also apparent from the evidence as a whole that not every uncircumcised girl or young woman of what (in Sudanese terms) might be described as marriageable age will as such be at real risk of FGM on return to Sudan. Ms Cronin did not argue for such a finding; she was right not to do so. From Dr Gruenbaum's writings, upon which the Tribunal has placed significant weight, as she is plainly a relevant expert of international stature, there are forces of change at work in Sudan, the aim of which is not merely to encourage a move from infibulation to Sunna circumcision but to eradicate FGM altogether. That is also clear from the other sources referred to in paragraphs 121 to 135 above. What Dr Gruenbaum has to say about the linkage between circumcision and Islamic teaching in her most recent article is significant. The article, which begins at page 54 of appellants' supplementary bundle A, written when she was a PhD candidate, noted the perceived relationship between "Sunna" circumcision and Islamic teaching but that must now be read in the light of her more recent work. Furthermore, that earlier paper plainly did not accept the legitimacy of the connection, as is evident from the reference on page 57 to "presumed religious reasons". It is apparent that FGM as a practice in Sudan faces attack on several fronts. According to those wishing to move Sudan towards a more overtly Islamic character, FGM (certainly in its infibulation form but possibly also in all forms) is regarded, as Dr Gruenbaum observes, as an unwelcome and essentially Sudanese social practice. At the same time, those within Sudan who regard the procedure as physically and psychologically harmful and a serious health issue, are taking steps to seek to persuade the population to end it. Anti-FGM reformers, such as the SNCTP, have the support of the Ministry of Health and others within government. In the context of what is plainly a politically repressive regime, it is in the Tribunal's view significant that comments by the President, which appeared to favour FGM, were the subject of contradiction from other government sources.

138. Overall, we prefer the evidence of Dr Gruenbaum on this issue, to that of Mr Verney (paragraphs 7 to 14 above) who very fairly acknowledged Dr Gruenbaum's expertise on the subject of FGM in Sudan. Looking at the evidence as a whole, it appears to the Tribunal that Mr Verney somewhat understated the momentum that is currently building in Sudan against the practice of female circumcision. The fact that government members are willing publicly to dissociate themselves from pro-FGM utterances of the President shows that Mr Verney's comments recorded at paragraph 14 above are unduly negative. But, having so found, it is plain that the present state of Sudanese society is, however, such that it is still not possible to say as a general

proposition that a girl or young woman who does not wish to undergo FGM in any form will be able to avoid it. The previous law, which prohibited infibulation, is no longer on the Sudanese statute book. Prosecutions under the general criminal law prohibiting assault on the person appear to be (at best) extremely rare.

139. The position of women in Sudan is such that a girl or young woman's risk of FGM will turn on the attitude of her family. Whilst, in the case of an educated family or one from a higher social stratum (or both), that attitude is likely to be against inflicting FGM on a female family member, the evidence is not such that it can be automatically inferred that a family of such a kind will be opposed to FGM. A specific finding on this issue will need to be made in each case.

140. The "family" in question will be the girl or young woman's extended family. The evidence of Dr Gruenbaum and Peter Verney (to whose evidence the Tribunal accords weight – albeit less on this issue than that accorded to Dr Gruenbaum) is consistent in showing that the wishes of parents, though important, are not decisive. In particular, a father who opposes FGM but who is absent on a particular occasion, may well be unable to stop his wife and other female family members from having the procedure performed on his daughter.

141. At the hearing, there was considerable emphasis placed upon what Mr Verney described as the abduction of girls and young women, in order for FGM to be performed on them. The concept of "abduction", however, is not particularly helpful or relevant in this regard. Dr Gruenbaum's comments at paragraph 96 above, that it would be rare, indicates that there is no reasonable likelihood of it happening as a general matter. What emerges from the evidence of Dr Gruenbaum in particular is the possibility of extended family members, who are in favour of FGM, taking advantage of the temporary absence of one or both parents, in order to bring themselves into contact with the girl or young woman in question, whereupon pressure to submit to FGM would be brought to bear. The nature and extent of that pressure will depend upon the circumstances, not least the age of the potential victim. In the case of a young girl, enticements such as presents might be sufficient. In the case of an older person, appeals or threats based on familial shame or the fear of unmarriageability are more likely to be employed. Again, the existence and degree of any such risk will need to be established on an individual basis, bearing in mind that the response to any such appeals or threats will vary, depending on the character and general circumstances of the person concerned.

