

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 22 October 2004

Date Determination notified:

22/04/2005

Before:

Dr H H Storey (Vice President)
Mr N H Goldstein (Vice President)
Mr C Thursby

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Appearances: Mr M Azmi of Blackmores, Solicitors for the appellant; Mr A Sheikh, Home Office Presenting Officer, for the respondent

DETERMINATION AND REASONS

1. This case is designated a Country Guideline case for what it says about the Bantu and the Bantu subgroup known as the Mushunguli. A summary of general conclusions is given at paras 75 onwards.
2. The appellant is a national of Somalia. He appeals against the determination of Adjudicator, Mr R.R. Hopkins notified on 23 April 2004, dismissing his appeal against a decision giving directions of removal following refusal to grant asylum.
3. The basis of the appellant's claim was that he was a member of a Bantu clan called the Mushunguli. He and family lived in a village known as Qallalijo in the agricultural region surrounding Jilib. He had been attacked in 1991 when he refused to fight for the Hawiye. From 1992 he and his family were forced to work for the Hawiye on a farm under

threat of being killed if they refused. He was eventually able to leave Somali with the help of the Mushunguli community in the USA.

4. The Adjudicator accepted only limited parts of the appellant's account as credible. He accepted, albeit with reservations, that the appellant was a member of the Mushunguli clan and that he came from somewhere in southern Somalia. He accepted that he may have been stabbed in the leg in 1991 when members of a majority clan tried to recruit him to fight in the civil war. However, he did not accept any further parts of his story. In particular he did not accept that he and his family had been forced to work against his will under threat of being killed nor did he accept that the appellant lived as claimed in a village some distance from Jilib. He concluded:

'16. The US State Department Report 2002 says that there are reports that in the Middle and Lower Juba Bantus were used as forced labour (page 78 in the appellant's bundle). Paragraph 6.97 of the latest CIPU Report indicates that, although Bantu have been largely displaced along the Juba and Shabelle rivers, they are usually able to remain in their home areas and to work mainly as labourers for the Somali clans. They can usually retain about 10% of their land for their own use. In some cases they work as plantation labourers in what Bantu elders described as situations of near slavery.'

17. The situation appears to me to be one where the Bantu suffer discrimination in Somalia. But discrimination is not necessarily persecution. Also, Article 3 has a high threshold. This appellant does not claim he was physically ill treated. He just says that he was forced to work against his will under threat of being killed, a claim which I reject. I accept that there have been instances of Bantu having been forced to work for the more powerful clans. But what I am concerned about is whether there is a real risk of persecution or of being killed, or of inhuman or degrading treatment as far as this appellant is concerned. I am not satisfied that there is a real risk here.'

5. The grounds of appeal made no specific challenge to the Adjudicator's adverse credibility findings. Instead they submitted that having found the appellant to be a Mushunguli, a subgroup of the Bantu, and having accepted that in some cases Bantu work as plantation labourers in what

Bantu elders describe as situations of near slavery, the Adjudicator had “misapplied the objective material, resulting in an unsustainable decision”.

6. In amplification of the grounds of appeal, Mr Azmi contended that the Adjudicator had erred by minimising the historical repression suffered by the Bantu and underplaying the fact that the Bantu had continued to suffer abuse at the hand of majority clans.
7. The Adjudicator's determination was notified on 23 April 2004. That complicates the matter of what background materials we can take into account, since, following the Court of Appeal judgment in CA [2004] EWCA 1165, we cannot have regard to materials to hand since the Adjudicator notified his determination unless he has made a material error of law. For reasons given below we do not find there was such an error. Accordingly we must confine ourselves to materials that were before the Adjudicator. But since we do not consider that in respect of the Bantu the more recent materials present a significantly different picture, we shall include references to them as appropriate. That will also assist us in furnishing (by way of obiter) up to date guidance.
8. We remind ourselves here of what is required in order to identify a material error of law, a set out in E & R [2004] EWCA Civ 49 and in CA[2004] EWCA Civ 1165. If it was a conclusion that no reasonable Adjudicator could have reached, then it would be irrational one and hence a material error of law. However, if it was a conclusion which was within the range of reasonable decisions that could be made on such materials, it cannot be considered a material error of law. Thus Mr Azmi can succeed only if able to persuade us that the Adjudicator significantly misconstrued the background materials that were before him relating to the Bantu.
9. It is essential therefore that we assess what picture of the Bantu emerges from the background materials before the Adjudicator.
10. The background materials in full on which we have drawn (those which were before the Adjudicator and others submitted since) are listed at Appendix A. We should perhaps mention at this stage three other matters. Firstly, after completion of the hearing of this case on 22 October 2004 we became aware of the existence of an expert report on the Bantu by Dr Joseph Mullen dated 24 October 2004 prepared in respect of another case. We asked the appellant's representatives to seek permission from the author for its production in this case. That was done, with success. We are grateful to the appellant's representatives for their assistance in this regard as it has enabled us, in the context of considering the current situation, to take this report into

account. Secondly we have made reference to a website account of the Bantu entitled `Somali Bantu-Their History and Culture` written by Daniel Van Lehman and Omar Eno. This website is called `culturaloreintation.com`. This account was before the Adjudicator. Although we would normally be wary of highlighting a source of this type, we note that it is considered by leading commentators on Somalia as a helpful source. Thirdly, bearing in mind that the appellant in this case was accepted as being a Mushunguli Bantu, we have emphasised where relevant references to the specific position of the Mushunguli.

