

ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at: Field House
On 19 June and 23 July 2008

Before:

Senior Immigration Judge Jordan
Senior Immigration Judge Jarvis
Mr F. T. Jamieson

Between:

FB

APPELLANT

and

The Secretary of State for the Home Department

RESPONDENT

For the Appellant: Ms K. Cronin, counsel, instructed by Brighton
Housing Trust Immigration Legal Service
For the Respondent: Mr P. Deller, Home Office Presenting Officer

1. Given the pervasive influence of the Bondo societies in Sierra Leone, the inferior position of most women in that country and the relative lack of support provided by the community, a woman who has undergone FGM but who has opposed traditional practices is capable of being a member of a particular social group for the purposes of the Refugee Convention.

2. Although the appellant faces a specific risk in her home area of being forced to be a soweï and of being forced into marriage, in general members of the Bondo societies fall short of adopting a positively hostile or combatant attitude to non-adherents of Bondo principles and avoid targeting them. The treatment faced by the minority is not persecutory.

3. *The Court of Appeal's decision in AA (Uganda) v SSHD [2008] EWCA Civ 579 is not authority for a wider proposition that lone women cannot be returned to Uganda or, indeed, any other specific country. Nor is it support for the proposition that it is unduly harsh to expect lone women to relocate to the capital city of their country of origin or any other large urban centre. Rather, it is a re-affirmation, in line with AH (Sudan) that such relocation must be reasonable, in other words, that it must not have such consequences upon the individual as to be unduly harsh for her. If survival comes at a cost of destitution, beggary, crime or prostitution, then that is a price too high.*

4. *There is a significant migration to Freetown from rural areas. For migrants to Freetown, those with the ability to access support would face no risk. Such support mechanisms might include family or other connections, support mechanisms from other groups, such as the Bondo societies and support from a local mosque or church. There is however no compelling evidence that these support mechanisms are the sole means of eliminating the risk of destitution and its corollary of the risk of beggary, recourse to crime or prostitution.*

DETERMINATION AND REASONS

Introduction and immigration history

1. The appellant is a citizen of Sierra Leone who was born on 3 June 1987. She is 21 years old. She pursues the reconsideration of a determination of an Adjudicator, Mr J.C. Boyd, as he then was, promulgated on 13 December 2004 in which he dismissed the appellant's appeal against the decision of the Secretary of State, refusing her claim on asylum grounds.
2. The appellant arrived in the United Kingdom on 3 February 2004. She was then just 16 years old. Limited leave to remain was granted until 2 June 2005, the eve of her 18th birthday. On 12 March 2004 her asylum claim was refused and this gave rise to a right of appeal, the so-called 'upgrade' appeal under section 83 of the Nationality, Immigration and Asylum Act 2002 limiting the nature and scope of the reconsideration before us to a consideration of her asylum claim. Accordingly, there is no outstanding appeal under the ECHR, notwithstanding the fact that the appellant's limited leave has now expired. In the context of this appeal the Convention reason advanced by the appellant is that she fears harm by reason of her membership of a particular social group.

The claim

3. The primary facts of this appeal are not in dispute because the Adjudicator found the appellant's claim entirely credible. The appellant lived in Bankala village with her parents and brothers. Her father was a farmer who was killed in 1999 during the civil war. The appellant's mother was a soweï (a leader of the Sande or Bondo women, these being interchangeable terms) in the village and one of the Bondo women who carried out the ritual circumcision of young girls.

4. When the appellant was aged about 16, she underwent FGM which caused her great pain and distress. She spent about five days recovering in a nearby village during which time she was told that her mother had died. She was also told that she was to replace her mother as soweï. On her return to the village, she voiced her reluctance to the local chief but he insisted that she went through the further rituals to become a soweï, after which he would take her to be his wife. He was a much older man who already had four wives and the appellant did not wish to marry him. She decided to run away from the village, which was about an hour's walk away from Wonkiefor, whence she travelled by truck to a larger town. There she met a man called Mr S, who was a friend of her father's. She used to call him uncle, although they were not apparently related. While she was staying at Mr S's house, a woman from the village of Bankala recognised her and, a week later, a group of Bondo women came to the house, demanding that she return to Bankala. Three days later, Mr S made arrangements for the appellant to leave the area and for her to travel to the United Kingdom. On arrival, she was briefly examined by a doctor and then placed in the care of social workers.
5. The Secretary of State refused the claim for reasons to be found in his letter of 5 March 2004. He did not accept that her claim that she would be forced into becoming a soweï and would have to marry the chief engaged the Refugee Convention. Having already undergone FGM, the appellant could not be said to form part of a particular social group. He accepted FGM was widely practised among all levels of society and that members of the Bondo society were particularly influential as advocates for FGM. Having identified the appellant's twofold fear of being forced to become a soweï and then into a forced marriage, the Secretary of State considered there were parts of Sierra Leone in which the appellant did not have a well-founded fear of persecution and to which it would be reasonable to expect her to go. The Secretary of State did not accept the appellant's account as to the true circumstances in which she left the country, in particular, the part played by Mr S in financing her departure. Although it clearly has many of the hallmarks of trafficking, this case was not advanced before us and we therefore make no finding on it. Absent a risk of harm, the Secretary of State also dismissed her claims for humanitarian protection and the under the Human Rights Convention.

The old-style appeal and the order for reconsideration

6. The Adjudicator, having accepted that the appellant's account was credible, considered the unequal position of women in Sierra Leone. He had before him a report of Dr Fanthorpe who spoke about FGM, the wider society and the role of the local chief, particularly in rural areas. He treated the case as one where the appellant had repudiated tradition by refusing to undertake secret initiation rituals that would result in her being a soweï. As the Tribunal later found, the Adjudicator did not properly engage with the nature of the claim and stated that, because she had already undergone FGM, she was not a member of a particular social

group. In particular, he rejected the risk of further genital mutilation, and therefore the risk of further persecution. Whilst he accepted that life could be difficult for women in Sierra Leone, he said that he was not satisfied that it would be unduly harsh for the appellant to relocate within the country.

7. The grounds of application to the IAT asserted that the Adjudicator had made a series of legal errors. When the application was considered by a Senior Immigration Judge on 15 April 2005, the application was dismissed on the basis that the appellant was not a member of a particular social group but on renewal before Bean J reconsideration was ordered. The single judge, having considered the decision of the House of Lords in Shah and Islam [1999] UKHL 20 and of the Tribunal in RM (Sierra Leone) [2004], UKAIT 00108 considered that the point raised in the application for reconsideration was arguable and warranted further attention by the AIT. In finding that the Immigration Judge made a material error of law, Senior Immigration Judge Nichols gave these reasons:

1. This is a reconsideration pursuant to s.103A of the Nationality, Immigration and Asylum Act 2002. It has been remitted to the Tribunal following an order made by Mr Justice Bean in the High Court on 21 July 2005. He considered that the grounds for reconsideration were arguable.
2. This is case where the Adjudicator as he was found the appellant to be entirely credible. Her mother had been a Soweï in Sierra Leone. After she died, when the appellant was aged sixteen, the appellant had been expected to take over her mother's duties which involved performing FGM on uninitiated girls in her tribe. FGM had already been performed on the appellant as a result of which she had suffered shock and fear. Before she fled from her village she was also told that she would be forced to marry the village chief.
3. The appellant feared persecution if returned to Sierra Leone because she claimed that she was a member of a particular social group, namely a young woman from Sierra Leone who faced a real risk of persecution for that reason. The Adjudicator had been wrong to rely on RM (Sierra Leone) [2004] UKIAT 00108 which was a case that dealt with women who were expected to undergo FGM. The Adjudicator failed to have proper regard to what the House of Lords said in Shah and Islam as to the determination of a particular social group. It was submitted that in this case the group i.e. young women in Sierra Leone, has been socially constructed by the country's laws and social mores (there was expert evidence about this issue from Dr Fanthorpe). The Immigration Judge had failed to consider that evidence in any detail (paragraph 13 of the grounds).
4. The appellant feared persecution for this reason and argued that this would arise if there was a real risk that on return she would be

forced against her will to carry out FGM on other young women and secondly, that she would be forced into a marriage that she did not want. These risks stem from her membership of a social group, namely as a young woman in Sierra Leone. It was further argued that the Immigration Judge had not given proper consideration to the issue of internal flight before him. He had failed to take proper and full account of the expert evidence in this regard.

5. Both parties agreed with the Tribunal that the grounds of the application are made out. In the light of the issues raised by this case, and having regard to the recent decision of the House of Lords in K and Fornah [2006] UKHL, the Tribunal is of the view that this case may be an appropriate one on which to give Country Guidance as to whether the objective evidence does establish that young women in Sierra Leone are a particular social group for the purposes of the Refugee Convention and are at real risk of harm for that reason. Further, the particular issues in this case are whether this appellant, on account of her membership of that social group is at real risk from members of the Bondo society if she returns to Sierra Leone because she will be forced to carry out initiation ceremonies on other women; forced into marriage; and faces general discrimination on account of her gender. Further, whether any internal flight option is available to the appellant and whether there is a sufficiency of protection against the ill treatment she fears on these grounds. Counsel's (Miss Naik) skeleton argument of 27 March 2007 clearly sets out the issues.
6. This case is therefore adjourned initially for the Tribunal to determine whether this is a suitable case for country guidance. The findings of Immigration Judge Boyd in relation to the appellant's account will stand and the only issues in the case are those set out above. The hearing date will be notified in due course.
8. It was on this basis that, eventually, the matter came before us.
9. Since the appeal was heard by the Adjudicator in December 2004, the appellant has given birth to two children. KY was born on 9 March 2005 and is now aged 3. AY was born on 20 November 2007, after the first-stage of the reconsideration, and is almost a year old. Both are boys. Throughout these proceedings the appellant has been described as a single mother.

The material before us

10. The material before us consists of the appellant's bundles A and B, running from A(i) to C401. We have also been provided with a bundle of authorities, a chronology and a skeleton argument of 13 June 2008.

