ASYLUM AND IMMIGRATION TRIBUNAL

AM (Risks in Bujumbura area)
Burundi [2005] UKAIT 00123

THE IMMIGRATION ACTS

Heard at: Field House	Determination Promulgated
On 18 August 2005	On 2 September 2005
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Before

Mr G Warr (Senior Immigration Judge)
Mr A L McGeachy (Senior Immigration Judge)

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Cantor (Refugee Legal Centre)
For the Respondent: Mr G Saunders, Home Office Presenting Officer

This case is reported in to provide confirmation of the general guidance given in ***SS Burundi CG*** *[2004] UKIAT 0029. Individual appellants who come from particular areas may still establish a well-founded fear of return.*

DETERMINATION AND REASONS

1. The appellant is a citizen of Burundi born in 1976. On 24 February 2005 an Adjudicator (Mr P D Southern) dismissed her appeal against the decision of the Secretary of State on 30/9/04 to refuse her application for asylum. She applied for permission to appeal on 10 March 2005. This was dealt with under the transitional provisions and

the Tribunal granted the application in the form of an order to the Tribunal to reconsider the decision of the Adjudicator.

2. The appellant's nationality was originally in dispute but this was resolved in her favour by the Adjudicator. Indeed, he found all of her evidence to be credible. The appellant's history is conveniently summarised by the Adjudicator in paragraphs 11 to 23 of the determination as follows:

> "11. The appellant says that she was born in Buyenzi, which is a suburb of the capital of Burundi, Bujumbura, on 14 April 1976. She is Hutu. She lived there with her parents and her six brothers and a sister. A father was a farmer and they lived in a compound where it seems she lives a somewhat insular life, rarely being allowed to leave the immediate vicinity of her home. Although it is accepted that Kirundi is the language of Burundi the appellant herself speaks Swahili as a first language and knows only a few words of Kirundi which she has picked up from hearing other people speak the language.
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> 12. The first incident referred to by the appellant took place in 1993, a few days after President Ndadaye was killed. She describes how her house was raided by Tutsi soldiers. Two of her brothers were killed and she was raped by a Tutsi solider. Her mother and sister were also raped during this raid.
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> 13. In January 1994 the appellant was again raped by a Tutsi soldier who came across her when she was out of her house, in the compound. She became pregnant by this rape and gave birth to a son, Sylvester, in 1994.
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> 14. Later in 1994 there was a further attack described by the appellant during which her remaining brothers were captured and later killed. Those brothers lived in a different compound but the appellant knows that they were taken away by rebels and have not been seen since and so they are assumed to have perished at the hands of the Tutsi soldiers.
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> 15. Shortly after this attack the appellant and the remaining family sought refuge in a church in Buyenzi. They stayed therefore two or three weeks until her father thought things had calmed down a bit and so they returned to their home in Buyenzi.
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> 16. Soon after returning to their home in Buyenzi the appellant suffered a further rape. This occurred when her father and some other neighbours had gone out to the land that was being farmed by them and while they were away Tutsi soldiers came and the appellant and her sister

were raped. This time she describes being raped by two soldiers.

17. The appellant does not seek to describe each of the many attacks she has described having taken place but does say that her village was being attacked "all the time" by the Tutsi soldiers.

18. In or about February 2003 the appellant says that there was a raid by Tutsi soldiers. It seems from what the appellant says that the principal purpose of this raid was to recruit young males as she describes them wanting her brothers who, of course, had already died some years earlier. On this occasion the appellant was raped yet again and on this occasion she was also beaten with a chair leg. Her mother was raped on this occasion and afterwards her father decided that they would have to try and move somewhere else. They left their home and went to stay with an uncle in a place Bwiza which was about two hours' walk away.

19. The appellant was asked in interview she had not sought to relocate earlier and explained that her father was growing coffee on the land that he farmed and they had temporarily moved to churches in order to obtain help from aid agencies.

20. Once the family had re-established itself in Bwiza the appellant describes how she met a man called Charles with whom she began to live as man and wife during April or May 2003. The appellant describes how attacks from the Tutsi soldiers continued and how her husband had been attacked and beaten on many occasions. Sometimes this occurred when he was trying to protect her. She describes that they would handcuff him and beat him and sometimes take him away and detain him overnight. This happened frequently. At the hearing she said that it sometimes happened seven times a week. However, her evidence in this regard is somewhat confused as she also said in her more recent written statement that she had witnessed this only three occasion. She also explains how sometimes they could avoid the worst consequences of these visits by paying money to the soldiers who would sometimes be in uniform and sometimes would be in plain clothes. The appellant says that she suffered further rapes whilst staying in Bwiza.