History

11. The Bantu are said to have their roots in East Africa, the main body of them having been brought to Somali several centuries ago as slaves.
12. Until 1991 they were chiefly involved in agriculture in the Juba river delta and Shabelle river area.
13. Although they did not take part in the civil war, and so did not face recriminations after it, the Bantu were scattered by the fighting and many lost their land along the Juba river to the north of Kismayo and in Middle Shabelle to the north of Mogadishu. The culturaloreintation.net report describes the dire effect on the Bantu of the civil war conflicts:

` Because the Bantu were excluded from the traditional Somali clan protection network, bandits and militias were able to attack the Bantu with impunity. In the process of stealing food stocks, the bandits also robbed, raped and murdered Bantu farmers.

As the war progressed, control of the lower Juba River valley shifted among various warlords, with each wreaking havoc on the Bantu farming communities. In October of 1992 the Bantu began to flee southern Somali en masse for refugee camps located approximately 40 miles from the Somali border in Kenya's arid and often hostile North-eastern Province. `

14. As regards the post-civil war period the report notes:

`As militia fighting in southern Somalia stabilised in the mid-1990s, the Bantu who remained in Somalia were once again able to resume farming. Since this time, however, armed dominant clan bandits have taken control of the valuable agricultural regions of southern Somalia. These bandits extort protection money from the Bantu in return for not harming them or allowing other bandits to harm them. Today, the Bantu in Somali again exist in a state someplace between sharecropping and slavery.`

15. The 1998 Netherlands delegation report (see Appendix A) mentions that although some displaced Bantu left Somalia for good, many returned to the Juba Valley where they both lived in and outside refugee camps. It cites a Nordic fact-finding mission report of 15 February to 14 March 1997 stating that in addition a large number of Bantu lived in Middle Shabelle where they were free to move about without any problems.
16. The April 2004 CIPU Report at 6.100-6.101 (which is in very similar terms to para 6.91 of the April 2003 CIPU Report and likewise draws heavily on the 2002 Joint Report (see Appendix A) and on an August 2002 Office for the Co-ordination of Humanitarian Affairs (OCHA) study of minorities in Somalia) states:

‘According to the [2000 and 2002 Joint reports [see Appendix A] conditions for Bantu reportedly vary according to the region in which they live...As stated above Bantu have been largely displaced along the Juba and Shabelle rivers. They are usually able to remain in their home areas, to work mainly as labourers for the Somali clans (mainly the Marehan, Ogadeni and Habr Gedir) that have taken their traditional land. They can usually retain about 10% of their land for their own use...However, in some cases Bantu work as plantation labourers in what Bantu elders describe as situation of near slavery...’

Bantu try to link themselves to the dominant Somali clans that have dispossessed them of most of their land, as, for their own security, they still need their protection. However, in Bay and Bakool Bantu have largely been incorporated into the Rahanweyn clan structure and are able to retain their land. Bantu that have assimilated themselves with the indigenous clans they live with are reportedly known as ‘sheegato’ which means they are not bloodline clan members, but adopted...’

Physical appearance

17. The Bantu are said to be physically distinct from other Somalis in terms of their Negroid features, particularly the hair: (jareer or kinked for the Bantu; jilec or soft for the non-Bantu).

Location

18. Although scattered by the civil war it remains the case that the Bantu primarily inhabit the interriverine areas of southern Somalia in the vicinity of either the Shabelle or Juba Rivers.

Status as a minority

19. Reference to the Bantu as a minority is contextual. In the wider context of Africa, Bantu-speaking peoples make up a major part of the

population of nearly all-African countries south of the Sahara. They are connected with over 300 groups, each with its own language or dialect. For example, in Kenya they are associated with the Kikuyu and in South African with the Zulu. However, in Somalia they are a minority.

20. The Bantu are commonly described as the largest minority group in Somalia. The US State Department report of February 2004 states:

`Minority groups and low-caste clans included the Bantu (the largest minority group), the Benadiri, Rer Hamar, Brawanese, Swahili, Tumul, Yibir, Madhiban, Hawrsame, Muse Dheryo and Faqayaqub. Inter-marriage between these groups and mainstream clans was restricted. These groups had limited access to whatever social services were available, including health and education. Members of minority groups continued to be subjected to killings, harassment, intimidation, and abuse by armed gunmen of all affiliations`.

21. The Bantu are not accurately described as a `minority *clan*`, since they have no tribal lineage system or segmented clan structure in the Somali sense and for the most part they are recognised as a grouping distinct from and outside Somali clan society.
22. However, the Bantu are certainly a minority *group*. That is clear in overall numerical terms. Out of a population of some 7.5 million people, the most common estimate for the entire Bantu population in southern Somalia is around 600,000. However, there are quite marked differences in estimates ranging at the one extreme from the figure of 2% given by Perouse de Montclos to the (plainly inflated) figure of 30%-40% given by the Bantu elders consulted by the authors of the 2000 Joint Report. Complicating matters, it has been estimated that up to one-third of all Somalis are minorities, representing a variety of cultures, languages and interpretations of the dominant Sunni Islamic religion. Minorities also make up a considerable proportion of the 375,000 persons estimated as being internally displaced persons (IDPs).
23. The situation is also subject to regional variation. As the 2000 Joint Report notes, `The Bantu elders with whom the delegation met urged that the Bantu population in Somalia should not be considered as a minority population in Somalia, because, they argued, the Bantu constitute a majority in a number of regions in Somalia`.
24. What can safely be said is that, even if not in all regions a minority numerically, the Bantu are everywhere in a marginalized position. The September 2000 report quotes Perouse de Montclos as stating that the Bantu are:

`... generally despised. While some succeeded in making themselves respected and in working on an equal footing with their neighbours, they do not belong to Somali lineages and are considered to be second class citizens. ` Dr Joseph Mullen in his October 2004 report states that: `On occupational, ethnological and economic grounds the Bantus have been despised, marginalized and oppressed in Somalia`.