The expert's report

11. The evidence is to be found in two reports, the first dated 12 May 2004, [B57-61]. The expertise of Dr Fanthorpe in this field is not in issue. Indeed, Mr Deller spoke warmly of Dr Fanthorpe as an expert of the highest calibre. It is not, therefore, necessary to set out his academic career or refer to his publications, details of which are found in the bundle. It suffices to say that he holds a Research Fellowship in social anthropology at the University of Sussex based on his study of Sierra Leonean history and culture and that he is a consultant to the United Kingdom Department for International Development and the Overseas Development Institute.
12. There is a shared general belief amongst the various ethnic groups in Sierra Leone that human beings are subject to a multitude of unseen forces, both malign and benign. These forces are controlled by observing social protocol in the performance of religious ceremonies and the making of charms and medicines. The Bondo societies deal specifically with women's affairs, especially reproductive health. Bondo groups are active throughout the country. It is not, however, an organisation as such, although all initiated women belong to Bondo. He describes it as: *"best understood as a ritual repertoire that may be performed, for various purposes, by any group of initiated women living together in one place."*
13. According to these customary beliefs, children cannot develop into fully socialised adults without ritual initiation into the adult world. This initiation is a process of sexual separation performed in two phases. The first, circumcision itself after which the girls are kept in seclusion in the Bondo bush; the second, a public ceremony marks the "coming out" of the girls into society as fully-fledged adults, fit for marriage and motherhood. Entering the adult world wholly female or wholly male is fundamental to the proper ordering of society. The purpose of FGM is to remove any potential for maleness by excising the clitoris. According to recent estimates published by the World Health Organisation, 90% of the adult female population of Sierra Leone has undergone FGM and it is in general only the Krio people in Freetown who do not participate in the practice.
14. In paragraph 6 of his report, Dr Fanthorpe stated that he was unaware of any strict rule stipulating that Bondo leadership must pass from a mother to her eldest daughter although he was aware of one example in which the current Bondo leader succeeded her mother at a time when she was already a widow, in late middle age and noted for her midwifery skills. As he understood it, the female elders of the local community select their leader amongst themselves and descendants of previous leaders may be preferred but age, experience and standing within the local community are also taken into consideration. From his own observation, Dr Fanthorpe noted that the local Bondo leadership were almost always well past childbearing age, although the younger married women supervise the newly initiated girls.
15. The term 'sowei' is derived from a word meaning 'adept' in the sense both of a characteristic and an individual.

16. Sierra Leonean society remains deeply patriarchal. The local chief continues to supply almost all of the day-to-day governance in the provinces. The system flourishes in a bureaucratically weak state, where very little information on people or property is recorded thereby imposing an inevitable reliance on customary rights to land and property. Society is essentially conservative and FGM is not questioned. Local chiefs often serve actively as patrons of initiation ceremonies. The autonomy of a local court system tends to insulate rural communities from modern systems of justice. Perhaps not altogether surprisingly, matters are somewhat different in Freetown but even there the State authorities are influenced by these cultural norms, supported by a compliant Sierra Leonean government so that, although technically criminal, the practice of FGM is not treated as a crime.
17. Dr Fanthorpe speaks of a slow change in social attitudes but that there is nevertheless an increasing momentum, particularly among the urban middle classes, to change these traditional and conservative values. That said, traditional religion often goes hand-in-hand with Christian or Muslim religious practices. The momentum for change has received a set back as one of the consequences of the recent civil war. The conflict led to widespread attacks – one might say desecration – upon traditional values which have led to the conservative elements within the country attempting to re-establish the old social order after hostilities ceased. Consequently, the conservative or traditional practices have tended to experience a resurgence, rather than a marginalisation, brought about by the pressures for social change.
18. Dr Fanthorpe considered the appellant's case in the context of this social *milieu*. He conceded that at first sight, it seemed improbable that a person as young as the appellant would be expected to take on such a socially sensitive and important duty as performing initiation ceremonies. It appears that in normal circumstances a girl like the appellant (and only recently initiated) would not have the skills, knowledge and experience of the rituals to have been chosen as a *sowei*. He cited it as being possible, however, that the local perceptions might place greater importance on the hereditary nature of a *sowei*'s functions. It might even be possible that, as part of an effort to re-impose traditional values, younger people were selected as a means of engaging both young and old in the process. Accordingly, he considered that the appellant's claim that she was under particular pressure to join Bondo in order to take over her mother's duties might therefore be accurate. This view is supported by background material at paragraph 41 which refers to the ages of women who perform the operation as getting younger, see paragraph 6.42 of the COIS report, below. The Adjudicator accepted that and we, in turn, accept that the Adjudicator's findings were properly open to him. Dr Fanthorpe concluded that the Bondo is not a unitary organisation and that, if the appellant relocated within the Sierra Leone, it would not necessarily

follow that her reluctance to serve as a soweï would become widely known or held against her. However, he commented upon how Sierra Leonean society operates through networks, especially among those ethnic groups scattered throughout the country. Thus a person's whereabouts could soon filter back. If the appellant sought to avoid contact with her extended family or those she knows, he considered that this would result in the loss of a major source of economic security and personal protection. Thus unprotected, she would fall into an underclass:

"The fortunate among this group find a householder, shopkeeper, lorry driver or suchlike willing to offer them food and shelter in return for menial work. The unfortunate descend into begging, theft and prostitution. A girl of [the appellant's] age does not survive long in this environment, without a male 'protector', and even then, her vulnerability to physical and sexual abuse would be very high."

19. In his supplementary report of 2 August 2007, Dr Fanthorpe reviewed and confirmed the contents of his earlier report. Six years have now passed since the end of the civil war. Despite prodigious amounts of foreign aid, the extended family and village community serves as the primary source of social welfare and economic security for most Sierra Leoneans. Individuals who become alienated from these groups are especially vulnerable. It is Dr Fanthorpe's view that the appellant's fundamental problem is that she has been caught up in a process of social change that has become intensely politicised. Many young Sierra Leoneans have come to the conclusion that the old social system has little to offer them compared to the perceived freedoms and economic rewards of modern life. An increasing number of young adults, and girls in particular, are no longer prepared to submit themselves to FGM and the uncompromising authority of the chiefs and family elders.
20. These developments have prompted a conservative reaction that extends right up to the Sierra Leonean government which is fundamentally traditional in complexion. Such conservatism is popular at grass roots level. Clashes between Bondo society members and those against them have become commonplace in Freetown, where cosmopolitan city life is at odds with the traditional values of the Bondo societies. Yet even among the urban elite, there are those keen to uphold traditional values. The tension has resulted in flashpoints on at least two occasions in 2007 in which two women speaking out against Bondo were forcibly initiated. The same tension has seen the authorities vacillating between wishing to ratify international standards which uphold 'western' values in relation to children and women, (perhaps if only because such moves reduce international pressure particularly from the nations that contribute to Sierra Leone's aid programme), but run into the sand when put to a Parliamentary vote. Hence, legislative efforts in September 2006 to ban FGM resulted in the material clause being omitted from the Bill. Although it is not entirely clear, we suspect that there may be similarities between the position under United Kingdom law prior to FGM being specifically

criminalised: the procedure is potentially an assault, A.B.H. or G.B.H. but is rarely prosecuted in Sierra Leone.

21. Dr Fanthorpe concluded that a person like the appellant, who refuses to perform the duties of a soweï and who refuses to enter into a polygamous marriage with the local chief is left in an *'invidious situation'*, unlikely to receive any support from the domestic political establishment and law enforcement agencies or any state welfare. In his evidence, he also spoke of the intense pressure placed upon a person in the appellant's position to marry in order to gain a male protector. Those returning from the United Kingdom, having clearly failed to make a new life abroad, are received unsympathetically by many Sierra Leoneans. He concluded:

“ ...while she might be at risk if she returned to her home village, it is very unlikely that there would be a coordinated effort, further afield, to target her for refusing to serve as a soweï. However, the Bondo Society is present in every neighbourhood in Sierra Leone, and in the current political climate she would be at risk of taunting and harassment from any Bondo Society members who learned of her history. Unlike experienced anti-FGM campaigners, who enjoy a national profile and international support, a young woman [like the appellant] would be ill-equipped to deal with such hostility.”

22. The expression *'taunting and harassment'* in what is clearly a carefully drafted report suggests a level of treatment that falls short of serious harm. In his evidence to the Tribunal, Dr Fanthorpe stated that he had never heard of a forcible coercion in the sense of a woman being physically abducted and returned to the home village. Instead, Dr Fanthorpe focuses on whether the appellant could cope with such hostility without the support mechanisms of local community and family. This was repeated in his evidence to the Tribunal where he spoke of the appellant being taunted by those of the Bondo who learnt of her history or who perceived her to be a failed returnee.

The expert's evidence at the hearing

23. In his evidence to the Tribunal, Dr Fanthorpe spoke of his inability to find the village of Bankala on the map and the appellant's description of the nearest larger village, Wonkiefor, being one hour's walk away on what is likely to be a non-motorable road. This graphically illustrates its remote location and the likelihood that its occupants hold deeply traditional views. The police presence in Wonkiefor is probably in the order of one or two policemen visiting once or twice a week. It is the local chiefs who provide the day-to-day governance. There will be one chief in the village of Bankala and a more important one in Wonkiefor, with justice provided by the chiefs or customary courts. State authorities would operate in only a very limited way, if at all, and would have no effective presence.

