

**IMMIGRATION APPEAL TRIBUNAL**

Date of Hearing : 10 February 2005

Date Determination notified:

22 April 2005

Before:

Dr H H Storey (Vice President)

Mr J Perkins (Vice President)

Dr A U Chaudhry

**APPELLANTS**

and

**Secretary of State for the Home Department**

**RESPONDENT**

Appearances:

Mr M.A. Rana of Counsel instructed by Aden & Co. Solicitors for the first Appellant; Mr M. Goldborough, Legal Representative, of Pickup & Jarvis Solicitors, for the second appellant; Mr L. Parker, Home Office Presenting Officer, for the respondent

**DETERMINATION AND REASONS**

1. Both appeals before us concern appellants claiming to be Midgan (sometimes spelt Midgen or Midgaan and sometimes referred to as Madhiban or Madiban). One version of their name translates as "harmless". We decided to hear them together under Rule 51 of the Immigration and Asylum Appeals (Procedure) Rules 2003, as they raised the common issue of whether members of the Midgan or of other caste groups are generally at risk of persecution or treatment contrary to Articles 3 or 4 of the European Convention on Human Rights (ECHR). Art 4, which prohibits slavery and forced labour, is

relevant here because it was alleged in both cases that Midgan faced a real risk of having to work in conditions of slavery or servitude or forced labour. Our determination in respect of both appeals will be designated Country Guidance case and is to be seen as replacing four previous Country Guidance determinations:

-MA (Risk - Jaaji Clan -Benadiri) Somalia CG [2002] UKIAT 04084 (previously known as Amin [2002] UKIAT 04084);  
-IJ (Risk - Midgan) Somalia CG [2002] UKIAT 06314 (previously known as Ibrahim Abdi Jama [2002] UKIAT 06314); and  
-FB (Risk - Class - Midgan) Somalia CG [2002] UKIAT 06753 (previously known as Beldeq [2002] UKIAT 06753)  
-AH (Midgan - Disabled Woman - Relocation - Mogadishu) Somalia CG [2002] UKIAT 07343 (previously known as Hirsi [2002] UKIAT 07343).

2. In Amin the Tribunal considered the position of a “Jaajii”, a minority group said to be included in the term Midgan. At paragraph 17 the Tribunal found that the appellant belonged to a defined and recognised subgroup in Somali society who could not in general terms place any reliance on the traditional infrastructure of clan support. Their vulnerability needed to be approached on a case-by-case basis depending on the specific facts. It went on to find on the specific facts before it that the appellant would be at risk in Mogadishu and elsewhere. In Ibrahim Abdi Jama the Tribunal held that a Midgan appellant would not face a real risk of ill treatment contrary to Art 3 either because of his own particular circumstances or because of the generalised risk arising for him in living in Somalia. In Beldeq the Tribunal found that the appellant was a Midgan and as such a member of a “vulnerable underclass” who faced and would again face persecution in her home area (Somaliland). Allowing her appeal on asylum and human rights grounds, the Tribunal did not consider she would have a viable internal relocation alternative since she was a woman without a husband or family support and the background information showed that the Midgan are spread across the country without any recognisable Midgan communities from whom she might be able to gain support. In Hirsi the Tribunal did not consider that either the appellant’s personal circumstances (she was registered disabled) or the position of Midgan generally would mean that she would face a real risk of ill treatment on return to Mogadishu.
3. In setting the two present cases down for hearing it was recognised that there was an apparent tension between the line of cases including Amin, Ibrahim Abdi Jama and Hirsi on the one hand, which treated the issue of whether Midgan are at risk as needing to be decided on a

“case by case” basis, and Beldeq on the other, which was said to view the Midgan as a persecuted underclass.

### **The first appellant**

4. The first appellant, who is aged twenty-four appeals against a determination of the Adjudicator E.B. Grant notified on 11 June 2004 dismissing his appeal against a decision refusing to vary leave to remain on asylum grounds.
5. The Adjudicator accepted that the appellant was a Midgan from Kismayo. His father was a shoemaker. During the civil war his family endured attacks from majority clan militia. His sister had been raped and had then fled. She had not been heard of since. His mother had been attacked. This had worsened her heart condition and she died soon after.
6. The only matters about which the Adjudicator did not believe the appellant concerned events said to have befallen him and his family in June 2001 and thereafter. The appellant had claimed that gunmen had attacked his family, shot his father, kidnapped the appellant, interrogated him continuously, tortured him and used him as a slave to carry out menial duties for the soldiers. He had further claimed he had managed to escape after one month when the base was attacked and captured by different rival militia. The Adjudicator concluded that the appellant and the rest of his family were “not in any imminent danger when he left Somalia”.
7. We need not go into the Adjudicator’s reasons for rejecting this part of the appellant's claim since the grounds did not challenge them. Their sole objection was to the Adjudicator's rejection of the appellant's claim that simply by virtue of being a Midgan the appellant would be at risk. At paragraph 34 the Adjudicator wrote:

“There is no evidence in the objective background material that the Midgan are persecuted in Somalia although they clearly have problems from time to time. The objective background material indicates that many of the Midgan live safely in northern Somalia and although the appellant is from Kismayo there is no reason why he should not return to northern Somalia and live with other clan members on return to Somalia”.
8. (We note here that it is far from clear whether the Adjudicator actually meant ‘northern’ rather than Somalia in general in the above passage;

but in any event no point was taken that the Adjudicator did not intend her findings to apply to Midgan in Somalia generally).