142. We turn now to the issue of risk from those other than the girl's or woman's extended family. There is no evidence to which our attention has been drawn which shows that a female might be at real risk of having FGM performed on her at the instance of a person who has no familial connection with her. That is so, even where, for example, FGM is particularly favoured in the social milieu (such as a village) in which the girl or young woman lives. In such a situation, however, it would no doubt require a particularly independent-minded family to be opposed to FGM.

143. On behalf of the appellants, it was submitted that the risk of FGM might come from a woman's husband or the husband's family. Dr Gruenbaum, however, considered that, if a girl's parents were opposed to FGM, they could and would withhold their consent to their daughter marrying a man who, or whose family, was likely to inflict it upon her, following her marriage. In such a case, it is accordingly unlikely that a woman

will be able to succeed in a claim to international protection, based upon an asserted fear of what might happen to her after marriage. In so finding, the Tribunal is aware of the argument that a woman in such a position might in such a practice find herself unable to marry, if returned to Sudan. The Almroth Report suggests that any such fear may in reality be unfounded. Whilst the Tribunal is aware of the relatively narrow nature of the group surveyed by Almroth, support for this conclusion can be found elsewhere in the evidence, for example, in the materials emanating from the SNCTP and the UNICEF document of November 2005.

(4) Nature of Particular Social Group in relation to FGM

144. In the present case, the respondent accepted that, if there were a real risk of the third and fourth appellants being subjected to FGM, the Refugee Convention would be engaged, having regard to the opinions of the House of Lords in K and Fornah. It is nevertheless necessary to categorise the nature of the particular social group into which the appellants fall. Although the position of women in Sudan appears to have markedly improved in recent years, the evidence as a whole shows that they are the subject of societal discrimination (see paragraphs 119 and 120 above). Such a conclusion also flows from the evidence of Ms Maguire to the Tribunal in HGMO, as analysed in paragraph 305 of the determination in that case. The reason why Ms Maguire in effect did not consider that a Sudanese female returnee would be at real risk of persecution on return, was that such a returnee would be regarded by the authorities merely as an adjunct of her husband. If that husband was a person in whom the authorities had a significant adverse interest, then the female returnee would suffer serious harm.

145. For present purposes, the Tribunal considers that women in Sudan constitute a particular social group and, for the reasons given by the House of Lords in K and Fornah, the infliction of FGM on a Sudanese woman would be persecution for a Refugee Convention reason.

Determination of the appeals

146. The burden of proof in this case is upon the appellants, who must show that, if returned to Sudan, they would face a real risk of persecution or serious ill-treatment, such as to entitle them to the grant of refugee status, the grant of humanitarian protection or to a finding that their rights under article 3 of the ECHR would be violated. In reaching our decision, we have in the case of each of the appellants considered each item of evidence and have reviewed that evidence in the round. The documentary evidence before us is itemised in the Annex to this determination.

(a) Political opinion

147. We shall examine first the claim of the first appellant that, if returned to Sudan, she would be at real risk of persecution by reason of her political opinion. This claim is related to the issue of FGM, to the extent that the first appellant has allegedly adopted an anti-FGM stance whilst in Sudan and, later, in both Pakistan and the United Kingdom. The third and fourth appellants also assert a fear in respect of political

opinion. This arises from their being imputed to hold the same political views as their mother and because they would dress and behave in a manner proscribed or politically condemned as immodest or inappropriate for young Sudanese women.