24. He then turned to consider the position in Freetown where he accepts that her refusal to be a soweï would not necessarily be known. Because the state is so weak in Sierra Leone, without family networks to provide a roof under which to sleep and food, he suggested it would be difficult or impossible to survive. He considered that it was vital to have a family network. There is a huge influx of people to Freetown, the usual destination for migrants. Those settling there live 20 to 30 in a house which offers very basic accommodation: a space to sleep and the prospect of some food. (Ms Cronin's note of the evidence refers to 10 in a house but the overall picture remains the same.) He recalled that the appellant's mother was T and her father F. The F are a close community with a mosque and its associated organisations providing charity. He considered the likely response at the F mosque to a request for aid would be to assist in reuniting the appellant with her family.
25. The exodus of young people from the traditional rural villages is resented by those who remain, polarising local communities and increasing pressure amongst some for a retrenchment. Were the appellant to be returned to her home village, she would be faced with a stark choice and with the obvious pressure of becoming involved in the ritual practices and the risk of forcible marriage in which wives of lower status are taken for domestic labour and their children as an additional source of manpower. A returnee, perceived as a failed migrant is likely to be subjected to taunts. Local assistance, such as access to provision of micro-credit, (small business 'start-up' loans, perhaps for as little as the equivalent of £50) is reserved for a chosen few.
26. Asked by Mr Deller about the process by which a person's history emerges, Dr Fanthorpe spoke of the questions asked when a person attempts to make connections or build a place in the community, notwithstanding the fact that the appellant speaks Krio, the *lingua franca* of Sierra Leone. He contrasted the position of high-profile opponents of FGM, (he referred to the highly-educated women who run such organisations who have the *luxury* of opposing FGM), and a person in the position of the appellant. He mentioned that the new government has spoken about its aim to eradicate FGM, the first time such a statement has been made, as well as other initiatives to assist women but that this is a far cry from seeing it put into practice in the rural areas under the sway of the local chiefs and traditional *mores*.
27. In answer to questions from the Tribunal, Dr Fanthorpe accepted that whilst 90% of the female population adhere to Bondo practices, the remaining 10% are likely to be concentrated in the towns. (Some of the background material speaks of 80% - see paragraph 41 below - thereby increasing the minority to 20% and we acknowledge such figures are not capable of accurate quantification.) On any view, 10% is a significant minority. Those who see the social advantages in FGM are genuine in their beliefs but do not adopt a positively hostile or combative attitude

towards non-adherents of Bondo. There is no general targeting of non-participants. The migration from the rural areas to the urban centres is not confined to the young male population, although historically this was the case. Females were “*catching up*”. It was put to Dr Fanthorpe that such migration would appear to run counter to his assertion that the appellant would be pressurised into leaving Freetown and returning to her local village. He drew a distinction between those leaving the villages but retaining their dependency upon family members and someone like the appellant.

28. There are those in Freetown who manage to engage in business selling newspapers, cassettes or other vending jobs. He also spoke of the fact that Sierra Leone is crying out for nurses and doctors in hospitals and clinics, some of which have accommodation to offer. (The appellant is unable to train as a nurse in the United Kingdom although she would like to do so because of restrictions on the work that she is permitted to do.) He stated, however, that the available jobs are offered to families with some influence and that, in any event, there is no pay. He also spoke of the limited opportunities for a non-qualified person to be involved in teaching. There is great unemployment and even qualified teachers are working as taxi-drivers in Freetown, once again as a result of private networking. In one part of his evidence, it was suggested to him that the fact that finding a job was difficult does not equate with a risk of persecution and the migratory effect into the towns is likely to create difficulties but the fact that it is taking place suggests there is a prospect of survival. Dr Fanthorpe did not disagree. He continued:

“It is a matter of emphasis. The cassette-sellers vendors and the newspaper organisers are springing up and migrants are finding ways to survive... It is not a question of leaving the rural areas behind and going into a city. The pressure to conform is not there the less. It remains a question of conforming or starving. This is the cutting-edge of research at this time in Sierra Leone. What is the effect of migration post-war? I cannot give a more definite answer.”

Case law

29. In Fornah v SSHD [2006] UKHL 46, the House of Lords spoke with one voice in saying that Ms Fornah, a young Sierra Leonean, (aged 17 at the date of the hearing before the Tribunal and aged 19 when the appeal came before the House of Lords), was entitled to refugee status because she was at risk of persecution. The form that the persecutory treatment was likely to take was FGM, genital cutting or excision. The Judicial Committee accepted that the appellant was a member of a particular social group and, therefore, had to be recognised as a Convention refugee. It was divided, however, as to the form the group took in the particular circumstances of the case; Lord Bingham and Baroness Hale classifying the appellant as part of a wider class involving all women in Sierra Leone who suffer discrimination and subjugation, Lord Hope and Lord Rodger choosing a

narrower definition admitting to the group all females who were intact or uninitiated but possibly excluding the Krio people from the Freetown area. Lord Brown preferred the narrower definition but did not disagree with the wider classification of Lord Bingham and Baroness Hale.

30. The underlying basis for the claim was that FGM was performed as a means of subjugating women and as a means of perpetuating or reinforcing their status as socially inferior to men. Whilst those who had been initiated no longer faced a risk of further excision, women collectively face discrimination.
31. If a person is at risk in his home area, internal relocation should be considered as a potential means of affording him protection. The decision of the House of Lords in AH (Sudan) [2007] UKHL 49 related to three appellants all of whom were in their thirties and were Sudanese nationals. The Judicial Committee considered the position of members of black African tribes who formerly lived in Darfur. Two of the appellants were subsistence farmers.
32. It is clear from the opinion of Lord Bingham of Cornhill that the enquiry has to be directed to the situation of each particular applicant whose age, gender, experience, health, skills and family ties may all be relevant in the enquiry. It is said that there is no warrant for excluding or giving priority to consideration of the applicant's way of life in the place of persecution or for excluding or giving priority to consideration of conditions generally prevailing in the home country. Instead there has to be a consideration of all circumstances of the case. That conclusion is to be found between paragraphs 12 and 14 of his opinion.
33. The scope of the consideration was also dealt with by Baroness Hale in paragraph 20 of her opinion. In referring to Lord Bingham of Cornhill's opinion in Januzi [2006] UKHL 5, Baroness Hale recorded this passage from Lord Bingham's thinking in the earlier appeal:

"The decision maker taking account of all relevant circumstances pertaining to the claimant and his country of origin must decide whether it is reasonable to expect the claimant to relocate or whether it will be unduly harsh to expect him to do so."
34. In approaching that task Baroness Hale also drew upon a UNHCR document which also considered that the task was an holistic exercise where the decision maker looks at the individual personal circumstances including past persecution or the fear of it, psychological and health condition, family and social situation and survival capacities. In setting out these categories there was not in our judgment meant to be any limitation on the scope of the reconsideration.

35. The legal test is the reasonableness of internal relocation avoiding the error of equating that with persecutory harm or ill-treatment sufficiently serious to engage Article 3. The reasonableness test and undue hardship are one and the same; in other words taking account of all the circumstances pertaining to the appellant and his country of origin, we must decide whether it is reasonable to expect the appellant to relocate or whether it would be unduly harsh to expect her to do so. See Januzi v SSHD [2006] UKHL 5 per Lord Bingham of Cornhill at paragraph 21 and approved in SSHD v AH (Sudan) [2008] UKHL 49 at paragraph 20.
36. In AA (Uganda) v SSHD [2008] EWCA Civ 579 the Court of Appeal was required to consider the case of a young Ugandan orphan whom the Secretary of State accepted would be at risk of serious harm if returned to northern Uganda but was not believed to be at risk in Kampala. The issue was whether it would be unduly harsh to remove her there, the classic internal relocation issue. Dealing with the position of unaccompanied women in Uganda, the Tribunal had before it a report of Dr Nelson who described conditions in these terms:

“[AA] has almost no chance of getting a formal sector job. First, she has no qualifications or formal training and her chances of improving her educational status in Kampala are nil....Secondly, in East Africa contacts and information are critical in finding jobs....contacts and assistance from relatives and friends can be critical in even getting to the interview stage of a job application. Her only hope will be some sort of self employment in the informal economy. Here she will also be at a disadvantage because she has no informal home training in any sort of activity which might generate an income in the informal sector (trading, cooking food, sewing, embroidery). The only jobs she could hope to obtain would be that of house servant or bargirl or sex worker (and bargirls are just sex workers by another name). Her chances of finding a job as a house servant will be limited. Almost inevitably these are found through contacts via friends and relatives since people are reluctant to bring a total stranger into their domestic circumstances...Sadly there is an unending demand for bar girls/sex workers (the two occupations are usually linked). That would be her best, perhaps her only chance of employment....In this context of high HIV/AIDS infection rates, [AA] will be condemned to dangerous jobs which will put her at risk of abuse, injury and most significantly of all in danger of contracting HIV/AIDS....Suffering from anxiety and depression, [AA] will be plunged into a very difficult, dangerous and unknown environment. In such an African slum many young people who have grown up there are vulnerable to unwanted pregnancies, early marriages, prostitution, drug abuse, crime, and AIDS....How much more daunting and difficult will it prove to this traumatised young woman?”

Dr Nelson said by way of a conclusion:

“As a young woman with no family or husband to call back on [AA] will be especially vulnerable, a fact confirmed time and again by anthropologists and sociologists working in African cities. With little education, no training and no job experience she will be reduced to

working in the informal sector in the slums. The most likely employment option she will be reduced to will be that of sex worker. This will put her at great health risk of contracting HIV/AIDs. She will be unable to find secure and decent housing. She will find it difficult to obtain counselling or medication for her psychological conditions.”

37. The Court of Appeal then set about construing what the Immigration Judge had meant in the paragraph of her determination in which she had accepted Dr Nelson’s assessment. The Court rejected the respondent’s submission that the Immigration Judge was qualifying her findings by accepting what was said by Dr Nelson about the general difficulties in Kampala but rejecting his assessment that what awaited the appellant in Kampala was a life of prostitution. Buxton LJ said in paragraph 10:

“I cannot agree. If the judge wished to insert that qualification into her general acceptance of Dr Nelson's evidence she undoubtedly would have said so.”