9. The grounds of appeal contended that this and other passages in the Adjudicator's determination betrayed two errors of law. Firstly she failed to consider or give reasons in her determination for not accepting the Tribunal decision in Beldeq in particular or other objective evidence that the Midgan were a persecuted minority. In his skeleton argument Mr Rana contended that the errors in the Adjudicator's appraisal of the objective evidence was made transparent by the expert report of Dr Virginia Luling (based largely on the same materials), whose expert credentials had been approved by the Tribunal in a number of cases. Secondly, it was submitted that the Adjudicator failed to apply the correct standard of proof.

### **The second appellant**

10. The second appellant, aged forty-one, appeals against a determination of Adjudicator, Mr A.J. Parker, notified on 30 April 2004 dismissing his appeal against a decision also refusing to vary leave to remain on asylum grounds.
11. The basis of the appellant's claim was that he was from Baidhaba. His family had moved to Mogadishu in 1968. In 1999, when he was working for an NGO called "Crescent of Hope", a majority clan militia attacked his workplace. They detained him with eight others in a warehouse. After ten weeks he managed to escape. Militia members then came looking for him at his home. They shelled it. He and his family fled, hiding elsewhere in Mogadishu. Soon after he left Somalia for Ethiopia. He stayed there for twenty months but could not remain as he had seen the same gunmen searching for him in Ethiopia.
12. The Adjudicator found his account credible. Despite making an adverse credibility finding in respect of the appellant's account of his past experiences, the Adjudicator did however accept that he was a member of the Midgan. At paragraphs 33 and 34 he wrote:

"I would have to find that the appellant's case is not credible and that there was no attack on the warehouse. I would find as a fact that he is from the Midgan clan. Based on the background material, I would find that his clan is not a persecuted minority. I do not believe that asylum status should be granted or exceptional leave be extended merely because of the appellant's background.

There is no particular reason why the appellant has been targeted or will be targeted on his return. He would be like other Midgan clan members. The CIPU confirms that they are not subject to the same degree of persecution as other minority groups in Somalia.”

13. The grounds of appeal contended that the Adjudicator's findings were contradictory, as elsewhere he had accepted that the Midgan have no territory of their own and that “They do face some dangers at the hands of the militia because of their ethnic origin” (paragraph 3) and he had before him a US State Department Report 2002 which included the Madhiban (an alternative name for the Midgan) in their list of minority groups and low caste clans. In other words, the Adjudicator should have recognised throughout that the Midgan is a persecuted minority in Somalia. The second main point raised was that the Adjudicator erred in paragraph 34 in considering that there were `degrees of persecution. There was also a challenge to the Adjudicator’s adverse credibility findings. This took the Adjudicator to task for disbelieving the appellant’s account of militia gunmen travelling 1000 km to silence him and then failing to kill him straightaway. Finally there was a challenge to the Adjudicator’s failure to make any findings in relation to the appellant's Article 8 rights.

### **The hearing**

14. At the hearing Mr Rana sought to clarify that his argument had two limbs. Firstly he submitted that his appellant should succeed (i) simply on the basis that he was a Midgan. But even if his appellant could not succeed on that basis he should succeed (ii) on the basis of being a Midgan with a history of being the subject of attacks by majority clan members in Kismayo. Mr Rana further emphasised that the view of the Midgan as a persecuted minority was one adopted by several experts on Somalia, Dr Luling, Dr Gilkes and Professor Asha A Samad in particular. In relation to internal relocation he contended that neither the background materials nor Tribunal case law suggested that internal relocation would be a viable option for the Midgan. In AJH (Minority group-Swahili speakers) Somalia CG [2003] UKIAT 00094 the Tribunal has found that relocation in the safer areas of Somaliland and Puntland would only assist those who originated from there of had their own clan residing there. This would rule out the Midgan who were regarded as the lowest of the low, rather like the untouchables in India used to be.
15. Mr Goldborough associated himself with Mr Rana’s principal submissions as to the position of the Midgan generally. He confirmed

pursued challenges set out in the grounds to the Adjudicator's adverse credibility findings. He accepted, however, that the challenge to the Adjudicator's failure to address his appellant's Article 8 rights was weak and he did not wish to pursue it further.

16. Mr Parker's argument in relation to the position of the Midgan was that, whilst they were a minority group, they were not a persecuted group. He invited the Tribunal to consider minority groups as existing at different points along a continuum of risk. At the one end of the spectrum, there were groups such as the Benadiri and Bravanese who were most at risk. Somewhere in the middle were groups such as the Bantu and the Eyle. He submitted that groups such as the Midgan were towards the other end of the continuum: they certainly suffered measures of discrimination and other disadvantages, but they were able generally speaking to find majority clan patrons, in particular noble clan patrons, to protect them.
17. In relation to the first appellant, Mr Parker submitted that the Adjudicator could not be said to have erred in law in failing to follow Tribunal Country Guidelines, since at that time (11 June 2004) he notified his determination none of the cases dealing with the Midgan had been designated as Country Guideline cases and in any event said different things about whether the Midgan per se were at risk. Furthermore, in a case dealing with another occupational caste group – the Yibir - HF ( Persecution - Discrimination - Yibir -Occupation - Caste) Somalia CG [2002] UKIAT 05520, it was expressly not accepted that occupational caste groups per se were at risk of persecution.
18. In the case of the second appellant, Mr Parker pointed out that his family still lived in his home area and he had not been found credible in respect of his claim that he and they faced an imminent threat of persecution in their home area.
19. At the end of the hearing we directed that the parties use their best endeavours to obtain a copy of the report by Dr Gilkes to which reference had been made in previous determinations, FB in particular, together with any submissions they wished to make, within ten days.
20. In the event nothing further was forthcoming from either party. However, we have noted from what is said about the contents of this report , which is dated some time in 2002, that it takes a similar view to that taken by Dr Luling in her report, which was before us.