We shall come back to the issue of their social, economic and political position below.

Subdivisions

25. The US State Department report 2003 states that the Bantu are said to include the Zigua, Zaramo, Magindo, Makua, Manyasa, Mushunguli and Yao.

26. The 2000 Joint Report states:

‘The term `Bantu` covers a large number of sub-groups but these groups all consider themselves as belonging to one large group, the Jarer...

According to Bantu elders the Bantu population is made up of a number of lineages, some of which live in certain areas and some of which are mixed and/or have resettled in other places in Somalia. Only a few groups are distinguished by their location, such as the Mushunguli, almost all of whom live in Lower Juba region. There are a number of well-known Bantu groups that are not attached and have not been swallowed up by the non-Bantu Somali clans. All of these Bantu groups are referred to as lineage groups: Shabelle; Shiidle, Kabole, Mushunguli, Gabaweyn (Garbaweyn), Eyle (Eile), Makne. In the Lower and Middle Juba areas there is another group of less well-known Bantu-lineages: Manyasa, Miyau, Majindo, Makua, Mlima, Pokomo and Manyika.

‘The Somali Bantu can be subdivided into distinct groups. There are those who are indigenous to Somalia, those who were brought to Somali as slaves from Bantu-speaking tribes but integrated into Somali society, and those who were brought to Somalia as slaves but maintained, to varying degrees, their ancestral culture, Bantu languages and sense of southeast African identity. It is this last group of Bantu refugees that has particularly suffered persecution in Somalia and that is therefore in need of protection through resettlement`.

27. Elsewhere this report states:

‘Those who trace their origins to an east African tribe refer to themselves collectively as Shanbara, Shangama, or Wagosha. Those Bantu refugees with very strong cultural and linguistic ties to southeast African refer to themselves as Mushunguli or according to their east African tribe, such as Zigua’.

Language and dialect

28. Generally the Bantu are said to speak their own language, but it would appear this is subject to some regional variation. Thus, whilst in the Juba River valley the main language used by Bantu is Af Maay, some Bantu in traditional villages are said not to understand this at all; instead they speak their ancestral tribal languages from Tanzania (primarily Zigua), with Swahili occasionally used as a common language.

29. The 2000 Joint report states that:

‘Some Bantu groups have maintained their own Bantu dialect or language while others have completely lost their dialects. The Mushunguli of the Lower Juba still have their own dialect called ‘kiziguua’ and the Mushunguli call themselves ‘waziguua’. Any other Somali will call them Mushunguli’.

30. Generally, most Bantu also speak broken Somalia.

Occupational patterns

31. The Bantu in southern Somali are typically agriculturalists but some have found work of diverse trades in cities.

32. The 2000 Joint report states that:

‘The Bantu communities in Somali are typically agriculturalists, farmers or labourers on farms and plantations in the area between the Shabelle and Juba rivers in central and southern Somalia.’

33. According to culturalreintegration.net, Bantu in Somalia exist as:

‘... small holders, restricted to either low-level jobs or farming on land cultivated by family members and, occasionally, by a few hired workers. The average land area owned by each family ranges between 1 and 10 acres. This type of farming can provide subsistence and limited surpluses to the commercial market.

Nevertheless, these farmers contribute the highest percentage to Somalia's staple food stocks, which include maize, millet, sorghum, sesame, beans, cotton, rice, vegetables, and fruits. Crops grown for commercial export markets include bananas, citrus and vegetables.

...

After independence, Somali authorities adopted a policy designed to prevent Bantu people from social, political and economic development. Over the course of the late Siyaad Barre's military regime in the 1980s, more and more Bantu farmers became landless as large government-owned agricultural enterprises and members of the political elite used unjust land registration laws to displace the smallholder Bantu from their farmers. Expropriation of this valuable arable and irrigable farmland from the Bantu allowed the new 'owners' to exploit the land for cash crops.

Some of the Bantu have managed to move to urban areas in order to improve their lives. The Bantu in the cities work in building trades, woodworking, vehicle repair, tailoring, and electric machine maintenance. In the refugee camps, the Bantu have engaged in construction, manual labour, tree farming and nurseries, and vegetable gardening.

Social, economic and political situation

34. The 2000 Joint Report describes the socio-economic situation of the Bantu in Somalia as one in which they are exploited economically by Somali majority clans. It quotes the Bantu elders consulted as maintaining that the Bantu:

'... are the most vulnerable and most seriously affected population in Somali. They stated that, in contrast to other so-called minority groups such as the Benadiri and Madhiban, the Bantu have no close ties to other Somalis. While the Benadiri often intermarry with other Somalis this never happens between the Bantu and other Somalis. The Bantu are afraid to speak freely in Somalia and [they] are the only group that is totally excluded and marginalized in political, social and economic terms. They claimed that Bantu identity is being suppressed because the 'Cushistic Somalis' want to deny the original ownership of Somali by the Bantu, who are the true indigenous people and original inhabitants of Somalia.... The so-called Cushistic or Jileec Somalis have, according to the Bantu elders, established a deliberate policy of suppression and impoverishment of people of Bantu origin in Somalia'.