Accordingly, there was a finding that the appellant would return to Uganda and there find a life of prostitution. The point is re-made in paragraph 17 of Buxton LJ’s judgment: the appellant would be *driven into prostitution*. Lloyd LJ in paragraph 55 of his judgment construed the Immigration Judge’s determination in exactly the same way:

“The evidence before the Immigration Judge included that of Dr Nelson, set out in part at paragraph 9 above, and which the Immigration Judge accepted. That evidence included the statement that the life awaiting AA in Kampala would most likely be one of prostitution. I agree with Lord Justice Buxton, despite the different view expressed by Lord Justice Carnwath, that the Immigration Judge's acceptance of Dr Nelson's evidence must be taken to include acceptance of that proposition as an integral part of the evidence. If the Immigration Judge had intended to accept some of the evidence but not that proposition, she must have said so in terms. If that proposition is accepted, it has a most significant effect on the assessment of whether conditions in Kampala are such that it would be unduly harsh to require a young woman in AA's position to go to live there.”

38. In our respectful view, the return of a woman to a country where she faced prostitution would not simply have a *significant effect* upon whether it would be unduly harsh to expect an appellant to be subjected to such a fate; it would be determinative of that issue. No construction of the obligations owed by the United Kingdom authorities (under whatever Convention) could possibly envisage permitting a woman prostituting herself as a survival technique and yet maintain it would not be unduly harsh for her to do so. For our part, we would be surprised, if Immigration Judge Coker (whose determination was under challenge) had been asked in terms whether that is what she had meant, if she would have contemplated assenting to such a proposition.

39. Nevertheless faced with that material, it is not surprising that the Court of Appeal allowed the appeal but the Court of Appeal's decision is not authority for a wider proposition that lone women cannot be returned to Uganda or, indeed, any other specific country. Nor is it support for the proposition that it is unduly harsh to expect lone women to relocate to the capital city of their country of origin or any other large urban centre. Rather, it is a re-affirmation, in line with AH (Sudan) that such relocation must be reasonable, in other words, that it must not have such consequences upon the individual as to be unduly harsh for her. Inevitably, it *will* be unduly harsh if an appellant is unable for all practical purposes to survive with sufficient dignity to reflect her humanity. That is no more than saying that if survival comes at a cost of destitution, beggary, crime or prostitution, then that is a price too high.

The background material

40. The Country of Origin Information Service report prepared in 2006 contains these passages in relation to the position of women in Sierra Leone and the practice of FGM:

WOMEN

CONSTITUTIONAL RIGHTS OF WOMEN

6.22 "The Constitution provides for equal rights for women; however, in practice, women faced both legal and societal discrimination. In particular, their rights and status under traditional law varied significantly depending upon the ethnic group to which they belonged. All women born in the Western Area, which is governed by General Law, had a statutory right to own property in their name. Some women born in the provinces, which are governed by customary laws that vary from chiefdom to chiefdom, did not. In the Temne tribe, women could not become paramount chiefs; however, in the Mende tribe, there were several female paramount chiefs. Women did not have equal access to education, economic opportunities, health facilities, or social freedoms. In rural areas, women performed much of the subsistence farming and had little opportunity for formal education."

6.23 The HRW report on sexual violence in the Sierra Leone civil war states:

"In theory, Sierra Leonean women are granted equal rights to men under the 1991 constitution, which provides as one of the 'fundamental principles of state policy' that the state '...[s]hall discourage discrimination on the grounds of place of origin, circumstances of birth, sex, religion,....' [...] The equal rights of women are again underscored in the human rights chapter of the constitution. Under Section 27 of the constitution, however, discrimination is permitted, inter alia, under laws dealing with 'adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law,' which have direct bearing on the rights of women, as well as under customary law. This important contradiction in the constitution - similar to that in many African

constitutions – has contributed to the low status of women in Sierra Leone, as it legitimizes the application of discriminatory customary law. No protection from discriminatory customary law can be sought under the constitution on the basis of sex. Customary and Islamic laws also continue to be widely applied, notwithstanding the fact that legislation provides that general law should prevail over customary law when customary law is ‘repugnant to statute or natural justice, equity, and good conscience.’ “

- 6.26 As employment opportunities are limited for women, some women have become prostitutes as a means to support themselves, as noted by the USSD 2004 Report:

“Prostitution was widespread and not prohibited by law; however, prostitutes sometimes were arrested and charged with loitering or vagrancy. Many women and girls, particularly those displaced from their homes and with few resources, resorted to prostitution as a means to support themselves and their children.”

SOCIETAL ATTITUDES TO DOMESTIC VIOLENCE

- 6.27 The USSD 2004 Report states that:

“Domestic violence against women, especially wife beating, was common. The police were unlikely to intervene in domestic disputes except in cases involving severe injury or death. In rural areas, polygyny [otherwise, *polygamy*] was common. Women suspected of marital infidelity often were subjected to physical abuse; frequently, women were beaten until they divulged the names of their partners. Because husbands could claim monetary indemnities from their wives’ partners, beatings often continued until the woman named several men even if there were no such relationships. There also were reports that women suspected of infidelity were required to undergo animalistic rituals to prove their innocence.”

- 6.28 The HRW report on sexual violence in the Sierra Leone civil war states:

“Societal attitudes to domestic violence are another indicator of the status of women and girls in society; physical violence against women and children is common in Sierra Leone. Indeed, under customary law, a husband has the right to ‘reasonably chastise his wife by physical force.’ If the husband is persistently cruel and frequently beats his wife to the point of wounding her or causing her great pain, the wife can divorce her husband, but under customary law a single act of physical and brutal force is permitted. A population-based assessment of war-related sexual violence in Sierra Leone carried out by Physicians for Human Rights among 991 female-headed households in camps for displaced people found that, although 80 percent of women surveyed expressed that there should be legal protections for the rights of women, more than 60 percent of the women believed that a husband has the right to beat his wife.”

41. The HRW report is also referred to in paragraph 6.32 of the COIS report and re-enforces what is suggested above. The rape laws in Sierra Leone are an indicator of the confusion and discrimination surrounding the status of women and girls in the community:

6.32 The HRW report on sexual violence in the Sierra Leone civil war states:

“...In addition to the legal confusion that exists in general law concerning rape, attempts by women to obtain the prosecution of rapists are frustrated by the collapsed state of the judiciary and the lack of effective law enforcement, which has contributed to the ongoing climate of impunity for offenders.”

“The manner in which rape is dealt with under customary law is indicative of the societal values towards sexual violence and the low status of women and girls in Sierra Leone. Although all serious criminal cases should automatically be tried under general law, rape cases continue to be prosecuted under customary law in the local courts.”

42. The COIS report continues:

THE PRACTICE OF FEMALE GENITAL MUTILATION (FGM)

6.40 A USSD 2001 Report on FGM in Sierra Leone states:

“Type II (commonly referred to as excision) is the form of female genital mutilation (FGM) or female genital cutting (FGC) widely practiced on women and girls in Sierra Leone. It is generally practiced by all classes, including the educated elite. Sierra Leoneans who live abroad sometimes bring their daughters back to Sierra Leone to participate in initiation rites that include this procedure. Type II is usually carried out within a ritual context. It is part of the passage from childhood to womanhood.”

“Some estimates place the percentage of women and girls in Sierra Leone who undergo this procedure at 80 percent. Others put the percentage higher at 90 percent. All ethnic groups practice it except Krios who are located primarily in the western region and in the capital, Freetown.”

“The customary power bases of women in Sierra Leone lie in the secret societies. Women who administer puberty rites are revered, feared and believed to hold supernatural powers. Membership in these secret societies, including *Sande* and *Bundo*, lasts a lifetime.”

“Groups of girls of approximately the same age are initiated into these societies. Part of the ritual is the cutting. Girls initiated together form a bond and this sisterhood lasts throughout their lives. The girls take an oath that they will not reveal anything that happened during the puberty rite.”

“It is believed that once initiated into the society, the girl has passed into womanhood. She now has adult status and can participate in society as a

woman. The secret societies are supported by some members of the influential elite who are also members of the societies or who have relatives who are.”

“Non-members of the secret societies are considered to be children, and not accepted as adults by society. They are generally barred from taking up leadership positions in Sierra Leone society. Children who come of age and have not gone through the puberty rite are liable to be forcibly seized to undergo the procedure.”

6.41 The USSD 2004 Report states that:

“FGM was practiced widely at all levels of society, although with varying frequency. The less severe form of excision was practiced. UNICEF and other groups estimated that 80 to 90 percent of women and girls had undergone the practice; however, some local groups believed that this figure was overstated. FGM was practiced on girls as young as 5 years old. No law prohibits FGM. Although a number of NGOs worked to eradicate FGM and to inform the public about its harmful health effects, active resistance by women’s secret societies, in which FGM commonly occurred as part of initiation rites, countered efforts to stop the practice.”

6.42 A United Nations IRIN report, dated 23 March 2005, about the practice of FGM in Sierra Leone, states:

“Young girls in Sierra Leone, who were traditionally circumcised at puberty, are having their clitoris cut out by secret societies at a younger and younger age, especially in the remote north of the country.”

“The women who perform the crude operation with a long-bladed knife are also getting younger.”

“...In many African societies, the circumciser is an older woman who has passed childbearing age - but not in Sierra Leone.”

“...Young girls in Sierra Leone were traditionally circumcised at puberty, as part of the rites of passage to adulthood. The ceremony was usually performed after they had undergone training for up to two years in household skills, such as cooking, sewing and curing illnesses with local herbs.”

“But today, in most cases, this period of apprenticeship has been pared down to just one or two weeks of preparation for the ritual of circumcision itself.”

“Age offers no protection from being circumcised. Olayinka Koso-Thomas, a gynaecologist who has been fighting against female circumcision for 30 years in Sierra Leone, said, ‘They even initiate babies and small children. Depending on the ethnic group, people do it at different ages: three, five, after secondary school, etc. The Sousous do it when the girls are 40 days old. The practice is more widespread in the

north, where there are also more Muslims, who are more intransigent in sticking to the practice,' she told IRIN."