21. The appellant said that later in 2003 her father returned to Buyenzi to see what had happened to their home. She later heard from neighbours that the area had been attacked by rebels and her father had been killed in this attack. The remaining family travelled to Buyenzi for a funeral but then returned to Bwiza.

22. The last incident described by the appellant took place in April 2004 when she was raped again, this time by three Tutsi soldiers. At the time she was about two months pregnant with the child of Charles to whom she refers as her husband although it does not appear there was a formal marriage ceremony. This was a particularly distressing experience since she was raped by three Tutsi soldiers and the rape took place in front of her son Sylvester. After the soldiers left she heard that her mother-in-law had also been raped during his attack. After this her husband and his brothers began to think of how they could leave the country. One of her husband's brothers was able to arrange some money from people he knew. It seems that the whole family contributed to provide the necessary funds for the appellant to travel to the United Kingdom. There was only enough money for her to travel and it was decided that she should go first because she was pregnant. She travelled by lorry, with a number of other Hutus who were seeking to leave, on a long journey to an unknown destination where after a stay in a church with a number of other refugees she was introduced to an agent with whom she travelled to the United Kingdom. On her arrival he took her to Croydon where she claimed asylum. She says that her husband and her son remained in Burundi but will follow her to the United Kingdom soon.

23. Since arriving in the United Kingdom the appellant has given birth to her second child. She says that she cannot return to any part of Burundi because women are being raped all the time in that country. She also said, in her first written statement, that she would be detained and put in jail upon her return because the government of Burundi would know that she has told secrets of her country to the government of the United Kingdom. However, she has not pursued that aspect of her appeal in her later statement or in her evidence at the hearing."

3. Among the issues before the Adjudicator was the question of the appellant's language. There was expert evidence before the Adjudicator that Swahili was widely spoken in Burundi.

4. Having carefully considered all the material before him the Adjudicator resolved various matters in favour of the appellant and concluded that the appellant was a credible witness and she had established to the required standard that her account of her past experiences was true. The Adjudicator then had to turn to the current situation in Burundi. He refers at length to the background material in paragraphs 44 to 59 of the determination. He then sets out references from the Tribunal country guidance case of ***SS Burundi CG [2004] UKIAT 00290***.

5. The Adjudicator noted at paragraph 62 of his determination the summary of the Tribunal's decision as follows:

> "In summary out conclusions are:
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> (a) The civil war in Burundi has ended. Accordingly, the guidance in ***Secretary of State for the Home Department v Adan*** should not be applied in determining the risk of future persecution in Burundi.
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> (b) Hutus are not, in general, at real risk of treatment amounting to persecution in Burundi.
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> (c) A Hutu or a Tutsi woman is not, in general, at real risk of rape or sexual violence in Burundi on account of her race/gender."

6. Paragraph 63 of the determination is criticised by Mr Cantor among other aspects of the determination and we reproduce it here:

> "I turn next, therefore, to the objective evidence and other news reports produced by the appellant's representatives to see whether there is any more recent country evidence which might lead me to a different conclusion than that reached by the IAT in **SS** in respect of these matters. It is of considerable significance that in all of the material produced by the appellant the source material pre-dates the decision in ***SS***. Further, the reports of episodes of sexual violence of the type that the appellant has been a victim in the past all pre-date the last of the appellant's experiences of such sexual violence which tends to confirm the view of the Tribunal that there has been a significant improvement in the situation and a very significant reduction in the risks faced by those now living in Burundi."

7. Mr Cantor submits that the Adjudicator was simply wrong to say that all of the material produced by the appellant pre-dated the ***SS*** decision. It is somewhat surprising that the Adjudicator should have said this since he himself reproduces some of the material later on. He may have been mislead by the fact that the Tribunal decision was promulgated on 29 October 2004 but the Tribunal had made it clear in its decision that the review of the objective evidence did not extend to the situation as at that date. Reference was made to paragraph 22.7 of the Tribunal's decision. A further challenge by Mr Cantor was made to the Adjudicator's approach to the case of ***SS***. Mr Cantor in effect submitted that the Adjudicator had treated the case as applicable in all circumstances rather than noting the words "in general" which featured in paragraph 25 of the summary of the ***SS*** decision. The Adjudicator had not had regard to the particular circumstances of the appellant in her particular locality. In paragraph 22.7 of **SS** the Tribunal noted that the UN Secretary General in his report of 16 March 2004 had referred to a situation of calm in most provinces "although security concerns remained for the Bujumbura area".