## **Our Assessment**

### **The first appellant**

21. We do not think that there was a material error of law in the determination of the Adjudicator in this case. She is open to criticism for not raising with the parties whether there were reported Tribunal cases in existence dealing with the position of the Midgan. Although when she dealt with the case, Beldeq had not yet been designated as a Country Guideline case (sub nomine FH), nor had any other case dealing with the Midgan or any other occupational castes. However, until the publication on the IAA website of a list of Country Guideline cases in mid-2004 there was no regular way of knowing what the Tribunal had said in reported cases on country conditions. Hence we do not think that mere failure to refer to reported cases dealing with a country issue was an error of law. Neither party had put any Tribunal case dealing with the Midgan before her. In the context of an essentially adversarial system, an Adjudicator cannot refer to cases that are not well known unless giving to the parties an opportunity to comment on ones identified through his or her own research.
  
22. In any event, it cannot be said that there was a clear and unequivocal line of Tribunal authority on the position of the Midgan. The case of Amin (later designated as MA), although identifying that the Midgan could not place any reliance on the traditional infrastructure of clan support, had concluded that whether they are at risk as a result had to be decided on a case-by-case basis. The case of Ibraaahim Abdi Jama (later designated as IJ) had found that the Midgan were not in general at risk. To similar effect was the case of Hersi. And the case of Beldeq (later known as FH) whilst indubitably considering more background sources than the aforementioned, did not appear to have known about the existence of IJ, although the latter had in fact been promulgated several weeks earlier (IJ was heard on 26 November 2002 but not promulgated until 29 January 2003); FH was heard on 12 December 2002, but not promulgated until 21 February 2003). Furthermore, despite making reference to Amin the Tribunal in Beldeq did not specifically disagree with its conclusions. Nor did it specifically conclude that the Midgan generally were at real risk of persecution or treatment contrary to Article 3. It certainly accepted the appellant had been persecuted in the past because she belonged to a `vulnerable underclass`. It certainly accepted too, in the light of her lack of a husband or family support or settled Midgan community to return to, that the appellant would be at risk. But these findings were clearly specific to the appellant. They did contain some general findings, in particular (i) that the Midgan were a "vulnerable underclass" and (ii) that the Midgan in Somalia are spread across the country without any recognisable Midgan communities able to give support, but not general findings dealing with whether the Midgan were, as a consequence, to be considered generally at risk.

23. As regards Mr Rana's second ground concerning the Adjudicator's interpretation of the background evidence, we do not think he can be said to have erred in law in this respect either. Dr Luling's report was not before her and so cannot be relied upon to identify a material error of law: see CA [2004] EWCA Civ 1165. Nor was the August 2002 report of Professor Asha A Samad. We do not consider that the body of background materials before him clearly indicated that the Midgan are generally at risk. (We shall deal later with the separate question of whether a different view should be taken on this issue in the light of the further evidence from the experts and other sources.)
24. As regards Mr Rana's second ground of appeal, concerning the Adjudicator's approach to the standard of proof, we see no merit in it. The Adjudicator properly directed herself in paragraph 10 as to the approach of "real risk" approved by the Tribunal in the starred determination Kacaj (01/TH/00634) and there is nothing to indicate that she applied this in a way which depended on a standard of proof higher than that of a reasonable degree of likelihood.

### **The Second Appellant**

25. We should first of all address Mr Goldborough's attack upon the Adjudicator's adverse credibility findings. His first complaint was that the Adjudicator was wrong to count against the appellant (as being implausible) the claim that the militia gunmen would have gone 1000 km to search for him. All he had said, argued Mr Goldborough, was that he "just happened to bump into him (the gunman)". However, we see nothing in this point. It is clear from paragraphs 21 and 22 that the Adjudicator was fully aware, when questioned as to why gunmen would have travelled 1000 km from one country to another (Mogadishu in Somalia to Addis Ababa in Ethiopia) to locate him, that the response of the appellant was to say he just happened to bump into him. But the appellant also went on to state that he considered information about him being in Ethiopia had "got out" through neighbours. He did not take the opportunity to deny therefore that the gunmen were in Ethiopia to search for him. Nor did he seek to resile from his evidence elsewhere that the gunmen had searched for him after the detention at his home because they were angry that he had broken silence about the detention.
26. As regards Mr Goldborough's assertion that the Adjudicator was "substituting his own version of the appellant story" we see no merit in this either. It was open to the Adjudicator, having considered the evidence as a whole, to find that the appellant had failed to give a satisfactory account of why the militia would have kept him in detention rather than killing him, as they later threatened and tried to



do. The challenge to the Adjudicator's adverse credibility findings fall on stony ground.