"In the face of widespread support for the practice among the country's five million people, and government indifference to international pressure to ban genital cutting, AIM [Amazonian Initiative Movement], is one of a handful organisations actively fighting FGM."

"...The organisation [AIM] has been talking to people in villages throughout the West African country, and claims to have persuaded about 400 women, many of whom double as midwives, to give up inflicting FGM on others by offering them alternative ways of earning money."

"...Female circumcision is lucrative business for the women who perform the operation."

"...It also brings cash into the hands of village chiefs, who charge a fee for every circumcision ceremony that takes place within their jurisdiction."

6.43 NGO workers who have campaigned against the practice of FGM have encountered opposition to their work from people who are strong advocates of the practice. An Inter Press Service News Agency report about FGM, dated 19 April 2005, states:

"It is not an easy job. Sometimes I get booed and taunted. At crucial moments I get chased out of places where the practice is much more prevalent,' complains 34-year-old Ann Marie Caulker, who is championing the campaign to end the age-old tradition of Female Genital Mutilation (FGM)."

"Here in the capital (Freetown), the practice is not widespread because of the cosmopolitan nature of the city. But in the predominantly conservative countryside, it is more or less a taboo to venture discussing FGM in public; a real tough challenge,' she says."

"Caulker's strategy is simple. Through her Katanya Women's Development Association (KADWA), she has recruited hundreds of young girls, aged between 12 and 18, the prime target for FGM, and placed them in skills training centres. The girls learn tailoring, dyeing, weaving, soap making and embroidery."

"This is a cover to promote her cause, because of the hostility faced by anyone who dares speak out openly against FGM. In between training sessions, she organises lectures and discussions about the harmful effects of FGM and admonishes youngsters to resist attempts at getting them initiated into the 'Bondo Society', the local name for FGM."

"There is as yet no law on FGM in Sierra Leone. In fact, there is no statute on children's rights. However, the fact that children played a major role in the decade-long civil war that ended three years ago, mainly as conscripted combatants, has jolted the authorities into action."

"The children are traumatised, many forced into marriages by rebel fighters or gang-raped and enslaved. The Ministry of Gender, Social Welfare and Children's Affairs has drafted a Bill aimed at protecting children's welfare."

"Francis Murray Lahai, a child protection officer at the ministry, says the bill was drafted with the help of experts hired by the UN Children's Fund (UNICEF) and has much to offer children in post-conflict Sierra Leone."

"In the bill there is an aspect dealing with harmful traditional practices like FGM, tattoos and any bodily inscription not in the interest of the child,' Lahai says. 'These will be proscribed and measures [will be] taken against people who may want to break the law.'"

"...But there is fierce opposition to the bill. 'Female Genital Mutilation is an integral part of our culture. It shouldn't be banned because it helps prepare our young girls for marriage and it curbs promiscuity,' rants 24-year-old Marie Bangura who had gone through the initiation ceremony."

"...One major problem facing anti-FGM campaigners is the massive illiteracy standing at about 75 percent especially in the interior of the country where UNICEF estimates 90 percent of the women have been circumcised. There, it is a display of affluence and power. Family heads save for a whole year proceeds from the farming activities to spend lavishly on 'Bondo' ceremonies."

"Bondo Society is what holds us together as a community and keeps our traditional heritage. We cannot sit idly by and allow outsiders to destroy it. We will fight it out,' 56-year-old Ya Ndigba Thulla, an initiator in Makeni, the northern regional capital, told IPS in an interview."

"...The 'Bondo Society' and its practice of FGM is often used as a weapon of political campaign. Politicians from all sides win votes from women by extolling the virtues of the 'Bondo Society'."

6.38 "...In terms of customary law, girls as young as ten are permitted to marry and are capable of consenting to marriage, given their levels of maturity. Families usually coerce them into these marriages. There is often a significant difference in age between these young girls and the spouses chosen for them."

"The Commission has found that the practice of early marriage has contributed to the high levels of sexual abuse of girls and has led to society's condoning of a practice that is detrimental to the development of young girls. It is also in clear contravention of international law to which the government of Sierra Leone is [a] signatory to [sic]."

43. These passages are significant. Although the appellant has undergone FGM, they inform our thinking in relation to the position of women in general in Sierra Leone and social attitudes towards them. We were referred by Ms Cronin to substantial amounts of additional background

material in relation to the position of women in Sierra Leone. In view of the findings made by the Adjudicator and the report of Dr Fanthorpe much of the ground is largely uncontroversial. Out of deference to the significant efforts to produce this material before us, we draw attention to the following passages. The references in square brackets refer to the pages in our bundles.

44. In a report by International Alert - *Addressing Gender-Based Violence in Sierra Leone: Mapping Challenges, Responses and Future Entry Points*, we were directed towards the material which related to violence perpetrated on women, not directly as evidence that the appellant was at specific risk but as evidence of the inferior place of women in Sierra Leonean society and the consequences that flow from that. Gender-based violence in its physical and structural forms is endemic in Sierra Leone. It is a security concern that also has broader economic and political consequences, [C126]. The report identified as a key factor that Sierra Leone is a highly patriarchal society, and institutionalised gender inequalities are exacerbated by discriminatory customs, particularly in relation to marriage, property rights and sexual offences, [C126]. The report continued:

“The discriminatory dimensions of Sierra Leonean political and social life have always been there, but they have been exacerbated by the impact and aftermath of the war. The destruction of social networks and structures, the breaking up of families and communities, and the mass displacement of half of the population all resulted in a rootlessness that destabilised traditional value and cultural systems. Whilst this offers the opportunity to renegotiate traditionally held beliefs, it also potentially facilitates a culture of violence where there is little accountability and few inbuilt structures to regulate behaviour, since ties to family and community were so often broken.” [C135]

45. The report also speaks of the role of the chiefs and customary law and the tendency for communities to resort to informal law, where decisions are made by the chiefs or other traditional leaders rather than going through local court authorities who are mandated to adjudicate on matters of customary law. Discrimination and human rights abuses against women are even more pervasive in the informal legal sector. According to Amnesty International, “*not only do Chiefs act outside their jurisdiction, at times they collude with men in the community to forcibly evict women and children from their homes or subject them to arbitrary detention and other forms of gender based violence.*” [C138]
46. The implications of women’s low economic status within the household and the community limit their ability to take action against gender based violence, and sexual violence in particular. Women are often reluctant to report sexual or domestic violence involving male family members, given that they often provide them with some degree of financial security. It was commonly voiced that if charges are made, the woman may risk losing her home and may compromise the survival of her dependents. Another

offshoot of economic insecurity is the prevalence of sexual exploitation and abuse that is exacerbated in environments of extreme poverty. Oxfam Sierra Leone conducted a survey in 2006 of approximately 500 randomly selected women in two districts, the Western Area and Kailahun, which showed that sexual exploitation and abuse are closely tied into livelihood issues. The survey finds that sex is most often being exchanged for basic goods, which reveals the economic dimensions of the discrimination that results in many women living in abject poverty. In 2002, reports emerged of the involvement of humanitarian agency staff in the systematic and widespread sexual exploitation and abuse of women and children in the refugee camps of Liberia and Sierra Leone. As in many other cases, sexual exploitation and abuse was driven by the inability of many women and children to secure access to basic goods. This leads them to exchange sex for food, school supplies, medication and even free and safe access to the camp facilities. So-called 'survival sex' or forced prostitution is particularly widespread during and in the aftermath of conflict, where economic insecurity has increased. Furthermore, the destruction of traditional coping mechanisms leads women and children to find alternate means of accessing food, shelter and protection. Although sexual exploitation and abuse is often considered an issue of exploitation rather than violence, engaging in sexual relations to secure basic goods or protection amount to violence or inhuman or degrading treatment when the effects on the girls and women are taken into account. Similar to other forms of gender based violence, it is based on an unequal distribution of power. [C141]

47. We have also read and considered the Amnesty International Sierra Leone report of May 2006: *Women face human rights abuses in the informal legal sector*:

“Women are forced by a lack of formal protection from the Sierra Leonean Government into situations where their rights---civil, political, social and economic---are violated on a daily basis. Treated as minors under the guardianship of a male family member, women lack formal equality in marriage and the ownership or administration of common property, either during the marriage or when it has ended. Inequality and discrimination affect their right to an adequate standard of living and their right to housing for themselves and their children. Women’s access to justice and redress is severely impeded.” [C173]

48. The report also records the importance of the chiefs in the social and political structures. Chiefs are elected for life, and are the most recognized authority and visible face of government in communities. They are considered the custodian of the customs and traditions of the people. Local government in rural areas is based on 149 traditional chiefdoms, each headed by a Paramount Chief. [C175] It is said that the chiefs have a tremendous impact on women’s access to justice in rural Sierra Leone. In some cases they can be a positive influence in a community, by assisting members of the community to resolve disputes without a formal legal hearing. However in some cases, Amnesty International has found that

they have exceeded their authority under the law by imposing punishments on women which violate their human rights - including the right to liberty. Amnesty International has also discovered that in other cases, the chief's role and actions in dealing with cases of domestic violence and sexual abuse have resulted in the continued perpetuation of violence at the community level. [C176]

49. In a section entitled '*Violence against Women*' the Amnesty report talks of one of the effects of a society emerging from conflict is that Sierra Leone has high levels of violence against women consistently across the country. Although overall prevalence studies have not been carried out, United Nations Mission in Sierra Leone (UNAMSIL) has reported that rape and sexual violence are higher in post-conflict Sierra Leone than prior to the conflict, [C178]. As a result, women are left with little protection against violence committed by their male relatives, [C178]. The conflict in Sierra Leone has also led to a large number of female headed households, many of whom are widows. Widows face specific forms of discrimination which may not be recognised as human rights abuses by mainstream human rights organizations or governments, [C179]. Women were, and frequently still are, perceived as the property of their husbands, to be inherited on the death of their husband along with the rest of his property by the husband's family, [C179].