148. So far as the first appellant's political activities in Sudan are concerned, those occurred a considerable time ago and in any event cannot be described as particularly high level or otherwise such as to cause the Sudanese authorities to take an adverse interest in the first appellant. The same is true of the first appellant's activities in Pakistan, in connection with human rights for women, including opposition to FGM. That this is so is borne out by the fact that the appellant was able in 1991, after some seven or eight years in Pakistan, to return to Sudan with her husband, in order (so she thought) to pay her last respects to her dying mother-in-law. We have been presented with no evidence to suggest that, on that return, the first appellant was subjected to any difficulties, let alone ill-treatment at the hands of the Sudanese authorities. The difficulties regarding obtaining passports for the third and fourth appellants, described in paragraph 45 above, were in reality no more than a bureaucratic irritation. They in no sense give the impression that the authorities in Pakistan or Sudan were making life difficult for the first appellant as a result of any perceived political opinion on her part.

149. Whilst the Tribunal accepts the genuineness of the first appellant's interest in women's rights in Sudan, and her stance on the issue of FGM, we do not consider that she has shown a genuine interest in overtly anti-regime activities, during her time in the United Kingdom. Her participation in a complaint to the Greek Embassy in London about the dumping by Greece in Sudan of toxic substances is not the sort of matter that is likely to lead the Sudanese authorities to take an adverse interest in her. She was one of many involved and does not appear to have taken any sort of pivotal role in an issue which, on its own terms, was essentially environmental, rather than narrowly political. So far as her alleged interest in Darfur is concerned, whilst we accept Mr Verney's evidence that the first appellant was present, together with many others, throughout the duration of a day-long meeting at the Friends Meeting House in north London, that appears to be the extent of her involvement.

150. In HGMO, the Tribunal found that *sur place* activities in the United Kingdom would not put a Sudanese citizen at real risk on return unless those activities were reasonably likely to be regarded by the Sudanese government as being significantly harmful to its interests (paragraph 299). That is so even where, as we accept may be the case with the first appellant, the Sudanese Embassy in London has become aware of the activities concerned. Bearing in mind the expert evidence considered in HGMO, that the Sudanese authorities would not be adversely interested in a female returnee in her own right, those authorities would have to regard the threat posed by the first appellant as considerable, before she could be said, on the state of the present evidence, to be at real risk on return today by reason of her political opinion. The Tribunal does not consider that this element of the claim has been made out.

151. Given her past and current stance on the issue of FGM, the Tribunal considers that it is reasonably likely at least that the first appellant would continue to speak out on the matter, if returned. That will not, however, put her at real risk. As is plain from the evidence to which reference has already been made, members of the government, religious leaders and NGOs are all publicly voicing concerns. Projects are being undertaken in Sudan to seek to persuade people to abandon FGM. Against this

background, it is wholly unrealistic to suggest that the first appellant would be in danger in this regard.

152. As for the third and fourth appellants, the Tribunal does not consider that the evidence shows that any political opinion is reasonably likely to be attributed to them, whether by reason of their mother's activities or their own dress and appearance, or a combination of both. Since the first appellant will not be at real risk by reason of her own political activities, there is no basis upon which the third and fourth appellants (or indeed any of the other appellants) is likely to suffer by reason of any imputed political opinion. So far as dress is concerned, the Tribunal has not been referred to any evidence that shows that the third and fourth appellants are reasonably likely, if returned, to put themselves at risk by refusing to adopt a more conservative sartorial appearance than they might choose to adopt in the United Kingdom.

153. Ms Cronin relied upon the judgment of the Court of Appeal in Noune v Secretary of State for the Home Department [2000] EWCA Civ 306 in support of the proposition that the third and fourth appellants would be at real risk as a result of being perceived as "westernised". The facts of Noune are, however, significantly different from those with which we are concerned. That case involved a claim that a female civil servant from Algeria, who had a "westernised" appearance or attitude, would be targeted by Islamists. The IAT had accepted that there was evidence that "westernised" women had been targeted within Algeria and that public servants might be targeted as such by people hostile to the government (paragraph 6 of the judgment). In the present case, the evidence does not show that women whose views might be described as "westernised" are, as such, subjected to persecution, either by the Sudanese authorities or by Islamic activists in Sudan. To the extent that Mr Verney may be said to have suggested otherwise, the Tribunal considers he somewhat exaggerated the degree of risk. Furthermore, as is apparent from paragraph 28 of the judgment in Noune, the Court of Appeal remitted the appeal in that case to the IAT for reasons other than any alleged failure to deal properly with risk to "westernised" women in Algeria.