27. That naturally brings us to Mr Goldborough's criticism of the Adjudicator's reference at para 34 to 'degrees of persecution'. What he objected to was the following passage: "The CIPU confirms that they are not subject to the same degree of persecution as other minority groups in Somalia."
28. We would agree that the Adjudicator fell into error here. Once harm reaches a level of severity sufficient to amount to serious harm, there is persecution (assuming always that in addition there is a lack of protection). If there is persecution, then whatever its degree, an appellant is entitled to succeed under the Refugee Convention (assuming he can also show a causal nexus with a Refugee Convention ground). But read as a whole it is perfectly clear that the Adjudicator did not accept that the Midgan were a persecuted minority and indeed said so in terms. Hence we do not consider that this error on the part of the Adjudicator was a material one. Even applying a correct understanding of persecution to the evidence before him, he would still have been fully justified in concluding that the dangers faced by Midgan at the hands of militia because of their ethnic origin, albeit significant, did not give rise to a real risk of serious harm.
29. As already noted, Mr Goldborough abandoned reliance on Article 8 ground at the outset.
30. Mr Goldborough's only remaining ground was that the Adjudicator had misinterpreted the background materials before them, as evidenced by seeming recognition elsewhere in his determination that the Midgan were a minority group who had been targeted. In our view, this ground is essentially the same as Mr Rana's principal ground in the case of the first appellant. The error of law in both cases is said to be that the background materials before each Adjudicator, properly understood demonstrated that the Midgan are generally a persecuted minority and so each Adjudicator should have allowed the appeal.
31. As with the case of the first appellant, so with the case of the second appellant, we must address this common ground in the context of considering the issue of whether Midgan were to be regarded as generally at risk, on the basis of the evidence before each Adjudicator.

**The treatment by each Adjudicator of the evidence before him relating to whether the Midgan generally were a persecuted minority**

32. It is important to bear in mind the specific body of background materials before each Adjudicator. In neither case did what was before the Adjudicator compel a conclusion that the Midgan generally are at risk. 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.
33. The first Adjudicator relied heavily on paragraph 9 of the 2000 Joint Report (see Appendix A). That report confirmed the status of the Midgan as an outcaste group. It noted that they had traditionally performed specialised occupational services for majority clans, although in the past few decades many Midgan had migrated to the cities, finding jobs with politicians as drivers, bodyguards and spies. At 9.32 it was stated:
- “Other clans also employed Tumaal, Midgan and Yibir families. To this day their work opportunities are mainly confined to menial jobs as hairdressing, blacksmithing, metalworking, tanning, shoemaking and pottery and are craftsmen in general.”
34. At paragraph 9.4, dealing with the security and human rights situation of the Midgan, the same report notes that during the civil war ushered in by Barre’s downfall in 2001 the occupational castes were in general not specifically targeted, although as groups without natural clan allies they were sometimes attacked with impunity. Particular individuals, and families who had visibly supported the Barre regime were however vulnerable to targeted retaliation. The report concludes:
- “Midgan, Tumaal and Yibir today live scattered all over Somalia, but mostly in northern areas. There are no indications that the security of Midgan, Tumaal and Yibir is at risk from targeted action by other clans at the same time, indications are that their relationships with the other major Somali clans have not improved much from traditional times, and that they are still discriminated against in the social and economic spheres.”
35. Concern is expressed, however, about Madhiban Internally Displaced Persons (IDPs) as being especially vulnerable to spontaneous and forced relocations.

36. The first Adjudicator also had before her the US State Department Report. But whilst this report did identify the Midgan as a minority group and did state that along with other minority groups they were subject to attacks, it did not state anything about the scale and frequency of these in respect of the Midgan and it did not identify the Midgan as a persecuted minority.
37. The Adjudicator who decided the appeal of the second appellant placed particular reliance on the CIPU Report for April 2004 and the 2004 Joint Report (see Appendix A). He took account at paragraph 26 of the appellant's representative's submissions that according to this Joint Report at 4.7 the situation has not changed for the better, the Midgan were scattered throughout Somalia, they did not control their own territory and internal flight was not possible. At paragraphs 28 and 29 he concluded that although the Midgan did face danger at the hands of clan militia because of their ethnic origin, their position had improved since the civil war and "There are no indications that their security is at risk from other clans. They have found recovery after the civil war difficult and economically they are mostly in menial jobs".
38. Like the Adjudicator in the first appeal, the Adjudicator in the second appeal also had the US State Department Report before him, but, as already stated this did not identify the Midgan as a persecuted minority.
39. As already noted, in neither appeal were any previous Tribunal decisions dealing with the Midgan cited to the Adjudicator. But even if we assumed that these should have been taken into account in each appeal, we do not consider for reasons given earlier that any of them can properly be read as having identified the Midgan as generally at risk of persecution or treatment contrary to Article 3.

#### **The particular circumstances of the first appellant**

40. We return at this point to the second limb of Mr Rana's submission which was that, even if not at risk by virtue of being a Midgan, the appellant would be at risk in view of his history of attacks at the hands of majority clan members in Kismayo. However, this submission presupposes that the Adjudicator made a positive credibility finding in respect of the appellant's past experiences in Somalia. She did not. Indeed she specifically found that the appellant and the rest of his family 'were not in any imminent danger when he left Somalia'. Accordingly we see no error of law in the Adjudicator concluding, on the basis of her findings of fact in respect of this appellant, that he would not be at risk on return.

## **The position of the Midgan in the light of more recent materials**

41. As indicated at the outset, we have decided to designate our determination in respect of these two appellants as a Country Guideline decision. We recognise that what we go on to say by way of guidance can only be given on an obiter basis, since in neither case have we found an error of law. However, we heard detailed submissions put to us against the background of a very comprehensive set of background materials and reports (see Appendix B) and hence it is appropriate to give our assessment of it.