35. In terms of political representation both the 2000 and 2004 Joint reports make clear that the Bantu have been dissatisfied with the Arta peace conference and subsequent political negotiations in Nairobi. They wanted a proportional number of seats in the Transitional National Assembly (TNA), but in the end received only 6 of the 29 seats allocated to the so-called `minority groups`, despite being, in their own words, `the majority of the minority`. The CIPU April 2004 report cites a June 2003 IRIN news release as noting that the Bantu have been represented by Somali African Muki Organisation (SAMO), which is aligned to the SSA SAMO, itself aligned with the G8 group at the Eldoret/Nairobi peace talks.

36. It is clear that the Bantu elders consulted by the 2000 Joint Report delegation considered that the Bantu were a persecuted grouping. At para 6.4 this report notes:

`The Bantu elders explained that the Bantu are unarmed and are victims of serious human rights violations. They argue that human rights violations against the Bantu population in Somalia are of such a scale that they cannot be compared to the human rights violations against other, non-Bantu, populations in Somalia. They stated that there is an important difference in addressing human rights and addressing minority rights in Somalia because the Bantu population should not be regarded as a minority group.

The Bantu elders considered Somalia as a nation to be more racist than South Africa during its apartheid period. They feel they have no assurance from any future government in Somalia that the rights of the Bantu will be protected and they have no trust in a future government. They claimed that freedom of expression does not exist for the Bantu in Somalia and their voice is not being heard. Perouse de Montclos comes to a similar conclusion when he makes a distinction between the Bantu and the so-called Sab castes (the Digil, mainly the Tunni and the Rahanweyne). The camel-herding clans of northern Somali despise the latter, but they are still part of the Somali lineage system and they will still be able to negotiate `when the hour of reconciliation arrives in Somalia`. Minorities, who are not part of the lineage system, the Bantu and the `half-castes` argue that they will never benefit from any compensation mediation procedures amongst the Somali clans`.

37. However, it must be borne in mind that the Bantu elders in Nairobi have plainly sought to present their case in political terms so as to maximise their voice in the peace negotiations: as is suggested by their

unrealistic estimates of Bantu numbers in Somalia. We do not consider they cannot be relied upon as an independent source. Moreover, the 2000 Joint Report suggests that the longer-term political future might not be as wholly bleak as the elders portray it:

`A UN agency in Nairobi described the land issue in Somalia as `dynamite`. They pointed out that while the Bantu population has so far been the loser in the land issue, they have never before been represented in a Somali Parliament, as they are not in the TNA. The Bantu population therefore now has more political influence than ever before in modern Somali history. Also, as a result of the civil war in Somalia a large number of Bantu fled the country and are now living in a diaspora in Kenya and in other countries. This has had the side effect that today the Bantu are better educated than ever before.`

38. Nevertheless it would be wrong to suggest that the Bantu have any significant political power. Dr Mullen in his October 2004 report states that:

`Although the Bantu represent a large proportion of agricultural labour in the fertile valleys of the Shabelle and Juba rivers, this is not tantamount to stating that they are in any meaningful majority as they are de facto virtually powerless politically and economically.`

Protection

39. Of the materials before us, The Home Office Operational Guidance Notes: Somalia May 2004 at 3.7.3.4 cited earlier represents perhaps the clearest statement of the view that in general Bantu are able to secure dominant clan protection: `Minority groups will be safest in areas where they enjoy the protection of a dominant clan. This is generally the case with the Bantu group`. However, it is fair to say that some take the view that Bantu in general are unprotected. That is clearly the view of the Bantu elders, of the authors of the culturaloreintation.net document and also of Dr Joseph Mullen who in his October 2004 report states:

`...[the Bantu] are perceived as inferior, socially excluded from mainstream social life of the dominant clans and regularly suffer human rights abuses such as forced land expropriation, rape and exclusion from any form of local governance. Usually they were attached to a Somali `noble` clan, from whom they sought protection, but it was a voluntary contract rather than constituting ownership or bondage rights and without reciprocal obligations for labour offered. For example, the

Shiidle...has a degree of affiliation or 'adoption' to the Hawiye Abgal sub-clan, the Mobilen, from Jowhar district. There is no evidence that this constitutes protection and certainly not diya or compensation rights...

...

The Bantu as a minority do not have clan alliances with the majority clans but rather a patron-client relationship, with unclear reciprocal obligations. What often happens is that the Bantu is conscripted to fight on behalf of their patrons, are placed in the front line since, if they are wounded or killed, no Diya or compensation money is payable to them. The Bantu in the Middle Shabelle are reported as having formed a protective militia for the security of what lands remain under their care. This has been quickly disarmed by the Hawyie overlords in the area. The absence of protection in a collapsed or failed state makes them vulnerable to loss of life, assets and human rights abuses, including rape.

...