(b) Risk of FGM

154. There is no dispute that the first appellant is opposed to the FGM of her daughters and that she has, over many years, openly expressed herself as hostile to the practice. The respondent, however, has taken issue with the credibility of the claim of the first, third and fourth appellants, that the daughters would be at real risk of having to undergo FGM, were they returned to Sudan. So far as the timing of the claim relating to FGM is concerned, the respondent now accepts that the first appellant raised the matter with her former solicitor, prior to receiving the respondent's notice of decision in 2002.

155. On the basis of the Tribunal's analysis of the general country position on FGM, as set out above, the crucial issue is, we consider, whether there are elements within the extended family of the appellants in Sudan who could and would take steps to have the third and fourth appellants circumcised, either by infibulation or "Sunna" cutting. The evidence as to the extended family's attitude relates mainly to (a) the alleged attempt in 1991 to achieve the circumcision of the fourth appellant, when the first, third and fourth appellants and the husband returned to Sudan and (b) the alleged

telephone calls made by the third and fourth appellants' aunt, in which the aunt made it plain that she considered that the girls should be circumcised.

156. The respondent has not established any serious challenge to the credibility of the evidence relating to the trip to Sudan in 1991. We consider the evidence on that matter to be both reasonably consistent and inherently plausible. So far as the evidence relating to the aunt is concerned, despite minor inconsistencies in the oral evidence of the first, third and fourth appellants, concerning how much the girls could understand of the aunt's telephone calls, the Tribunal finds it reasonably likely that those calls were made and that during them the aunt expressed the views and comments attributed to her by the appellants.

157. In assessing the risk to the third and fourth appellants, it is plainly important to consider the evidence of the first appellant, that a family member is a former Minister of Tourism, with strong political contacts and influence, and that another was involved at a senior level with the Khartoum Health Department. As the Tribunal has already found, the evidence before the Tribunal cannot be said to demonstrate any official or, indeed, deep-seated unofficial support on the part of the Sudanese government for the continuation of FGM in Sudan. The evidence shows clearly that there are powerful anti-FGM forces at work, including within the government itself. On the other hand, it is not possible to conclude on the state of the present evidence that, whatever might be the official stance of the Ministry of Health towards FGM, all those within government and its associated agencies must, as such, be regarded as opposing FGM, not only officially but also in their own private lives. The fact that the first appellant has male relatives in the positions she described has not been challenged by the respondent. Given our overall positive credibility finding regarding the evidence of the appellants relating to the issue of FGM, the Tribunal considers that it is reasonably likely that those male relatives hold conservative views on the issue of circumcision, when it comes to their own extended family members.

158. It is here that the Tribunal considers that the issue of the "westernisation" of the third and fourth appellants becomes significant. The introduction of the third and fourth appellants into an extended family, which is in favour of FGM, is, we consider, likely to be regarded by that family as a threat to its established values. That concern is likely to lead to a desire on the part of the extended family to ensure that the third and fourth appellants are "reintegrated", by undergoing infibulation or, at the very least, "Sunna" cutting.

159. The Tribunal accepts the evidence of Mr Verney and Dr Gruenbaum that an absent father is, in practice, unlikely to be able to prevent FGM, even if he is opposed to it. The father of the third and fourth appellants has, in our view, shown himself to be a person who puts his own career very high on his list of priorities. It cannot be said that he is highly likely to return to Sudan, if the appellants are sent there, in order to ensure that the third and fourth appellants are not circumcised.