## **The Midgan**

42. It is convenient to start our consideration of the Midgan with the June 11, 2004 report of Dr Virginia Luling entitled 'Report on the Midgaan And Other Caste Groups in Somalia'. The body of the report is as follows:

### **'The Midgaan**

There are a number of small groups in Somali society which are sometimes described as "caste" groups because of their low status and specialisation in certain occupations. The most numerous are the Midgaan; their other name, which they prefer, is "Madiban", which means "harmless". The other caste groups are the Tumaal (smiths), Yibir and a few other small pariah groups: the Bon, Ribi and Eyle hunters in the south. Other names that one comes across are Jaji (who are fishers), Yahar, Ga'ansibir (smiths), Musa Deryo, and Rer Wardere. Some of them also call themselves Baidari or Gaboye. Everything that I say here about the Midgaan applies equally to these others.

These people have been described as "not only outcast but outside the place of classification" and are known as "the people without brothers"<sup>1</sup>, because they are not found in the general scheme of genealogy of the Somali "noble" clans.

There are no proper population figures for them, but all caste groups together have been estimated at only about 1% of Somali society. The Midgaan were reckoned in 1958 to number 9,000 - almost certainly an underestimate, since they would conceal their origin from outside questioners<sup>2</sup>. Since then no one has attempted to count them.

The origin of the Midgan is obscure – it may be that they in part derive from pre-Somalia population of the region. However it is reported that people could also become Midgaan by being degraded in punishment for some crime, or in some other way losing status, and this degradation was passed on to their descendants. In recent times the Yibir have claimed Jewish origin, and sometimes the other groups make the same claim.

However Midgaan and members of the other caste groups do not show any physical differences from the majority Somalia population. They do not have special dialects, but speak like the majority populations of the areas where they live: however some if not all of these groups have a special secret slang, which was developed in order to converse secretly and hide their meaning from the majority population<sup>3</sup>. This is more likely to be known by older people than the young.

They are generally very poor people. The Midgaan of Hargeisa in 2003 are described<sup>1</sup> as living in extreme squalor and deprivation and having no access to the hospital.

The Midgaan, like the other outcast groups, carry on trades and perform tasks that other Somalia would refuse. Traditionally they were hunters, leather workers (making shoes, belts etc) and barbers. The women were and are birth attendants, and perform girls' circumcision, while the men perform that of boys. (However the same tasks carried out by modern trained medical personnel carry no stigma and are done by "noble" Somali). The Tumaal are blacksmiths, while they have certain magical powers attributed to them. These groups can thus be compared to the "untouchables" of Indian caste society.

In recent times however many of them have moved into towns, often trying to hide their origins in their new environment, and found other ways of living. Some worked as labourers or started up as

shopkeepers, some joined the army, a natural way to escape or disguise their low status.

Midgaan could not intermarry with members of the “noble” Somali clan. This rule is less strictly observed in modern times, but all the same there are known case of couples who tried to do so being lynched. The Joint Danish, Finnish, Norwegian and British Fact Finding Mission to Nairobi, Kenya, 7-12 January 2004, p.52 cites “a case ... where a man of the Midgan minority group married a woman from a major clan originating in Sool region in Somaliland. After their marriage in Sweden, the couple travelled to the bride’s original home in Sool. The bride was badly beaten and disowned by her father ... the couple could no longer live in Somalia.”

There are groups of Midgaan scattered all over Somalia. They are attached as servants or clients to various “noble” Somalia clans and subclans, who in the traditional order would give them some degree of protection in return for the services they performed. This protection can however no longer be relied on when (a) the Midgaan have moved into towns far away from their former patrons and (b) the anarchy of the present time makes such traditional roles inoperative. In any case this protection only applied as long as the Midgaan accepted their low status.

During the time of Siyad Barre there was an explicit policy of advancing low-status people, in keeping with the socialist ideology of the regime. Certain individuals were raised to important positions in the government; the motivation for this however was that since they had no clan allegiance of their own they would be reliable servants. An outstanding example was Mohamed Ali Samatar, who became Minister of Defence and then Prime Minister. He was a Tumaal. The result was that after the fall of Barre these people became specially targeted for revenge.

The Midgaan have suffered greatly in the civil war and the current lack of government, as they do not belong to any of the major clans and thus do not

have the power base that this affords. As no revenge will be taken by the more powerful clans they can be attacked with impunity. Professor I.M. Lewis has told in a letter of a case in which a young Midgan working as a shoeshine boy in Mogadishu complained because his customer had not paid him enough. The customer pulled out a gun and shot him dead.

To quote the Amnesty International Annual Report for 2001 under "Somalia": "Women and the minorities were particularly vulnerable to abuses including rape, killing and theft of land and property. The minorities at risk, who had suffered most from militia attacks in the civil wars and social discrimination, included ... artisan groups (Midgan, Tumul, Yibir ... Prison conditions, particularly in Mogadishu, were harsh ... Many prisoners seemed to be from minorities who lacked support from any armed clan."

I would therefore conclude that Midgaan and other caste group people are particularly at risk in the Somalia of today.'

43. Also in a report adduced for the Tribunal by those instructing the first appellant was a summary of the research by Professor Asha A Samad dated August 2002 of the City University of New York and Executive Director, SAFRAD - Somali Association presented to the UN Committee on the Elimination of Racial Discrimination. She describes most Midgan as being attached to "noble" dominant clans as their "clients, serfs, or virtual slaves. Should they complain, or seek to organise they face severe reprisals from those "noble" clans dominating them". She goes on:

'In Somalia, the outcaste groups are collectively referred to as "Midgan" or "Madhiban", the former being much more disrespectful and insulting than the latter one. However, there are actually many more Somalia outcaste groups. Each is connected as clients, former slaves, or servants to a noble clan group. They include the Kuulbeer, Hildid, Khayr, Hubone, Aden, Aarsade, Howie Aforta, Ganbar, Gaakaab, Mudoraale, Magtal, Omar, Hussein and others scattered all over the Somali regions, including Ethiopia, Kenya, and the broader Somalia

diaspora. The Midgan constitute the largest Somali outcaste family and its subclans include the Madhiban, Maxamed Gorgaate, Muuse-Darye, Tumaal, Yibir, Howle, Mahaad-Bore, and, according to SIMA, hidden others.'