8. The Adjudicator's determination concludes as follows:

> "64. I have had careful regard to the report of Professor James Fairhead. At paragraph 3 of his report he says this:
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> > "Before engaging with specific issues, it is important for the court to note that Burundi continues to be an extremely violent and dangerous country, that the appellant is from the most violent region in it, and that this has continued despite innumerable peace processes. This is outlined in a recent "Human Rights Watch" Report (Burundi Suffering in Silence: Civilians in Continuing Combat in Bujumbura Rural). This report describes how, in recent months, soldiers of the government army (Forces Armeés Burundaises, FAB) and combatants of rebel forces violated international humanitarian law by killing, wounding, raping and pillaging civilians in areas just outside the capital that neighbour on Buyenzi, where the appellant is form".
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> 65. However, this is somewhat misleading since the way this information is presented, in a report dated 28 January 2005, suggests that the killing, wounding and raping had taken place in recent months whereas in fact that phrase is used in the Human rights Watch Report dated June 2004, which means that it is referring to the period towards the beginning of 2004 which would also be consistent with the various reports in the CIPU report. I cannot see that there is reference to anything more recent than that in Professor Fairhead's report and so I do not accept that the content of that report in any way undermines the conclusion of the Tribunal in **SS**.
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> 66. There is a further report in the appellant's bundle by Mr Andrew Manley, a journalist and researcher with a particular interest in North West and Sahelian Africa. This report was not prepared specifically for this appellant but is relevant for what it says about the country situation as Mr Manley sees it to be. This report is dated 23 January 2005. However, once again, although there are references to dates arising subsequent to the decision of the Tribunal in **SS** these do not relate to incidents of the type with which I am concerned and there is nothing at all in that report which relates to episodes of sexual violence occurring after April 2004.
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> 67. The next report in the appellant's bundle is the Human Rights Watch Report dated January 2005, the opening observation of which is this:

> "Most of Burundi enjoyed relative peace for the first time in a decade during 2004, but the province of Rural Bujumbura just outside the national capital a battleground between the rebel National Liberation Forces (FNL) on one side and the combined Burundian Armed Forces and the Forces for the Defence of Democracy (FDD) on the other. The FDD is a former rebel movement that joined the government at the end of 2003. The FNL, drawn largely from the majority Hutu population, remains outside the peace process"

There is reference to "the more recent limited combat outside the capital" and to the more serious problems from before the peace accord. Again, I do not find that the content of this report supports the suggestion that the appellant would continue to be at risk of being subjected to sexual violence upon her return to Burundi in circumstances such as they are today.

68. Next in the appellant's bundle is a brief news report concerning a clash between FNL and government forces at the beginning of January 2005 in which 45 FNL combatants were killed and three government soldiers were killed. There follows a Human Rights Watch Report dated September 7, 2004, and a Human Rights Watch Briefing Paper dated June 2004, this being the report referred to in the report of Professor Fairhead.

69. I conclude from all this that the position in Burundi today is as described by the Immigration Appeal Tribunal in **SS**. It is no longer the case that rape and sexual violence is being carried out in a gross and systematic fashion as has been the case in the past and there is no reason at all to suppose that the appellant is at risk particularly because of her specific circumstances.

70. There is no evidence that the appellant is at risk of harm because of her ethnicity. Indeed, whilst she describes her past attackers as principally being Tutsi she had indicated that some Hutus were included within the groups that case. The objective evidence suggests that there has been a significant change in the country situation since the last incident described by the appellant in April 2004.

71. Article 1 of the 1951 Convention defines a refugee as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

72. There is no reason at all to depart from the view of the Immigration appeal Tribunal and I find therefore that Hutus are not in general at risk of treatment amounting to persecution in Burundi and that there is nothing about the appellant's circumstances such as to put her in any worse or difference position. Similarly, I find that, despite the appellant's own past experiences, she is not today at real risk of rape or sexual violence in Burundi on account of her race or gender and, again, there is nothing about the appellant's own specific circumstances which puts her at any greater risk than any other Hutu or Tutsi woman.

73. There is no other reason recognised by the 1951 Convention that is engaged by the circumstances of this appellant's claim.