160. Notwithstanding that the first appellant would be likely to do all that she reasonably could to prevent FGM occurring, there is nevertheless a reasonable likelihood that, sooner or later, one or more members of the extended family will have the opportunity of bringing to bear on the third and fourth appellants the kind of pressure we have described in paragraph 141 above. The fact that extended family members are well-connected with the regime is likely to preclude the first appellant

from invoking the assistance of the authorities, such as the police, either to provide some form of protection for the third and fourth appellants or to institute and pursue a prosecution, should FGM take place. This is the nature of the real risk facing the third and fourth appellants. Although the third and fourth appellants presented as reasonably confident, in the environment of a United Kingdom tribunal hearing, they are still young and, importantly, have no experience of conducting themselves in Sudanese society, where they are reasonably likely to face a formidable assortment of relatives who are in favour of FGM. In such circumstances, the Tribunal does not find that it can be said that there is no reasonable likelihood that very serious pressure will be brought to bear on the third and fourth appellants, such as to result in them suffering one of the forms of FGM.

161. The Tribunal does not consider that any risk arises from the attitude of any future husband of either of the appellants (see paragraph 143 above). Given the first appellant's abhorrence of FGM, any infliction of it upon either of her daughters is, we find, reasonably likely to have so profound an effect upon the first appellant as to amount to the infliction on her of persecutory harm. In the light of our finding as to the nature of the particular social group in the present case, it follows that the first appellant is at real risk of persecution for a Refugee Convention reason (Katrinak v Secretary of State for the Home Department [2001] EWCA Civ 832; recital (27) to Council Directive 2004/83/EC).

162. There has been no submission to the effect that the second and fifth appellants (who are male) would be reasonably likely to suffer in the same way, if their sisters were subjected to FGM. The second and fifth appellants, accordingly, are not at real risk of persecution on return to Sudan.

(c) Article 3 ill-treatment

163. In the light of the Tribunal's findings, the first, third and fourth appellants are at real risk on return of treatment that would be contrary to article 3 of the ECHR. For the reasons set out above, the second and fifth appellants would not be at real risk of such treatment.

(d) Internal relocation

164. The Tribunal finds that, in the circumstances of this particular case, the first, third and fourth appellants would not be able to avoid the persecutory attentions of the extended family by relocating to another part of Sudan. The first appellant comes originally from northern Sudan. Notwithstanding the size of that country, it is reasonably likely that the extended family, through its governmental contacts, would discover if the appellants, having re-entered Sudan, endeavoured to live somewhere in the north, other than in or near the former home area of the first appellant. The respondent submitted that relocation to the south of Sudan could be an option.

165. The Tribunal disagrees. Southern Sudan is a Christian area of the country, where there has until recently been a serious civil conflict. It is common ground that the infrastructure in the south is in a very significantly worse condition than that in the north. There is every reason to believe that, even assuming that the first appellant's

husband were to continue to provide the appellants with financial support, life in the south, where the appellants would have no other support system, would be extremely difficult. Having regard to the propositions concerning internal relocation set out at paragraph 33 of the judgment of Buxton LJ in AH (Sudan), the Tribunal finds that the nature of the life that would face the appellants in southern Sudan, having regard to their history and particular characteristics, would be such that it could not be said that they could live in the south reasonably or without undue harshness. Whilst the starting point on the facts of this case involves a comparison between conditions in the north and south of Sudan, and whilst a move from north to south might well ordinarily be one that can be reasonably expected to be made by a person from the north, it would be wrong to exclude from the analysis the fact that the third and fourth appellants have had very little exposure to life in Sudan and that the change in their lives would be more traumatic than that of a person who had grown up in the north.

(e) DP5/96 and article 8

166. The second appellant is now aged 9. He arrived in the United Kingdom in 1999 when he was 2 years old. There is no dispute that he is settled in school in Hounslow and has been brought up in a way that has enabled him to mix with the community. The fifth appellant is now aged 14. He was 6 when he arrived in the United Kingdom. What we have just said about the second appellant applies in the case of the fifth appellant.