There is strong evidence emerging that the minority clans such as the Bantu and the Benadiri without an armed militia have been singled out for persecution since the fall of the Siad Barre government c.f. CIPU, Africa Confidential, Danish Immigration Board, UNOCHA, Dept of State; to quote the Immigration and Refugee Board Ottawa 31.10/02 the Benadiri (sic) 'live in conditions of great poverty and suffer numerous forms of discrimination and exclusion...homes have been taken over by members of the Hawiye militias...campaign of systematic rape of women...' the Amnesty International Report 2002 reports that the situation in Mogadishu was that 'fighting continued throughout 2001...hundreds of civilians were killed...indiscriminate force was used...killings or reprisal killings of clan opponents...expulsions of members of other clans...case kidnappings as well as detention and torture...women minorities were particularly vulnerable'. This situation is certainly applicable to the Jareer/Shiidle and nowhere in the literature is it unequivocally suggested that a patron client relationship with a more powerful people would lead to protection of members of the Bantu family of peoples.'

40. We have quoted from Dr Mullen's report at length because it seems to us to exemplify the case of a country expert who has assessed country conditions in terms of a higher standard of protection than applies under the Refugee and Human Rights Conventions: see Horvath [2000] 3 WLR 379 and Bagdanvicius [2003] EWCA Civ 1605, [2004] INLR 163. Dr Mullen may be right to say that the patron-client relationship on which many Bantu rely for their day-to-day security lacks any clear

reciprocal obligations and does not extend to the payment of diya or compensation money. However, even basing ourselves on the body evidence to which he refers, we do not consider that it establishes that the arrangements made by many Bantu with dominant clans fail to secure them against being exposed to routine or systemic abuses of their fundamental human rights. We would also note that in relation to his claim that persecution of Bantu is identified by several of the sources on which he relies – e.g. CIPU and the US Department of State – what he appears to mean is simply, to cite from the US State Department Report 2002, that members of minority groups such as the Bantu ‘continued to be subjected to killings, harassment, intimidation, and abuse by armed gunmen of all affiliations’. Whilst this type of statement, along with ones of a similar kind found in other materials is important evidence as to the situation of the Bantu, it is insufficient in itself to show a consistent pattern of gross, mass or frequent violations of the basic human rights of Bantu generally.

Our Assessment

41. It is time to consider what findings regarding the Bantu should be made in the light of the background evidence, both that before the Adjudicator and the larger body of materials before us. On the body of material before the Adjudicator was it open to him to conclude that the Bantu generally were not at risk?
42. We do not consider that the background materials demonstrate that the Bantu generally are at persecuted minority group. It is true that the Bantu elders consulted in Nairobi stated that they were and that that many commentators emphasise that the Bantu are marginalized and exploited by Somali majority clans. However, there is an equal emphasis, firstly, on the ability of significant numbers of Bantu to pursue traditional livelihoods as agriculturalists or new livelihoods in the cities; and, secondly, on the ability of significant numbers of Bantu to integrate in some fashion with majority clans. It is in order that we examine these two aspects more carefully.

The forced labour issue

43. We would accept that if it were the case that the Bantu generally were in a situation of slavery or near-slavery that would amount to a form of persecution or treatment contrary to Articles 3 and 4 of the ECHR (the latter, of course, prohibits slavery and forced labour). However, we do not consider that the background materials viewed as a whole go that far. It is true (as the Adjudicator noted) that the CIPU report for April 2003 stated that in some cases Bantu work as plantation labourers in what Bantu elders describe as situations of near slavery. However, the word used is ‘*some*’ and immediately beforehand is the sentence: ‘They

can *usually* retain about 10% of their land for their own use. `(emphasis added).

44. It is also true that The 2004 Joint Report notes that:

`According to Abdi Mamow, members of the minority clans are often forced to work for the majority clans. Members of major clans are often dependent on the skills possessed by members of minority clans when it comes to farming. They are promised either food or money for their work, however, usually no payment is given. Minority clans are not in a position to object to this practice. If they refuse to work, or if they demand payment, they can be killed.`

45. It notes too that:

`Wolken indicated that members of minority groups are subject to forced labour by majority clans in the southern and central regions of Somalia`.

46. Significantly, however, it adds that `She was unable to quantify the prevalence of the practice`.

47. The Home Office Operational Guidance Notes: Somalia V6 May 2004 summarise matters as follows:

`3.7.3.3. Bantu. The Bantu, the largest minority group in Somali, are an agricultural group found in pockets, usually in the river valleys of southern Somalia. The Bantu did not take part in the civil war and are therefore not in danger of recriminations or reprisals at the hands of majority clans but they were displaced by the fighting and often lost their land along the Juba River and in the Middle Shabelle region. Many now try to link themselves to the dominant Somali clans, where they live in order to obtain their protection. Conditions vary according to the region in which they live, though they are usually able to remain in their home area, to work mainly as labourers for the Somali clans (the Marehan, Ogadeni and Habr Gedir) that have taken their traditional land.

3.7.3.4. Sufficiency of protection/Internal relocation. Minority groups will be safest in areas where they enjoy the protection of a dominant clan. This is generally the case with the Bantu group...`

48. What is lacking in the background materials (both those before the Adjudicator and the additional ones before us) is anything to suggest that slavery is the common lot of Bantu or that the Bantu routinely find themselves subject to work conditions tantamount to persecution or treatment contrary to Art 3. It may be that in their everyday lives Bantu are often subjected to threats of violence and that they do not receive proper if sometimes any payment for their services; but there is little to suggest that they are not able to feed themselves and their families. And although they face a level of threats and dangers, it would appear that many have been able to continue living in their traditional regions getting on with their lives, enjoying, directly or indirectly, some level of protection from majority clan members who plainly benefit from their agricultural productivity.