44. Elsewhere she describes them as one of the groups worst affected by the civil war. She considers that, post-civil war, any Midgan would be at risk of serious physical danger if found in any part of Somalia in which his family is not a client of the local powerful clan family. She considers that very few Somalis or clans will protect the Midgan-Madhiban either for fear of being targeted and attacked themselves or because they too feel they merit no protection (as an outcaste or "polluted" group). As no clan is permitted to marry the Midgan-Madhiban, they have no kinship ties with other groups to offer them shelter or protection. She summarised the situation this way: "Midgan-Madhiban, Yibir, Tumul and other outcaste groups are still facing restrictions, prejudice, discrimination, harassment, abuse and attacks".
45. Subsequent to Dr Luling's June 2004 report, there has been a further CIPU Report for October 2004. At paragraphs 6.86 to 6.88 it states:

**'Midgan, Tumul, Yibir and Galgala**

**6.86** According to the [Joint Reports of 2000 and 2002: see Appendix A], the Gaboye/Midgan (usually referred to as the Midgan but also known as the Madhiban), Tumul and Yibir (a group said to have Jewish origins) traditionally lived in the areas of the four main nomadic clan families of Darod, Isaaq, Dir and Hawiye in northern and central Somalia. In the last few decades many of them migrated to the cities, these groups are now scattered through the country but are mainly found in northern and central regions; Midgan have been able to settle in Puntland.

**6.87** According to the [the 2000 Joint Report] these groups are called "occupational castes" as they traditionally perform specialist services and settle in areas where they obtain protection from a clan and build up an economic activity. As reflected in OCHA report of August 2002:

"Most of these minority groups have assimilated into other Somalia clans with whom they live. For example, the Galgala have assimilated into the Abgal in Jowhar and Mogadishu. However, they identify



themselves as Nuh Mohamud, a sub-clan of the Majerten clan. Some Gaboye, Tumal and Yibir assimilated into the Isak in Somaliland, while others have assimilated into the Darod in Puntland and central regions. There are also other Gaboye, Tumal and Yibir who assimilated with Hawadle, Murasade and Marehan clans in Galgadud region.

**6.88** According to the OCHA Minorities Study of August 2002, the Midgan, or Madhiban, have always been placed at the lower end of Somali society. In Hargeisa there are five telephone companies, six money transfer companies, several light industries, transportation and construction companies; all of which create hundreds of job opportunities. The minorities claim that these jobs are offered according to the ethnic identity of the individual. The Gaboye, Tumal and Yibir have no access to those jobs because of their ethnicity. Midgan can trade freely, although they are usually unable to own property and livestock the [2002 Joint Report: see Appendix A] noted the position of the Midgan/Gaboye improved at time of stability and recovery.'

#### **Our assessment of the current position of the Midgan**

46. We would accept that the fuller body of background materials made available to us casts a somewhat different light on the current-day position of the Midgan, albeit the October 2004 CIPU Report does not portray the Midgan being particularly at risk. But we do not consider the fuller body of evidence calls for a radically different conclusion from that which the Tribunal has reached previously.
47. We see considerable accord between on the one hand the conclusions drawn by the Tribunal and by the two adjudicators in these appeals and on the other hand, the latest materials, including the opinions of the two experts.
48. Firstly, whilst Dr Luling and Professor Samad both highlight growing protection gaps, they do not suggest that either in the civil war or post-civil war periods the Midgan, save in exceptional case, have been targeted by majority clans. (It may well be that the Midgan suffered disproportionately from militia attacks during the civil war and its immediate aftermath, but that does not mean that they were targeted.)

49. Secondly, neither expert denies that the Midgan as an underclass and outcaste group have traditionally sought, although they have not always obtained, protection from majority clans, especially noble (“bilis”) clans. This places them in a different position from some of the Somali minority clans, such as the Benadiri and the Ashraf, who have never been able to build clan protection relationships with majority clan patrons except in isolated individual cases. The Midgan have been defined essentially by their client relationship of service to majority clan patrons and their ability to receive (or not receive) protection has always been primarily governed by this fact.
50. If there is a real point of difference between the materials relied upon by the two Adjudicators and those relied upon by those representing each appellant (particularly the Luling and Samad reports), it is this. Whereas those materials considered that the scope of protection the Midgan can still access to be relatively wide, the two reports see it as having begun, especially in recent years, to narrow. Thus Dr Luling in paragraph 3 of her report stated:
- “This protection can however no longer be relied on when (a) the Midgaan have moved into towns far away from their former patrons and (b) the anarchy of the present time makes such traditional rules inoperative. In any case this protection only applied as long as the Midgan accepted their low status.
- ... I would therefore conclude that Midgaan and other caste group people are particularly at risk in the Somalia of today.’
51. We are prepared to accept that the scope of protection has narrowed in the way Dr Luling describes, although we note that Dr Luling has not elsewhere suggested that the ‘anarchy’ of current-day Somalia has wholly prevented protection being afforded by majority clans to their own members or those under their patronage. And we take her (b) as mainly meant to drive home the point that no reliance can be placed on any recognition by Somalis generally that the Midgan have to be considered under traditional rules governing majority clan patron protection.
52. We also heed the words of Professor Samad: she considers that very few Somalis or clans will protect the Midgan-Madhiban either for fear of being targeted and attacked themselves or because they too feel they merit no protection (as an outcaste or “polluted” group).