167. In MA (Seven Year Child Concession) Pakistan [2005] UKIAT 00090, the IAT set out the terms of Policy DP5/96 as follows:-

> "***Deportation in cases where there are children with long residence: Policy Modification announced by Under-Secretary of State for the Home Department Mr O'Brien on 24 February 1999.***
>
> *3.1 Whilst it is important that each individual case must be considered on its merits, there are specific factors which are likely to be of particular relevance when considering whether enforcement action should proceed or be initiated against parents who have children who have lengthy residence in the United Kingdom. For the purpose of proceeding with enforcement action in a case involving a child, the general presumption is that we would not usually proceed with enforcement action in cases where a child was born here and has lived here continuously to the age of* [7] *or over,* ***or*** *where, having come to the United Kingdom at an early age, they have accumulated* [seven] *years or more continuous residence. However, there* ***may*** *be circumstances in which it is considered that enforcement action is still appropriate despite the lengthy residence of the child, for example in cases where the parents have a particularly poor immigration history and have deliberately seriously delayed consideration of their case. In all the cases, the following factors are relevant in reaching a judgment on whether enforcement action should proceed:*
>
> - *The length of the parents' residence without leave; whether removal has been delayed through protracted (and often repetitive) representations or by the parents going to ground;*
>
> - *The age of the children;*

- *Whether the children were conceived at a time when either of the parents had leave to remain;*

- *Whether return to the parents' country of origin would cause extreme hardship for the children or put their health seriously at risk.*

- *Whether either of the parents has a history of criminal behaviour or deception.*

3.2 It is important that full reasons are given for making clear that each case is considered on its individual merits."

168. In an accompanying Home Office press release, it was said:-

> "*A child who has spent a substantial, formative part of life in the UK should not be uprooted without strong reason and that is why we are changing the time-limit from ten to seven years for families with young children who have been unable to establish a claim to remain.*
>
> *We are committed to delivering a system of immigration control which is firm but also fair. Those who are not entitled to be here should be removed.*
>
> *However for those who have been in this country for a long time we need to recognise that they will have become established within their community.*"

169. As we have already noted, Mr Tranter did not seek to persuade the Tribunal that the policy set out above would not apply in the facts of the present case. Nor did he suggest that there were circumstances that might make it unlikely for the respondent to decide against the relevant appellants, were the respondent to apply the policy. The relevant facts are, indeed, not in dispute.

170. The notices of decision to the appellants made it plain that they had a right of appeal under section 61 of the Immigration and Asylum Act 1999, whereby a person may appeal against a decision to vary or to refuse to vary any limited leave if as a result the decision that person may be required to leave the United Kingdom within 28 days. There being no restriction on the right of appeal under section 61, the Tribunal must allow the appeal if satisfied that the decision appealed is in any respect not in accordance with the law (paragraph 21(1)(a) of Schedule 4 to the 1999 Act). In all the circumstances, including the position adopted by Mr Tranter, the Tribunal has concluded that this is a case where we could and should decide the application of the policy for ourselves. On the facts, we find that the first, second and fifth appellants meet the terms of the policy and that, as a result, the immigration decision against which they appeal is not in accordance with the law.

171. So far as article 8 is concerned, the first and second of Lord Bingham's five questions in paragraph 17 of Razgar [2004] UKHL 27 are to be answered affirmatively. On the facts of the present case, it would be unreasonable to expect family life to be carried on elsewhere and removal would thus have consequences of sufficient gravity to engage article 8. In view of our finding in relation to DP5/96, it cannot be said that the importance of maintaining a proper system of immigration control can be prayed in aid by the respondent, in determining whether his decision represents a disproportionate interference with the appellants' article 8 rights. In all the

circumstances, requiring the first, second and fifth appellants to leave the United Kingdom would be disproportionate and they are accordingly entitled to succeed by reference to article 8.