50. Ms Cronin also referred to the *Sixth report of the Secretary-General on the United Nations Integrated Office in Sierra Leone*, [C230]:

"40. Considerable progress has been made in promoting respect for human rights, particularly in building the capacity of the national Human Rights Commission to monitor, protect and promote human rights and to review the status of implementation of the recommendations of the Truth and Reconciliation Commission. With support from UNIOSIL and UNDP, the Human Rights Commission has established fully functioning offices, recruited some core staff, completed a brainstorming retreat for the development of a five-year strategic plan, developed rules of procedure for the handling of complaints and created a framework for the production of its first human rights report. It is also in the process of finalizing its administrative and human resource manual, as well as its financial policies. During the reporting period, the Commission received and investigated 70 complaints with the support of the United Nations.

41. Some progress was also made in building the capacity of State institutions to address the root causes of the conflict. Several training programmes on human rights, the rule of law, women and children, and the findings of the Truth and Reconciliation Commission were conducted by UNIOSIL for representatives of civil society and officials of key Government ministries, including local government.

42. Notwithstanding these positive developments, a number of challenges remain to the full realization of human rights. The justice system and the response of the Government to sexual and gender-based violence, including domestic violence, rape, and female genital mutilation, are still weak. The impunity with which these abuses are committed continues to

pose a threat to the basic human security of women...Many courts continue to be understaffed and under-equipped. There are now 19 magistrates and 13 State counsels.”

51. The position of women in Sierra Leone was also considered by the United Nations *Committee on the Elimination of Discrimination against Women* (CEDAW) whose concluding passages in relation to Sierra Leone of June 2007 [C244] spoke of the need to enact legislation prohibiting female genital mutilation and to ensure that offenders are prosecuted and adequately punished. It also urged the government to strengthen its awareness-raising and educational efforts, targeted at both men and women, with the support of civil society, to eliminate the practice of female genital mutilation and its underlying cultural justifications. It continued:

“24. While welcoming the domestic violence bill of 2006, the Committee is deeply concerned about the high levels of violence against women, including rape and sexual assault. The Committee is particularly concerned about the persistence of customary law and cultural practices that consider the physical chastisement of family members, in particular women, acceptable.”

52. Finally, we were referred to the Annual Report for 2008 of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: *Assistance to Sierra Leone in the field of Human Rights* and, in particular to a passage concerning women’s rights, [C359]:

“16. Through consistent advocacy, technical support and intervention by the United Nations, international partners and civil society organizations, in 2007, Parliament passed the Domestic Violence Act, the Devolution of Estates Act and the Registration of Customary Marriages and Divorce Act, (referred to as the “gender bills”) in furtherance of the implementation of the Convention on the Elimination of all Forms of Discrimination against Women. The enactment of the gender bills will hopefully lay a firm foundation to address discriminatory practices and violence against women, enabling them to play a meaningful role in the process of democratization and economic development. However, for the gender bills to have any meaningful impact, there is need for Parliament to enact the Sexual Offences Act and the Matrimonial Act, and to make adequate budgetary allocations to the Ministry of Social Welfare for their effective implementation.

17. Despite the progress on the legislative front, challenges to the full realization of women’s rights still abound. Gender equity and women’s empowerment remain a challenge to the full realization of women’s rights in Sierra Leone. UNIOSIL collaborated with the 50/50 Group Sierra Leone and a number of other women’s organizations to carry out sensitization activities for aspirant women candidates at the 2007 general elections as well as on women’s rights to participate in the political process. However, women’s representation in Parliament has dropped from 18 to 16 and only 2 women have been appointed as Ministers to the new Government, thus

indicating the deeply entrenched discriminatory attitude towards women as political leaders.

18. The increasing incidence of sexual and domestic violence also remains a barrier to the realization of women's rights in the country. Up to 67 per cent of women regularly suffer from domestic violence, including beatings, assault, destruction of properties and deprivation. Although the rate of reporting has increased because of the greater awareness among women of their rights, prosecution of cases is continuously hampered by the inadequate capacity of the family support units of the Sierra Leone Police, pressure by family members of the victims to drop charges, obstruction of justice by people in high places, including traditional leaders [and] politicians, and by the unusually long delays in court trials. The Ministry of Social Welfare, Gender and Children's Affairs, the national entity responsible for taking the lead on such matters, lacks capacity and is hamstrung by the Government's inadequate budgetary allocation for women's empowerment programmes. The Peace Building Fund is providing support for capacity-building of family support units and the Ministry."

53. On the basis of this material and what we have said above, we approach the assessment of risk.

The assessment of risk - the subjective and objective fear

54. If the appellant can do nothing to resist the pressure to become a *sowei* and is thereby forced to perform ritual activities, including FGM, which she finds abhorrent, these consequences are capable of amounting to persecutory treatment. Such a conclusion flows from the appellant being required to submit to practices which amount to grave human rights abuses upon others, see BE (Iran) v SSHD [2008] EWCA Civ 540. It is unnecessary to determine whether a forced marriage is, in all cases, itself persecutory treatment because Mr Deller accepted that, if a real risk is made out, it would be persecutory. In the context of this appeal, the combination of being forced into being both a *sowei* and being forced into marriage is enough to establish treatment sufficiently severe to engage the Geneva Convention.

55. As a credible witness, the appellant has been found to have a subjective fear of these events occurring. Having found that the appellant has a subjective fear of such treatment, the Tribunal now has to determine whether that fear is a well-founded fear in her home village.

An opponent of traditional practices

56. There is a significant element of improbability in the appellant's claim that she has been approached to be a *sowei* given our understanding of the role of Bondo, and in particular, the place of a *sowei* as one who is adept at performing the ritual functions. The appellant's immaturity, lack of experience and understanding run counter to the thrust of the background

material that Bondo elders entrust the proper functions of a *sowei* to those who have acquired experience in the activities of the society. Whilst heredity may have a role to play, it would not appear to be a predominant factor. As Dr Fanthorpe accepted, his precedent for a daughter taking over from a mother in the case of a middle-aged woman already known for her midwifery skills, does not lend support to a wider claim that a daughter without such skills is likely to have the necessary qualities to take over the role. Nor does the fact that the rituals and activities of a secret society will be largely unknown alter the evidential burden upon an appellant to establish her case. There is, therefore, a significant degree of speculation as to whether the village elders are breaking away from traditional patterns as part of a conservative backlash against the destructive forces of the civil war by drafting in younger persons into positions of responsibility in Bondo in order to re-engage a younger generation with customary practices that may seem alien to them. So, too, is it speculative to attribute the decision to magic or unseen forces operating on the minds of the local community. Doubtless, superstitions exist but it has not been established they operated in the appellant's case. Nevertheless, we are not prepared to differ with the findings of fact made by the Adjudicator to the effect that the appellant's claim was wholly credible. We shall take it that, for whatever reason, the Bondo elders in Bankala selected this appellant, then a 16-year old, to be a *sowei*.

57. Given the all pervading importance of Bondo rituals in daily life, it is inconceivable that these functions will have been suspended in Bankala since the appellant left the country in February 2004, some 4½ years ago. Thus, it is likely that village elders have been practising the Bondo rituals since 2004 and will continue to do so whether or not the appellant returns to her village. It is of course impossible to assess whether, in their eyes, these past few years have been as successful as they would have been had the appellant accepted the role of *sowei*. The fact that the ancient rituals will have survived the appellant's departure must inform our thinking on the risk faced by the appellant on return. Logic might appear to argue that the elders have either chosen another *sowei* and have no need to force that appellant to be one; or they have not done so indicating that the practice would seem to have stopped.
58. We also accept the appellant's evidence recited in paragraph 4 of this determination that she was recognised after her departure from the village and this led to a group of Bondo women demanding she return to Bankala which the Appellant resisted and she fled. That event, sometime in 2003 or early 2004, some 4½ years ago, must be seen in its historical context. We cannot properly infer that in the intervening period arrangements have not been made to replace the appellant as a *sowei* or that the interest then displayed towards her would be repeated now.
59. We think that it is possible that the risk will be no greater than the risk faced by others who oppose these practices. We are mindful of the

background material (set out in paragraph 6.43 of the COIS report) in which an NGO in 2005 spoke of its not being an easy task for campaigners against the practice of FGM: *"Sometimes I get booed and taunted. At crucial moments I get chased out of places where the practice is much more prevalent."* We do not consider that the appellant falls into that extreme category of outspoken critics who have been forcibly initiated or might face serious harm. On the other hand, the appellant does not have the backing of an organisation such as an NGO like the woman whose words we have quoted. For these reasons, we are satisfied that it would not be safe for the appellant to return to her home area. We are not satisfied that she has a support base provided by her family; nor that the local system of justice operates to provide her with effective protection.

60. Dr Fanthorpe has identified the social pressures exerted on those who fail to conform and whilst there is not general evidence of hostility harboured by Bondo women and their male patrons against non-initiates, the particular circumstances of the appellant's case in her home village suggest that she could not easily survive in the village by remaining an outsider. The stark choice described by Dr Fanthorpe of conform or starve is probably an apt way to describe the bleak options available to her in her home village. On the other hand, we are not satisfied that Dr Fanthorpe's evidence in relation to recurrent cases of persons going missing or of abductions or ritual murders which are fairly regularly reported in the press give rise to a real risk. Dr Fanthorpe accepted this was an area of speculation.
61. We doubt that we are really able to gain much insight into the social mores or customs of remote villages in Sierra Leone but we have been provided with a sufficiently detailed account of a traditional and conservative rural environment which is unreceptive to values that promote western concepts concerning the dignity and equality of women in society. Whilst the revolting operation of FGM will almost inevitably cause a lifetime of physical and psychological problems, as great an offence is its underlying rationale, the subjection of women to male dominance and the limitation upon a woman's ability to develop a wider potential. That artless agenda is all the more remarkable because a majority of women in Sierra Leone are apparently complicit in the process; indeed justifying it under quack theories of developing a woman's true persona by removing the maleness in her. We can understand that for supporters of these ingrained customary practices, especially in times of recent social upheaval, there is the likelihood of their wishing to revert to these traditional shared beliefs. Whilst with the passage of time, we are satisfied that the villagers of Bankala will have managed to find a means of countering the effect of the loss of their *sowei*, we are unable to speculate on their attitude towards the return of the appellant now, notwithstanding the passage of time since these events took place. Nevertheless, it is axiomatic where an appellant has been believed as to her account of past risk, that the Tribunal will be slow to find that the risk has ceased to exist in the absence of fresh material indicating a change in circumstances that is normally more than the

passage of time alone. In the event, it is this factor that we have found most persuasive. There is no other evidence (save as to the passage of time) that demonstrates a change in circumstances. Adopting this approach, (supported by paragraph 339K of the Immigration Rules), the Tribunal is drawn to the conclusion that the appellant has established to the lower standard that she remains at risk of harm in the area of Bankala arising from her being selected to act as a soweï and having rejected that role because she is opposed to such traditional practices.