74. I next consider the appellant's rights under the 1950 Convention. There is no real risk that her rights under Article 2 would be breached since there has never been such a real risk to her life as is evidenced by the fact that had that been the case those who sought to do her harm and ample opportunity in the past to take her life but had chosen not so to do. In the improved circumstances such as they are there is clearly no real risk of that happening upon her return today.

75. The situation is the same with regard to Article 3, which I consider separately from the appellant's claim under the 1951 Convention. With the exceptional of the continuing efforts of the FNL to cause difficulties to government troops in the area around Bujumbura there is no longer civil war in Burundi. It would appear that the appellant left the country just as these difficulties we coming to an end. Indeed, she does not suggest that either she or her family experienced any difficulties between the incident she described in April 2004 and her departure in August 2004.

76. I find, therefore, that there is not a real risk of the appellant being subjected to treatment such as toe engage her rights under Article 3 of the 1950 Convention.

77. With regard to Article 8 of the 1950 Convention the appellant has established a family life with her baby daughter in the United Kingdom but that family life would not be interfered with or interrupted as a result of the decision under appeal since clearly the child would return to Burundi with the appellant. The appellant has no doubt also established a private life in the United Kingdom since her arrival in August 2004. However, her family remains in Burundi and it has not been suggested on her behalf that she would be unable to rejoin them

> upon her return. Therefore, any interference with her private life would be in accordance with the law to pursue the legitimate aim of the maintenance of a firm immigration control and so such interference would be entirely proportionate in a democratic society to that legitimate aim."

9. Mr Cantor did not criticise the Adjudicator for applying the country guidance decision of ***SS***. However the Adjudicator was criticised for treating ***SS*** as if determinative of risk in the case of the appellant. Mr Cantor submitted that the appellant came from Buyenzi which was an outlying Northern Suburb of Bujumbura which was surrounded by outlying settlements and hills which form part of Bujumbura Rural. It was acknowledged in ***SS*** that conflict continued in this area as was indeed acknowledged in the material referred to by the Adjudicator in his determination. Mr Cantor relied on ***Demirkaya [1999] Imm AR 498***. There had been no material change of circumstances and the appellant would face a real risk of continued persecution in her home area. Mr Cantor took us to material included in his bundle which indicated that there had been no material change in the circumstances.

10. Mr Saunders requested the Tribunal to uphold the determination. There was no material error of law. The Adjudicator had detected a distinct improvement and indeed since the Adjudicator's decision elections had taken place.

11. Mr Saunders submitted that although the Adjudicator might have missed a couple of references which post-dated the decision of ***SS*** these did not materially impact on his decision. If the Tribunal were against him and a material error of law was found, then the question of internal relocation arose. Fighting was localised. The appellant would not have to travel through a war zone. She would be starting her journey from the United Kingdom. She would not be at risk of rape in the airport which was to the North West of Bujumbura. The appellant's language would not be a problem since she would be returning to her family and the language was widely spoken in Burundi.

12. Mr Cantor submitted that whether one took the date of the proceedings before the Adjudicator or the date of the proceedings before the Tribunal (assuming an error of law was found) the situation was the same. Reference was made to a UN Mission in Burundi (ONUB) Report covering events in April to June 2005. The frequency of human rights violations was increasing especially in the provinces of Bujumbura Rural and Makanba. Burundi's transitional government had signed ceasefire agreements with all former rebel movements except the FNL which is most active in Bujumbura Rural and Bubanza provinces.

13. Mr Cantor also referred to an ONUB report dated 4 August 2005. This noted that sexual abuse is top most among the daily acts of human rights violations. To change this trend, ONUB'S Human Rights Division and local and International NGOs had, over the past 3 months, been conducting an awareness campaign across the country on sexual

abuse. According to Mr Diallo (who is a director of the Human Rights Division of ONUB): "It will take another couple of months to determine the impact of this campaign, but one can say that there has been a positive change in people's behaviour with regard to sexual abuse which is perpetrated mostly against young people and minors of both sexes."

14. Mr Cantor submitted that it would not be assumed that the danger to the appellant from sexual abuse had been abated by this information. The impact of the campaign had not been fully assessed. A Reuters report dated 31 July 2005 refers to Burundi rebels killing 300 civilians in 2 months. This was a blow to "otherwise good process in the plan to end the central African Nations 12 year civil war". African's said there would be no real peace "until the FNL can be brought into the peace process".