Country Guidance in HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062

172. In AH (Sudan), the Court of Appeal overturned the decision of the Tribunal in HGMO, insofar as the Tribunal found that the appellants, Sudanese citizens from Darfur, could reasonably be expected to relocate to Khartoum, in circumstances where they would be reasonably likely to find themselves having to live in a camp for internally displaced persons. As is apparent from paragraphs 18 to 21 and 57 of the judgment, however, there was found to be no error of law in the Tribunal's findings as to the lack of general risk of persecution or serious harm to a person from Darfur who might be sent to Khartoum. The Court also did not hear argument on, or make a finding that there was an error of law in, the conclusions of the Tribunal concerning particular categories of persons who may be at real risk on return, including those engaging in *sur place* activities (paragraph 309(8)) and in relation to military service (paragraph 309(3)). Those country guidance findings remain authoritative, within the terms of paragraph 18 of the Practice Directions.

Summary of findings on risk of FGM in Sudan

173. We summarise our findings at paragraphs 136 to 143 above as follows. As at April 2007, the position in Sudan is that significant action is being taken both within government and by NGOs to combat the practice of FGM in Sudan in all its forms. Legal sanctions are, however, unlikely to be applied where a woman has been subjected by her family to FGM.

174. There is in general no real risk of a woman being subjected to FGM at the instigation of persons who are not family members. As a general matter, the risk of FGM being inflicted on an unmarried woman will depend on the attitude of her family, most particularly her parents but including her extended family. A woman who comes from an educated family and/or a family of a high social status is as such less likely to experience family pressure to submit to FGM. It is, however, not possible to say that such a background will automatically lead to a finding that she is not at real risk. The risk of FGM from extended family members will depend on a variety of factors, including the age and vulnerability of the woman concerned, the attitude and whereabouts of her parents and the location and "reach" of the extended family.

175. If a woman's parents are opposed to FGM, they will normally be in a position to ensure that she does not marry a man who (or whose family) is in favour of it, regardless of the attitude of other relatives of the woman concerned.

Decision

176. The determination of the original Tribunal contains a material error of law. This Tribunal accordingly substitutes for it a decision:-

(i) allowing the appeals of the first, third and fourth appellants on asylum grounds and on human rights grounds (article 3);

(ii) allowing the appeals of the first, second and fifth appellants on human rights grounds (article 8) and because the decision of the respondent is not in accordance with the law.

177. None of the appellants is entitled to the grant of humanitarian protection.

Signed Date

Senior Immigration Judge P R Lane

Annex

Documents submitted on behalf of appellants:-

Documents particular to the appellants

"Clearance Certificate" from the Office of the Director of Khartoum Province Education Directorate (June 1980)

Correspondence with MK Solicitors (2002)

First appellant's letter in response (undated) raising FGM claim

Respondent's letter of refusal and refusal notice to appellants (13 December 2002)

Notices of appeal

Letters regarding status and progress of appeal (2003 and 2004)

Witness statements of first appellant, KH and Dr ME

Statements of first appellant, BR, third appellant, fourth appellant, Dr OAA and birth certificates

Photographs of first appellant's knee and scar from her injuries caused in order to circumcise her

Photographs of appellant demonstrating in United Kingdom

Photographs of appellant at a meeting in the United Kingdom

Documents relating to children's schooling

Example of petition against the dumping of radioactive waste in Sudan

Photographs of third and fourth appellants at school and with friends

Music and drama department award – Heston Community School (2004)

Further school reports, photographs, letters from head teachers, certificates, etc.

Various school reports and certificates relating to educational qualifications obtained in Pakistan

Expert reports

Report of Dr Ellen Gruenbaum (2 February 2007)

Report of Mr Peter Verney (2007)

General evidence relating to FGM in Sudan and political issues

Ellen Gruenbaum: “The Cultural Debate over Female Circumcision: The Sudanese are Arguing this One Out for Themselves; The Movement Against Clitoridectomy and Infibulation in Sudan; The Islamist State and Sudanese Women” (various dates)

The US State Department: Sudan: Report on Female Genital Mutilation or Female Genital Cutting (June 2001)

UNICEF “Changing a Harmful Social Convention Female Genital Mutilation/Cutting” (2005)

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