The risk of a forced marriage

62. Dr Fanthorpe said that he could not say that the appellant would be forced to marry the chief. That, too, is our conclusion on the evidence. We can well understand that, had the appellant wished to conform to the societal pressure of village life in Bankala by her acceptance of the role of soweï, the recognition of her status by becoming one of the chief's wives would have been reasonably likely. We do not see that as a real likelihood now given our findings that the appellant has placed herself on the margin by rejecting traditional values. The passage of time is, in our view, a much more significant factor in considering whether the chief is reasonably likely now to force her into marriage, if only because the chief, then a much older man, may no longer be alive. Whilst a forced marriage would amount to persecutory treatment, we are not satisfied that the appellant faces such a risk on return to Bankala. Our assessment of risk proceeds on the basis that she will return as a woman who has eschewed traditional values.

Particular social group

63. Lord Bingham summarised the effect of Shah and Islam [1999] 2 AC 629 in paragraph 13 of his opinion in Fornah: the Refugee Convention is concerned with persecution based upon making distinctions which principles of fundamental human rights regard as inconsistent with the right of every human being judged in the context of the society in which the group forms part. The social group need not be cohesive but it must exist independently of the persecution.

64. Article 10 of the Qualification Directive (2004/83/EC) refers to a group being considered as forming a particular social group where in particular:

members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

This definition is accurately reproduced in the Qualification Regulations (SI 2006 No 2525), Reg 6 (d).

65. In Fornah, Lord Bingham chose the broadest classification, namely women in Sierra Leone on the clear evidence that women share a common characteristic being forced into a position of social inferiority compared with men. If FGM affords a means by which a woman is accepted into Sierra Leonean culture, it does so on the basis of institutionalised inferiority. See paragraph 31:

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

Disagreeing with the position adopted by Auld LJ in the Court of Appeal, both Lord Bingham and Lord Hope took the view that because those who have undergone the process were no longer at risk did not prevent the identification of women as members of a particular social group. The identification of a section of the group not at risk was not inimical to the existence of the particular social group. See, for example, Lord Hope at paragraph 55.

66. Lord Hope was content to avoid the difficulty by re-defining the particular social group in narrower terms: uninitiated indigenous females in Sierra Leone. This avoided the risk of introducing those initiated into the description. He considered such a classification avoided defining the class by reference to the persons likely to be persecuted.

67. Lord Rodgers classified the group in similar terms as uninitiated (intact) women and girls, rejecting the principle that initiated women are disparaged (paragraph 74) and thereby the concept that the process of FGM is itself an act of disparagement. He did not accept that both initiated and uninitiated form part of a particular social group. In his opinion, it was necessary that all members of the group should be susceptible to the persecution. He did not reject the principle that in a given context all women might form a particular social group; nor did he reject the concept that if there is widespread discrimination against women in various aspects of life in Sierra Leone, this was not a sufficient reason to overlook the more specific reason – that these were *intact* women. If wrong he accepted the wider social group of women and girls who face mutilation, notwithstanding the fact that the persecution was conducted by women, that is, members of the very particular social group who are classified as victims.

68. Baroness Hale recognised the world had woken up to the reality that women might be persecuted in ways that were different from men which may include their treatment as the social inferiors of men in their home country. In a patriarchal society the recruitment of women to perform the persecutory acts against women was simply a manifestation of the subjugation of women by men that was at the heart of the persecution. Relying on the UNHCR guidelines on Gender-Related Persecution, she concluded that if a woman is persecuted because she is a woman in a

country where women are assigned an inferior status, this is sufficient to engage the Refugee Convention without further sub-classification.

69. The fact that judicial decision-makers at the highest level in the United Kingdom have not reached a unanimous decision about the precise definition, nature or scope of a particular social group suggests to us that such distinctions are elusive and, in the final analysis, perhaps less important than judges and commentators have earlier thought. In particular, the process by which successive courts have defined and re-defined and defined again the constituent elements of a particular social group has more to do with semantics than recognising the face of a refugee. In the context of this case, the facts which we see as breathing life into the description of this appellant as a member of a particular social group arise from her relative weakness to combat the risks she faces and this derives ultimately from the fact that she is a woman. Secondly, it arises from the relative lack of support provided by the community itself in the form of effective protection offered by the lawmakers, the law enforcers and the other state agencies who themselves reflect and reinforce underlying social attitudes. These are the brush strokes in the broadest sense. The various elements can be identified in greater detail by specific reference to the facts of the appellant's case: the appellant as a young female, without a male protector or the support of family, extended family, clan, religious or other support group. It can also be identified by reference to the state's attitude towards her: the lack of effective legislative protection; the lack of universal state control; the pervasive influence of customary practices; the absence of any willingness to grant protection. Once again, these categories are not designed to be a comprehensive list of factors.
70. We do not consider that the fact that the appellant has undergone FGM must necessarily exclude her from membership of a particular social group. Those who have already been initiated face a different, but still serious, risk of harm but the risk stems from the same underlying social and cultural *milieu*.
71. Given the risk and applying the principles underlying the decision in Fornah, the lengthy arguments directed at whether the appellant is to be treated as a member of a particular social group can be swiftly disposed of. If uninitiated women who are at risk of FGM fall to be treated as members of a particular social group by reason of the absence of protection afforded to them by the state authorities and the complicity of those in power, we see little difficulty in accepting that the appellant is capable of forming part of a particular social group by her resistance to accepting the prevailing cultural norms in her own rural society.

Imputed Political opinion

72. The appellant, of course, holds no political opinions. She does not approve of FGM or wish to participate in the Bondo or to marry an elderly man

occupying a position of local chief. *Her* motives are not political in any discernible way. That, however, is not the point. She has been identified as one who has rejected the traditional and customary ways of her village. Those traditions and customs include the recognition of the local chief in the social hierarchy. There is thus a political element that might be extracted both from the social place of Bondo and the position of the chief as the principal source of local governance. These so-called 'political' elements are relied upon to support a claim that the rejection of customary *mores* will be imputed as opposition to the existing *status quo* and therefore as an imputed political opinion giving rise to a further Convention reason.

73. We have, however, concluded that it does not, in spite of these political 'overtones'. See, generally, the reasoning of the Court of Appeal in Quijano v SSHD [1996] EWCA Civ 1244. Our view is that there is but a peripheral connection between these political strands and her resistance to being a soweï and becoming involved with rituals which she considers harmful and demeaning (both to herself and those subjected to them) and her obvious reluctance to marry a man for whom she does not care. The fact that the chief is, in a sense, a local politician and that the Bondo has a political element in its operations is not conclusive are not conclusive in characterising this claim as one of imputed political opinion. This classification may, in large measure, be a simple matter of fact.

74. These considerations are largely academic because the appellant has established a risk of harm in her home area and we have already identified that the harm is related to her membership of a particular social group. The 'political' dimension of her appeal has no bearing when consideration is given to internal relocation since we are not concerned there with a Convention reason when applying the relevant tests. The passages in Gomez (Non-state actors: Acero-Garces disapproved) (Colombia) * [2000] UKIAT 00007 to which we were referred in the appellant's skeleton argument contain a large measure of broad interpretative guidance but can properly be reduced to the Tribunal's overarching conclusion that in any particular case it will depend very much on the individual circumstances.

Internal relocation: Reasonableness-unduly harsh

75. In considering internal relocation, we have considered the guidance offered in Januzi [2006] UKHL 5, AH (Sudan) [2008] UKHL 49 and more recently in AB (Jamaica) [2008] EWCA Civ 784. A person is not entitled to the protection of the Convention if there is a part of her country of origin where she would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country. In reaching a decision, regard must be had to the general circumstances prevailing in that part of the country and to the personal circumstances of the person, see paragraph 339O of the Immigration Rules.

76. Central to the consideration is an assessment of what conditions the appellant will face in Freetown. The first stage is to consider whether the

appellant will be safe there. If the appellant has not established a risk of harm there, the next stage is to consider whether it is reasonable for her to stay there or, to use the other side of the same coin, whether it would be unduly harsh. In the course of the evidence, we considered relocation in Freetown, partly because it will be the destination for the appellant's return and partly because it is a cosmopolitan urban environment where the rural chiefs do not have so great an influence and where state authority is more evident.