53. What implications does the latest body of background evidence, Dr Luling's report and Professor Samad's research in particular, have for the approach to be taken by immigration judges to persons who are found to be Midgan from Somalia?
54. We do not consider that the general position of the Midgan as an "outcaste underclass" occupying the lowest level of Somali society entails that they are to be viewed as a persecuted minority. It may be that in some cases the circumstances in which they have to perform their occupational work are tantamount to serfdom or even slavery. But there is no evidence to indicate that this is the common lot of Midgan generally. Thus for most Midgan it would appear that, although they face widespread societal discrimination and work on very disadvantageous terms, their contract to work is voluntary; they are paid for the services they provide and they are able to trade freely.
55. Given that significant numbers of Midgan previously living in rural areas are said to have moved to the cities and in the process become detached from the noble clan patronage systems traditionally operative in rural areas it will be particularly important in cases involving Midgan to establish (a) whether their own personal history indicates that they have recently moved from a rural area to a city and (b) whether they have previously received dominant clan protection and, if they have, whether they could again avail themselves of it on return. (Regarding (a), we should clarify that we do not see that Midgan who have previously resided in cities and secured patron clan protection there could not do so again - unless there are special circumstances arising in the particular case).
56. We do not understand there to be any real visible physical differences between the Midgan and members of Somali clans. It would seem they speak the same language as the clans amongst which they live. But equally it is well-established that in Somalia it would be impossible for a Midgan to hide the fact of his underclass identity.
57. As in the case of persons from Somali minority clans, it is important to bear in mind that the onus is on the claimant who is a Midgan to establish his or her claim in material particulars.
58. But if all an appellant can establish is that he or she is a Midgan, that will not suffice to show a real risk of serious harm, since one of the necessary elements to demonstrate such a real risk are not present namely being a Midgan who has become detached from traditionally provided noble or dominant clan patronage and protection.

### **The internal travel issue**

59. If, however, someone is able to establish not just the fact of being a Midgan from Somalia but also that he or she hails from a particular home area, then there is a further dimension which needs consideration.
60. That further dimension relates to the need in such circumstances to consider whether the appellant would be able to travel in safety from the point of landing in Somalia (e.g. the airport near Mogadishu) to his or her home area.
61. In these two appeals we did not hear arguments addressed to this issue of internal safety of travel. That has very recently been identified as a key issue in SH (Return-Gedo-Burden of Proof) Somalia [2004] UKIAT 00164 and in a pending Country Guideline case dealing with returnees and lone women. It is envisaged that the latter will set guidance on this issue, but to the extent that the issue arises in relation to Midgan or other caste cases, we consider that where a positive finding has been made as to the home area of a Midgan claimant and it has further been accepted that there would be a majority clan patron for that claimant, it would take compelling evidence to persuade us that safe transit could not be secured. If there is no reason to think that a Midgan has become detached from traditional sources of noble or dominant clan protection, then in our view there is no reason to think such a person would be unable to arrange in advance of return for clan militia protection, even though this may involve some payment.

### **Female Midgan**

62. Neither of the appeals before us concerned a female Midgan and neither representative made any specific submissions regarding their position. However, we are conscious of the fact that in Beldeq (FH) it was plainly considered a relevant factor that the appellant was a vulnerable female. It is therefore appropriate if we set out in brief form our view of whether being female changes the general position for those who are Midgan. On the evidence before us, whilst we would accept that the fact of being a woman or a lone woman increases the level of risk, we do not consider it would increase it to the level of real risk under the Refugee Convention or the ECHR. What we say here must be subject to what is said by the Tribunal in the pending Country Guideline case dealing with women and lone women returnees. However, we anchor our assessment here on this essential fact: the question of real risk comes down to whether a Midgan would be able to access protection from a majority clan patron. There is nothing to show that such protection would be denied to a female Midgan where it would be afforded to a male Midgan.

63. However, we would emphasise that we are dealing only here with generalities. It may still be the case that an individual appellant will be able to show in the particular circumstances of her case that she would be at real risk of serious harm and that protection would be unavailable.

### **Internal relocation**

64. Since neither Adjudicator in the two appeals before us accepted that the appellant had shown he would be at risk, the issue of internal relocation did not arise, although it could be argued that para 34 of the determination of the Adjudicator in the case of the first appellant (see above para 7 ) resembled a finding that a Midgan from Kismayo would be able to relocate safely in other parts of Somalia. But we have already had cause to consider the Tribunal decision in Beldeq (FH) finding that she would not have a viable internal relocation alternative because she was a woman without a husband or family support or any recognisable Midgan community to turn to. We have also noted that there are said to be, amongst the large number of IDPs in Somalia (estimated at around 375,000), a high proportion from minority groups. However, for reasons already explained, we do not consider that this case had general application since it involved someone found to be at risk of having to return as an Internally Displaced Person (IDP).
65. That said, we consider that internal relocation would rarely, if ever, be a viable option for a Midgan. We bear in mind generally the point made in the UNHCR Position on the Return of Rejected Asylum Seekers to Somalia, January 2004 about it not being reasonable `to expect someone to take up residence in an area or community where persons with a different ethnic, tribal, religious and/or cultural background are settled, or where they would otherwise be considered aliens`. Specifically we bear in mind that for Midgan any available majority clan patron protection will normally exist in his or her home area only: there are no Midgan communities in Somalia. Thus, if it has been found that a Midgan would be at risk in his or her home area, then it is difficult to see how he or she could move elsewhere with any real prospect of securing an alternative source of majority clan protection. It is true, that in the ordinary course of events some Midgan do move away from their home areas in search of work and this way are said to have found work in diverse occupations, usually menial. But in such circumstances it is hard to see they would be able to arrange in advance for any clan militia escort. Furthermore, from what is said by Dr Luling regarding Midgan in Hargeisa and by the October 2004 CIPU Report regarding Hargeisa, even in Somaliland (where there would not necessarily be a need for majority clan protection) Midgan face serious measures of socio-economic discrimination.