Levels of integration

49. What is the evidence regarding integration? Plainly Bantu generally are denigrated by the Somali majority clans. However, it is equally clear that a significant number of Bantu have been able to achieve a degree of integration, albeit in a client relationship, with dominant clans. It would appear that complete integration such as that mentioned by the April 2004 CIPU Report at para 6.100 as occurring in Bay and Bakool where Bantu `...have largely been incorporated into the Rahanweyne clan structure and are able to retain their land.`, is the exception. However, the 2000 Joint Report states at 6.1:

`The Bantu elders explained that many Bantu groups would readily identify themselves with the non-Bantu clan that they are attached to and a Bantu from such a group will say, for example, that he is a Hawadle or an Abgal etc. Such a person considers his identity as totally incorporated into the non-Bantu clan with which he is affiliated. ...Migration and intermarriage can also result in a situation where a Bantu will not identify himself as belonging to one of the Bantu groups.

According to Somali sources quoted by IRIN those Bantu that have assimilated themselves with the indigenous clans they live with are known as `sheegato`, which means they are not bloodline clan members, but adopted.

The UNHCR overview distinguishes between three so-called `Bantu groups`: Mushunguli, Swahili and Bajuni. The Eyle are considered as a Mirifle sub-clan and the Gabawayn (Garbaweyn) as a separate minority group...

A UN agency in Nairobi stated that the group identity of the Bantu population in Somalia is stronger than ever before. A person of Bantu origin will no longer automatically identify

himself with one of the major Somali clans or sub-clans as the group identity of the Bantu has generally been strengthened during the civil war. `

50. At 6.3.2 it is noted:

'...A representative of a UN agency in Nairobi informed the delegation that the Bantu or Jareer population in Somalia know different levels of integration (or `Somalisation`), especially those living along the Shabelle River in central Somalia. Some Bantu are employed as plantation labourers and are almost in a situation of slavery. They are the only workforce available and they have no bargaining power against the main Somali clans, the Hawiye along the Shabelle River in the Lower Shabelle region and the Darod in Lower Juba. The Bantu are generally a resourceful people, and in North West Somali (Somaliland) they are working as construction workers and as watchmen. In the North West and in North Eastern Somali (Puntland) their position is that of an 'under-clan'. They are safe throughout northern Somalia and in certain cases they could even marry very poor members of one of the majority clans.

The culturaloreintation.net report in its historical survey noted that after the 1920s some of the Bantu groups ` were either assimilated into the indigenous Bantu/Jareer of the Shabelle River or incorporated into other Somali clans such as Biamal, Garre, Jiido, Shiqqal, and so on`.

51. When discussing the extent to which Bantu populations still maintain their tribal identities, the same report, after noting that most identify with their ceremonial kin grouping, notes that:

`Other Bantu, who lived in the vicinity of nomadic Somali clans (particularly those residing outside of the lower Juba River Valley) integrated into the Somali nomadic clan system, which provided the Bantu with protection and a sense of identity with the nomads.

...Many Bantu from the middle Juba River valley lost their east African language and culture. These Bantu have attempted to integrate, usually as inferior members, into a local dominant Somali clan social structure.'

52. What we derive from this is the following.

53. It may be that in an unusual case a Bantu could establish a case under the Refugee Convention or under the ECHR. Such a case can arise because there are a limited number of tribes or clans of Bantu origin which presently face a real risk of serious harm in southern Somalia against which they cannot obtain protection. But we stress that such a case will be unusual. In assessing whether the appeal involves an unusual case there are a number of particularly relevant factors, including geographical location, the nature of a Bantu's previous and ongoing relationship with the dominant Somali clan or clans in the home area, tribal history in Somalia and the extent to which language and dialect and cultural identity (which can vary from individual to individual) mark a Bantu out from surrounding clans and groupings.
54. However the objective materials do not bear out that for Bantu generally there is a real risk of serious harm. Certainly there is a level of discrimination, or varying levels of discrimination, once again depending on such factors as tribal clan history, geographical location, relationship with local dominant clans, linguistic and cultural identity etc. But the evidence is lacking of a consistent pattern of discrimination rising to the level of persecution or serious harm. The evidence is also lacking to show that most Bantu are unable to obtain adequate protection from dominant Somali clans in their area.
55. Our reasons for reaching these conclusions are principally three.
56. Firstly, despite close monitoring by international observers and experts over a lengthy period there is no consensus in support of the view that persons of Bantu origin are generally at risk of serious harm, particularly since the immediate aftermath of the fall of the Barre government in 1991.
57. Secondly, it is clear that in certain areas of southern Somalia, persons of Bantu origin have been able over time to co-exist with majority clans. Although as we have seen the price of co-existence has sometimes been living in a persecutory situation of slavery, it is equally clear that this has not usually or generally been the case. More commonly the conditions under which the Bantu have had to live and work, although marked by discriminatory treatment and some level of threats and intimidation, fall short of amounting to serious harm or treatment contrary to Arts 3 and 4 of the ECHR.
58. A third reason, albeit of much less weight, is that persons of Bantu origin have been able through the maze of political processes arising within Somalia since 1991 to achieve a limited degree of recognition as a distinct grouping, possibly reinforced by an increasingly influential diaspora.

The Position of the Mushunguli

59. As already noted, the appellant in this case was accepted as being a Mushunguli from somewhere in southern Somalia.
60. Given our acceptance that in assessing Bantu cases it will be relevant to take into account factors such as tribal history, relationship with local dominant Somali clans, geographic location, linguistic and cultural identity, we need to examine whether being a Mushunguli significantly adds to the risk facing the Bantu as a whole.
61. In our view there is nothing to indicate that Mushunguli, despite maintaining a stronger sense of identity than some other Bantu, have been generally unable to obtain clan protection in the context of agricultural working in their traditional areas. Nor is there any evidence that majority clans have specifically targeted the Mushunguli or have specifically sought to deny them the type of protection afforded to other Bantu.