15. Whether one looked at the new evidence or the evidence before the Adjudicator, Mr Cantor submitted, the objective material indicated much the same. A report by Irin dated 4 January 2005 referring to thousands of civilians being displaced following fierce fighting in Burundi's western province of Bujumbura Rural. Until the fighting, refugees and internally displaced people had been returning to their homes in record numbers. The Human Rights Watch Report dated January 2005 refers to the deliberate targeting of civilians by combatants. These combatants "deliberately killed civilians, raped women and girls, burned houses and stole property. FNL forces assassinated those known or thought to be working with the government and stole or extorted property from civilians." By late 2004 it was reported that government and FDD forces were regularly looting civilians immediately after they had received humanitarian assistance, like food, blankets or other household items.

16. On the question of internal relocation it would appear that the appellant would be returned to the airport near Bujumbura which would be surrounded by Bujumbura Rural and she would not be able to access a safe area without going through an area troubled by the conflict. She had already tried to relocate once to her uncle's house without success. Freedom of movement was restricted in practice as appeared from the US State Department Report. According to the Human Rights Watch and local NGOs one tactic the CNDD-FDD regularly employed "was to search local areas for persons not known by the areas inhabitants, or to search for wounded individuals, and to summarily execute them under suspicion of belonging to the Palitpehutu-FNL". Security forces had restricted access by humanitarian organisations to parts of Bujumbura Rural province although authorities said insecurity in those areas made delivery of aid impossible. There was also the risk of land mines and acts of banditry – civilians would be ambushed in mini buses on the highways. The appellant only spoke a few words of Kirundi and therefore would have difficulty communicating outside her home area. While she had family in Burundi her family remained in areas where the appellant had been regularly raped and attacked. Mr Saunders submitted that Swahili was widely spoken in Burundi according to the expert evidence.

17. At the conclusion of the submissions both sides indicated that they had covered all the points which they would need to cover were the Tribunal to have found that there had been a material error of law in the Adjudicator's determination and it would not be necessary to adjourn for further material to be lodged or for further submissions to be considered.

18. We are very grateful to the representatives for their submissions and to Mr Cantor for his lengthy and well researched skeleton argument.

19. The determination is generally a well researched and well prepared one but it does appear to us that the Adjudicator fell into error from paragraphs 63 onwards. He appears to refer to relevant material concerning the appellant's home area and then failed to explain why the appellant would not be at risk on return there. He treated, as Mr Cantor submits, the case of ***SS*** as if determinative of the issues and did not properly explore the appellant's individual circumstances. It is quite apparent that the peace process has had important beneficial repercussions across large areas of Burundi and that huge numbers of refugees have been returning. The UNCHR facilitated the voluntary repatriation of 83,849 Burundian refugees by the end of 2004 and there were in addition approximately 6,500 refugees who had spontaneously repatriated to their country – see page 10 of the US State Department Report covering events in 2004. However conditions are difficult and an estimated 750,000 refugees remained outside the country. The report notes that civilians were regularly displaced as a result of fighting in Bujumbura Rural province. At any time during the year some 25,000 to 70,000 persons were so displaced.

20. However, we see no reason why the appellant would or should draw comfort from the general improvement faced with a return to her home area. The general guidance given in ***SS*** clearly noted a distinction between the generalised position and the security concerns in the Bujumbura area. We find that the Adjudicator misdirected himself in law as submitted by Mr Cantor in failing properly to analyse the ***SS*** decision and failing to explain why the appellant would not be at risk in her home area. A further subsidiary error is the fact that the Adjudicator considered it was of considerable significance "that in all of the material produced by the appellant the source material pre-dates the decision in ***SS***." Mr Saunders submitted that this in effect was not a material error. We agree that it is not so significant an error as the main error. The main error was not to look at the appellant's case in its context against the background provided by ***SS*** regarding security concerns in the Bujumbura area. In particular we do not find that the Adjudicator properly explained why in the light of the report to which he makes reference in paragraph 67 of the determination the appellant would not be at risk on return to her home area.