77. First, we think that Dr Fanthorpe's evidence was clear. Were the appellant to relocate, she is not at risk of being forcibly removed to Bankala and the consequences that would flow from it. He did not say that the background material suggested there was a real likelihood of forcible action, although he spoke of the risk that, in a country that relies upon networks for the distribution of information and gossip, there was a risk that the presence of the appellant in Freetown or elsewhere would filter back to her home village.
78. Second Dr Fanthorpe also spoke of the protection that is afforded by marriage and was here referring not just to a specific chief in her home area who had approved her for marriage to him. In this context he spoke of the pressure upon any unmarried woman, with or without children to obtain a male protector in order to function better in Sierra Leonean society. We can well see that there are real and solid advantages in marriage in comparison with a state of existence experienced by those who are unmarried, separated, divorced or widowed. These advantages apply equally to those with or without children, unless the children are sufficiently mature to act in part as protectors. With such advantages in favour of marriage, a woman will inevitably be under pressure to marry but that does not, in our judgment, amount to putting her at risk of a forced marriage. The coercion that the Adjudicator found that the appellant was placed under to marry the local chief was different in quality and in substance from a more general social pressure placed upon this appellant to marry for the sake of benefiting from a male protector. It is too speculative to assert that such pressure is persecutory. (In any event, whilst self-interest may have a part to play, it does not by any means exclude the real possibility of such a marriage being the voluntary exercise of free-will.)
79. In the same way that it is too speculative to find that the appellant will be forced into a loveless marriage as a viable means of gaining a protector, it is also too speculative to assume that she will marry out of choice and thereby gain a protector. Hence, we have to assess the risk to the appellant as a single person with 2 children in Freetown. She is not at risk of FGM or further mutilation. The evidence that the appellant is not likely to suffer direct targeting from those who participate in Bondo removes a key risk. The incidents of violence were described by Dr Fanthorpe as arising when the activities of the Bondo wrestled for space with those opposed to their

practices. Specific violence occurred when opponents spoke out and, in two cases at least, were forcibly subjected to mutilation in response. These specific risks are not faced by this appellant.

80. There are other discrete areas of risk. First, the appellant according to Dr Fanthorpe will face the risk of exposing her past history to those with whom she is forced into contact in Freetown or elsewhere. On the assumption that she will have to reveal the fact that she is no longer an active participant in Bondo activities, that will result in her becoming part of the minority of Sierra Leonean women who do not actively participate in Bondo or the secret societies. Whilst this will not in itself lead to her being targeted it will result in her being marginalised. Further, as a person who has returned to Sierra Leone having failed to settle herself successfully in Europe or elsewhere she will not be viewed sympathetically by other Sierra Leoneans, presumably those envious of the chance of success that she was offered and indignant at her failure. The consequences of her past history being revealed will therefore result in her being taunted and harassed but, in our judgment, this falls well short of being at risk of serious harm or persecutory treatment. She may well face greater difficulty in enlisting the help of others and will not have the ready access to the extended family or the connections to whom she might otherwise turn. She will not, however, be entirely isolated as the background material establishes she will form part of a significant minority within Sierra Leone namely those who have disassociated themselves from the Bondo and traditional practices.
81. We therefore turn to the substantive conditions in Freetown and this means consideration of the prospects of leading a life such that it would be reasonable to expect her to settle there. This itself requires an assessment of the economic and social circumstances in Freetown for this appellant and in particular the risk that she faces of being reduced to begging, crime or prostitution. On the facts of this case, the risk faced by the appellant has always been identified in argument as the risk of prostitution representing, as it would do, the most degrading form of destitution and one that is most alien to universal principles of human dignity. Nevertheless, prostitution or sexual exploitation are just two of the various forms that destitution can take. We would not wish to draw distinctions between them and beggary or being forced through want into crime. Nor would we regard it, of course, as a risk that is faced exclusively by a women or young girls. Prostitution, (other than through unequivocal choice), destitution and their associated risks of damage to health and dignity are the result of an individual's failure to find survival techniques in the community in which he or she is living. For our purposes, we exclude the possibility that these conditions are the result of an exercise of free choice.
82. We approach the assessment of risk to this appellant from the starting point that prostitution is always available to those who have no other

means of survival and is an unacceptable solution to the eradication of want.

83. The issue in this appeal, therefore, centres upon whether the appellant has established the real likelihood that Freetown offers her no means of survival, other than destitution or prostitution. In this regard, we must take the appellant as she is. There are a number of factors that are particularly significant. She is now aged 21. She has two children. She has no male protector. She has no family or extended family to whom she can turn. She has no access to effective charity from the F mosque in Freetown. She is without connections. This is not to be taken as a comprehensive list as there are a number of other factors, identified in other parts of this determination, which have described the appellant's position. On the positive side, the appellant is clearly an intelligent woman; she has completed the initial stages of her nursing training and is only permitted from going further by restrictions on what she is now permitted to do in the United Kingdom. Whilst we would never wish to underestimate the vulnerability of young women in the position of the appellant, the appellant herself has shown both courage and resilience in facing her difficulties.

84. Thus, the Tribunal's task is to assess the risk faced by the appellant without the social and family networks that provide mechanisms of support, particularly for lone women. The fact that the appellant has been absent will oblige her to form social contacts again.

85. We make the following findings from the evidence;

- (i) Freetown is the principal destination for those leaving rural areas.
- (ii) As a young woman, who has eschewed traditional values, she is one of many young Sierra Leoneans who have decided that the old social system has little to offer and, in particular, that FGM is an anachronism. This group is indeed placed in a difficult position as a minority group, perhaps, representing as little as 10% of the population. Nevertheless, members of the Bondo societies fall short of adopting a positively hostile or combatant attitude to non-adherents of Bondo principles and avoid targeting them. The treatment faced by the minority amounts to taunting and harassment but is not persecutory.
- (iii) The migration to Freetown is both of males and females; the females are in the minority but are catching up in numerical terms.
- (iv) Freetown is a cosmopolitan society, where work is available to both men and women.
- (v) For migrants to Freetown, those with the ability to access support would face no risk. Such support mechanisms might include:
 - a. family connections;
 - b. support mechanisms from other groups, such as the Bondo societies;

- c. support from a local mosque or church.
- (vi) There is however no compelling evidence that these support mechanisms are the sole means of eliminating the risk of destitution and its corollary of the risk of beggary, recourse to crime or prostitution. This is a crucial finding in relation to this present appeal.

86. The background material has spoken of the type of work that is available to women. Dr Fanthorpe spoke of the fortunate who are able to find a householder, shopkeeper, or lorry driver able to offer food and shelter in return for menial work. Dr Fanthorpe also spoke of those selling newspapers, cassettes and other vending work. Although he also referred to the difficulties inherent for those without connections, there is evidence of work in nursing and teaching. Yet, at the same time, he spoke of the forces that drive migration into the cities. That force is not the prospect of destitution but the prospect of seeking relative advantages. No statistics have been given concerning the number of jobs available to females in Freetown. It would require cogent evidence to establish that jobs are not available for shop workers, waitresses, typists, office workers, domestic workers or street vendors rising through to those more skilled in teaching or nursing. The numbers of such placements are likely to be significant. We have no statistics available as to the numbers of those who are destitute or forced into prostitution. Dr Fanthorpe properly spoke of the better opportunities available to those with "connections". Nevertheless, the evidence falls short of establishing that only those with connections can find work or are able to avoid prostitution. We do not say that the appellant does not face the possibility of destitution but nor do we find that she has established the reasonable likelihood that she will not be able to find work. We think this finding is consistent with Dr Fanthorpe's evidence. We can do no better than repeat what Dr Fanthorpe said:

"It is a matter of emphasis. The cassette-sellers vendors and the newspaper organisers are springing up and migrants are finding ways to survive... It is not a question of leaving the rural areas behind and going into a city. The pressure to conform is not there the less. It remains a question of conforming or starving. This is the cutting-edge of research at this time in Sierra Leone. What is the effect of migration post-war? I cannot give a more definite answer."

87. Furthermore, we do not consider that the evidence establishes that job opportunities are restricted to single women without children. The evidence falls short of establishing that having children prevents women engaging in work. Any economy that has a female workforce as an integral element must operate on the basis that working women will often need childcare arrangements. Such arrangements are likely to range from paid care to drawing upon help from neighbours and acquaintances. It would require cogent evidence to make out a case, even to the lower standard of proof, that the presence of children as part of the family unit prevents the mother from working in societies which has no system of

welfare benefits. Whilst the presence of a mother or close relative would clearly be advantageous as the provider of childcare, the evidence falls short of establishing that such assistance is a necessity. In reaching this conclusion, we take into account the fact is that this appellant has no family member to whom she can turn but we also take into account the particular skills that she has developed in the United Kingdom and the courage and resourcefulness she has displayed in coming here.

88. Absent a risk of harm and a failure to demonstrate that she has not acquired the techniques necessary to survive in Freetown without destitution, the appellant's relocation to Freetown is a reasonable step for her to take. We consider that the appellant has been unable to show that she cannot lead an independent life.

Conclusion

89. The appellant has established that the treatment she fears in her home area is sufficient to amount to a level of severity capable of being persecutory.
90. She is at risk of serious harm in her home area.
91. The risk of harm arises from her being a woman and as a member of a particular social group for the purposes of the Convention. If a more limited group needs be identified, it is as a woman who has shown herself opposed to traditional values in her rural environment.
92. She has not established she is now at risk of a forced marriage to the local chief.
93. She has not established she is at risk of abduction from Freetown to her home area by those known to her in Bankala; nor at risk of harm from members of the Bondo societies in Freetown.
94. She has not established she is at general risk of harm for any other reason in Freetown. The appellant has failed to establish that she is at risk of being forced through destitution into beggary, crime or prostitution. Had the appellant established a risk of prostitution, this would render the internal flight alternative impermissible. Accordingly, there is an internal flight option open to the appellant that it would be reasonable for her to take; it would not be unduly harsh for her to do so.

DECISION

- (1) The original Tribunal made a material error of law.
- (i) Having found that the Immigration Judge made a material error of law, we substitute a determination dismissing the appeal on asylum grounds;

- (ii) This being an upgrade appeal, no claim for humanitarian protection or under the ECHR calls for decision.

ANDREW JORDAN
SENIOR IMMIGRATION JUDGE

17 November 2008

LIST OF SOURCES

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7. International Alert - *Addressing Gender-Based Violence in Sierra Leone: Mapping Challenges, Responses and Future Entry Points.*
8. Amnesty International Sierra Leone report: *Women face human rights abuses in the informal legal sector*, May 2006
9. Sixth report of the Secretary-General on the United Nations Integrated Office in Sierra Leone.
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