The Appellant's particular circumstances

62. The Adjudicator specifically rejected the appellant's account of where his home area was (the appellant said it was a village near Jilib). Nevertheless we would accept, in light of what it said about the Mushunguli in the 2000 Joint Report (it refers to 'almost all' Mushunguli being from the lower Juba area) that it is reasonably likely the appellant was from the lower Juba area. This requires us to examine the issue of safety of internal travel, which we do below.
63. Although finding that the appellant was a Mushunguli, the Adjudicator said nothing to suggest that he accepted the appellant's claim to speak Af Maay. And on the appellant's own evidence he did not speak `kiziguua, which is the dialect of most Mushunguli. Thus on the facts as found by the Adjudicator it could not be said that he had established his Mushunguli identity as a strong one. We note further that the Adjudicator specifically rejected the appellant's claim that he had been forced by people from a major clan, under threat of being killed, to work as a slave: see para 15. The fact that the appellant lacks a history of working as a slave reduces in our view the degree of likelihood that upon return he would be required to work in a situation akin to slavery.
64. Hence, the appellant's particular circumstances suggest that he would have fewer difficulties than the other Mushunguli, at least those with a strong tribal identity.

Internal travel

65. Returning to the position of the Bantu generally, it is necessary to deal next with the issue of the safety of internal travel. Where an appellant fails to establish anything beyond that he is a member of the Bantu, we do not consider it is open to him to argue that the Adjudicator should address the issue of whether he could travel in safety from the airport to which he is landed in Somalia to his home area: if the appellant has not established where his or her home area is, an Adjudicator cannot be expected to consider whether he or she can get to it.
66. However, we would accept that in cases where an Adjudicator has made a finding about the home area of a Bantu appellant is, things are different. It becomes necessary to consider the evidence concerning whether he would be able to travel in safety from the point of landing back in Somalia to that home area.
67. In this case the Adjudicator did not make a finding as to the appellant's home area and no challenge has been made to that finding. We do not consider, strictly speaking therefore, that the Adjudicator can be said to have erred in failing to address the issue of the safety of internal travel. However, since we have accepted as reasonably likely on facts as found by the Adjudicator that the appellant was from Lower Juba, we will proceed to consider whether this is a factor which should have been seen as placing the appellant at real risk of serious harm on return.
68. We have already held that the Adjudicator properly found that the appellant had failed to show he would be unable to obtain dominant clan protection. Assuming that the appellant's home area in this case is Lower Juba, it would be reasonable in our view to infer from this that he would also be able to arrange with the dominant clan patron(s) for a clan militia escort back to his home area, even though, given the absence of any family or clan link to the patron, this will very likely involve some expense. We appreciate that we have not heard specific argument on this, but in our view it would require compelling new evidence to justify the Tribunal taking a different view than we do here.

Internal relocation

69. Given that the Adjudicator found that the appellant had failed to show he would be at risk on return, notwithstanding that he was a Mushunguli Bantu, there was no issue before him as to internal relocation. However, we note that the Home Office Operational Guidance Notes: Somalia V6 May 2004 at 3.7.3.4 states:

`Sufficiency of protection/internal relocation. Minority groups will be safest in areas where they enjoy the protection of a

dominant clan. This is generally the case with the Bantu group. The authorities controlling Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. Internal relocation to these areas would therefore not be a reasonable option for those claiming to be affiliated to the Bantu group. Relocation within regions south of Puntland is appropriate only where protection from a dominant clan can be secured`.

70. In our view this aptly summarises the position set out in the main reports on Somalia. Given that the Bantu have no territorial affiliations with Somaliland or Puntland, we consider that generally speaking there will be no viable option of internal relocation for a Bantu to northern Somalia. But so far as relocation within southern Somalia is concerned (where Bantu do have territorial affiliations) , it would seem that whether such a step is viable will depend on to what extent the evidence indicates that a Bantu would have more than one area where, along with other local Bantu, he could obtain dominant clan protection. Once again, however, depending on the routes of internal travel involved, there may also be a question of whether it is reasonable to expect someone in this situation to arrange in advance for majority clan militia protection. We consider that normally such arrangements could be made.

Female Bantu

71. The case before us did not involve a woman member of the Bantu, but since we are seeking to provide guidance, it is important that we address the issue of whether being female places a Bantu in a different position as regards risk on return. We bear in mind that in NG (Risk-Female Eyle-Internal Displacement) Somalia CG [2003] UKIAT 00011 - previously known as G (Somalia) - it was found that a woman of the minority Eyle clan (a sub-group of the Bantu) would be particularly vulnerable on the basis of her membership of a despised minority sub-clan, as a woman and as an internally displaced person living in a refugee camp in Somalia.
72. As regards G (Somalia), we note that this was heard in March 2003, over two years ago and that we have to consider more recent developments and background materials on them. But even so, we do not consider that the Tribunal in that case intended to hold that all female members of the Eyle faced a real risk of persecution. Indeed, as regards the Eyle generally, the Tribunal had before it a report from the UNHCR on minority groups which stated that there were no indications that the Eyle were at present targeted by the main Somali

clans although insofar as they might live in unstable area they could become victims of armed conflicts and thereby minority status made them vulnerable. But it was specifically accepted by the respondent in G (Somalia) that the appellant was not only a woman without a husband or family, but also someone who would have to go to a camp as an internally displaced person. Very properly in our view the Tribunal considered, in view of the background evidence relating to the appalling conditions endured by IDPs in IDP camps, that the appellant would be at risk on return.