21. Because of the fact that we have identified a material error of law in the Adjudicator's determination, we are able to consider material not available to the Adjudicator. Mr Cantor submitted that it made no real difference whether one took the up to date material or the material before the Adjudicator. Mr Saunders on the other hand submitted that

elections had taken place which were likely to clear the Hutu majority's path to power – see the Reuters Foundation Report dated 29 July 2005. On the other hand, since the polls the FNL "have staged deadly attacks in Bujumbura Rural and Bubanza provinces on the outskirts of Bujumbura ..." – see the report dated 12 July (a report from Agence France – Presse). We have referred earlier in this determination to the report by ONUB and the fact that ceasefire agreements had been signed "with all former rebel movements except the FNL which is most active in Bujumbura Rural and Bubanza provinces". Human rights violations were reported as increasing in frequency especially in the provinces of Bujumbura Rural and Makamba.

22. The appellant experienced persecutory treatment over a considerable period. Her experiences took place in her home area and did not abate when she moved to stay with her uncle. There is no evidence of a change of circumstances in the appellant's home area, in our view.

23. That is not to say that there is not cause for optimism as to the future and we note in particular the initiative taken by ONUB together with various NGOs to conduct a campaign across the country on the question of sexual abuse. The director of the Human Rights Division of Onub stated that while it would take another couple of months to determine the impact of the campaign one could say "that there has been a positive change in people's behaviour with regard to sexual abuse which is perpetrated against mostly young people and minors of both sexes". Furthermore, the elections are clearly a step in the peace process which would appear to give cause for some optimism as to future developments. Nevertheless, the situation in the appellant's home area still appears to be volatile. Circumstances are not demonstrated to have changed materially in that area.

24. Because of the Adjudicator's findings he did not examine the question of internal relocation. Mr Cantor submitted that the appellant would need to access a safe area after travelling through a war zone. She would have various hazards to encounter en route, including land mines and banditry. Her family apparently lived in the area where she had previously been raped and suffered other abuses. The appellant had previously attempted to relocate from her home area to stay with her uncle in Bwiza. This attempt to avoid her problems had not been successful and she had continued to suffer as she had before. There is evidence of the difficulties that the appellant would encounter, particularly as she has a young child with her, in travelling a greater distance. Reliance is placed on the language aspect and the fact that the appellant only speaks a few words of Kirundi. This point is probably not a determinative one since the expert evidence is to the effect that Swahili is widely spoken in Burundi – see the report by Dr Chege Githiora. Nevertheless, looking at the matter in the round, bearing in mind the appellant's particular circumstances and her past experiences, including her unsuccessful attempt to relocate, it would be unreasonable/unduly harsh to expect her to exercise the internal flight option.

25. It was submitted by Mr Cantor that the persecution feared by the appellant would be for a Convention reason. Mr Saunders did not argue that the appellant's fears were not based on a Convention reason. In the case of ***SS*** the Tribunal dealt with the matter at paragraph 16 of its determination. It said that if there was a real risk of rape for a Refugee Convention reason the appellant's appeal would succeed on asylum and human rights grounds. As we say, it was not argued before us that the appellant's appeal would fail on the basis of no Convention reason. Mr Cantor in his skeleton argument submitted that the conflict in the appellant's home area had a peculiarly ethnic component. The Adjudicator considered that the appellant was not at risk of harm because of her ethnicity because some Hutus had been included within the groups that had attacked her. As is pointed out in the skeleton argument, the only time the appellant had given evidence that she had been attacked by a mixed group was in 1994 when her brothers had been taken away. At that time the appellant's home area (Buyenzi) had still been ethnically mixed and it was only later that it had acquired a steadily stronger Hutu identity. The appellant's attackers had included Hutus at a time when the violence had not yet taken on its current ethnic character. As we say, this particular aspect did not appear to be the subject of contention before us. We would not agree with the Adjudicator that the fact that some Hutus had been included within the people who had attacked the appellant indicated that she had not been targeted on ethnic grounds.

26. For the reasons we have given, we find that the Adjudicator's decision was flawed by a material error of law. He was right to rely on the decision of **SS** which continues to give, as Mr Cantor accepted, useful general guidance. However, in particular localities, and particularly in the appellant's home area, individual appellants may still succeed in their appeals despite the general improvement in the situation in Burundi. This case turns on its own facts and turns on the evidence before us. As we have observed, attempts have been made to address the problem of rape and there may be cause for optimism in the light of the recent elections. Nevertheless, for the reasons we have given, the appellant is entitled to succeed on asylum grounds and human rights grounds (Article 3).

Summary of Decision

27. The decision of the Adjudicator contains a material error of law. The following decision is accordingly substituted:

We allow the appeal on asylum grounds.

We allow the appeal on human rights grounds.