73. We are aware that there is a pending Country Guideline case dealing with the issue of returnees and lone women returnees. What we say here must be subject to what is said in that, but in our view, whilst being a woman, even a lone woman, returnee increases the level of risk for someone of Bantu origin, it would not increase it to such extent that there was a real risk of persecution or treatment contrary to Articles 3 or 4 of the ECHR.

Summary of conclusions on this appeal

74. We have not found that the Adjudicator erred in law in assessing that the background evidence relating to the Bantu did not demonstrate that Bantu generally face on return a real risk of serious harm or treatment contrary to Articles 3 and 4 of the ECHR. Nor did the Adjudicator err in concluding that the fact that the appellant was a Mushunguli did not place him in a different position.

Summary of general conclusions

75. Each case has to be considered on its specific facts, but the following is intended to give authoritative guidance on relevant issues of a general nature.
- (i) Bantu generally are not a risk category. Bantu generally do not face a real risk of persecution or treatment contrary to Art 3 of the ECHR and they are able to obtain adequate protection from dominant Somali clans in their area.
 - (ii) Slavery or near-slavery is not the common lot of Bantu. Bantu generally do not face a real risk of treatment contrary to Art 4 of the ECHR.
 - (iii) It will only be in the unusual case that a Bantu will face a real risk of persecution or treatment contrary to Arts 3 or 4 of the ECHR on return. In assessing whether a case falls into the unusual category, it is important to take account of factors such as tribal clan history, geographical location, the nature of a

person's previous relationship with the dominant Somali clan or clans in his or her area and the extent to which language, dialect and culture mark him or her out from surrounding clans and groupings.

- (iv) Where an appellant can establish not only that s/he is a Bantu but also that s/he is from a particular area, an issue does then arise as to the internal safety of travel; but normally it is reasonable to expect that arrangements can be made with the dominant clan patron or patrons for clan militia escort.
 - (v) Internal relocation is not generally available for Bantu in northern Somalia, but may be available in southern Somalia depending on the accessibility of alternative areas where there is a Bantu community in receipt of dominant clan protection.
 - (vi) Being a female Bantu may increase the level of risk on return, but not on its own to the level of a real risk under the Refugee or Human Rights Conventions. The case of NG (Risk- Female Eyle-Internal Displacement) Somalia CG [2003] UKIAT 00011 was not intended to establish that all female members of the Eyle face a real risk of persecution. In any event, this case supersedes NG (if it has not been superseded already by the pending Country Guideline case on returnees and lone women returnees).
 - (vii) The Mushunguli, a Bantu subgroup, are not generally a risk category.
76. Insofar as previous reported and Country Guideline decisions dealing with the Bantu (e.g. NG) are concerned, this determination should be seen as superseding them.
77. For the above reasons this appeal is dismissed.

**DR H H STOREY
VICE PRESIDENT**

Appendix A: Background Materials

Report by Netherlands delegation to EU Council on Situation in Somalia in connection with asylum procedures, 14 Dec 1998.

Joint British, Danish and Dutch fact-finding missions to Nairobi, Kenya, Report on minority groups in Somali, 17-24 September 2000 (elsewhere the `2000 Joint Report`).

Joint British - Danish fact-finding mission to Nairobi (Kenya) and Baidoia and Belet Weyne (Somalia) 20 May 1 June 2002 (elsewhere the 2002 Joint Report).

CIPU Somalia Country Report April 2003.

EIN Country Database: Somalia front sheet September 2003.

Freedom House, Freedom in the World 2003: Somalia 9 July 2003.

US Committee for Refugees, World Refugee Survey 2003: Somalia 29 May 2003.

Amnesty International, Annual Report 2003: Somalia 28 May 2003.

US State Department, Country Reports on Human Rights Practices - Somalia 2002, 31 March 2003.

CIPU Somalia Country Report October 2003.

Joint Danish, Finnish, Norwegian and British fact-finding mission to Nairobi, Kenya 7-21 January 2004 (elsewhere the `2004 Joint Report`).

UNHCR Position on the Return of Rejected Asylum Seekers to Somalia, Geneva, January 2004.

Culturalorientation.net: Somali Bantu-their history and culture.

US State Department, Country Reports on Human Rights Practices - 2003, February 24, 2004.

CIPU Somalia Country Report April 2004.

Home Office, IND Operational Guidance Note: Somalia V6 May 2004.

Immigration and Refugee Board of Canada, Somalia: The situation of minority groups and their members 9 August 2004.

UN Office for the Coordination of Humanitarian Affairs (OCHA), Somalia: Humanitarian Update September 2004, 4 October 2004.

Expert report on the Bantu by Dr Joseph Mullen, October 2004.

Appendix B: Tribunal cases of relevance to the principal issues in this case.

NG (Somalia) CG [2003] UKIAT 00011 (previously G (Somalia)).

SH (Somalia) [2004] UKIAT 00164

FA (Somali Bajuni female at risk) [2004] UKIAT 00106

SH (Return-Gedo-Burden of proof) Somalia [2004] UKIAT 00164.