66. It is true that we noted earlier that the October 2004 CIPU report refers at para 6.86 to `Midgan have been able to settle in Puntland` and in general terms UNHCR (in its January 2004 report) and other sources view internal relocation as sometimes being a viable option in northern Somalia. However, by the same token the authorities in Somaliland and Puntland are said to accept only those who have a clan connection with or were previously resident in their respective territories. Almost by definition Midgan will not have a clan connection in Somaliland or Puntland. And in respect of a Midgan previously resident in northern Somalia (as was the appellant in Beldeq), if the home area is unsafe, then it would be a question of, once again, being detached from any realistic source of majority clan patron protection.
67. It may be, in light of what is said in the October 2004 CIPU Report about Puntland that that part of Somalia could afford a viable internal relocation alternative in some cases, particularly bearing in mind that it is currently said to encourage migrant labour, irrespective of clan or tribal background and that Midgan are seen to have occupational skills. However, we would expect the Home Office to produce evidence to show that the authorities in Puntland would be prepared in practice to admit someone who was a Midgan.

#### **Other caste groups**

68. The two appeals before us concerned Midgan. However, we have sought to include references from the background materials to other occupational caste groups (of which the Midgan is said to be the largest) so that this case can be a reference point in cases involving other caste groups. We note that in her report Dr Luling equated the risk facing the Midgan with that faced by caste groups generally.
69. We note that other reports tend also to regard all the occupational caste groups as being in a very similar position. Accordingly, we consider that for us to find any other particular occupational caste group as being generally at risk would require compelling new evidence and argument. The start-point should be that, like the Midgan in general, other caste groups are not at risk in general either. We do not rule out that such evidence may be forthcoming, but we have set out what we regard as the proper start-point. Whilst in view of the conclusions we reached in this case as to caste groups generally, what was said by the Tribunal in HF (Persecution-Discrimination-Yibir-Occupation-Caste) Somalia CG [2004] UKIAT 05520 remains useful guidance, that case must now be read in the light of the further evidence on occupational castes which we have considered in this case.
70. For completeness we should add two observations. Firstly, at several points Mr Parker made criticism of Dr Luling's recent report, pointing out for example that it was not fully sourced and relied in large part on the major country reports, those by the joint delegations from certain

European countries published in 2000, 2002 and 2004. However, as the Tribunal has made clear in AH (Town Tunnis regarded as Bravanese) Somalia CG [2004] UKIAT 00144, and MN (Town Tunnis regarded as Bravanese) Somali CG [2004] UKIAT 00224, the Tribunal generally regards Dr Luling as an expert whose opinions are to be accorded considerable weight. That is not to say, having considered the evidence as a whole, that the Tribunal will always come to the same conclusions as Dr Luling as to risk categories. Whatever Dr Luling's (or Professor Samad's) own conception of `risk`, the question immigration judges have is whether there exists a real risk of persecution or treatment contrary to Arts 3 and 4 of the ECHR in accordance with the criteria set out in leading cases. But so long as Dr Luling's reports show care and preparation, the Tribunal will continue to take them seriously.

71. Secondly, whilst we do not seek in this determination to set out a specific list of minority groups that in our view are or are not at risk in current-day Somalia, we do see merit in Mr Parker's suggestion that minority groups in that country be seen as existing along a continuum, some being generally at risk and some not being generally at risk. The Tribunal in KS (Minority Clans-Bajuni-ability to speak Kibajuni) Somalia CG [2004] UKIAT 00271 has already indicated that members of certain minority clans are to be considered generally (although not universally) at risk. It is clear from the two appeals before us that in the Somali context, when considering monitories, one has to analyse not only the situation of minority clans, but also that of other minority groups which for one reasons or another are seen to fall outside, or co-exist with, the Somalia clan system. (The Midgan fall outside because they are an `underclass`; the 2004 Joint Report identifies the Bantu as a minority group also outside the mainstream Somali clan structure, albeit for different reasons). Of course, the situation with any particular minority group may also change over time. But whether considered in terms of minority clans or (the broader category of) minority groups, it will only be in respect of certain minorities that the evidence will establish their members generally to be at real risk of serious harm or of treatment contrary to Art 3.

72. For the above reasons both appeals are dismissed.

**73. Summary of conclusions**

- (i) This decision should be seen as superseding four previous Country Guidance determinations:

-MA (Risk - Jaaji Clan -Benadiri) Somalia CG [2002] UKIAT 04084 (previously known as Amin [2002] UKIAT 04084);

-IJ (Risk - Midgan) Somalia CG [2002] UKIAT 06314 (previously known as Ibrahim Abdi Jama [2002] UKIAT 06314); and  
-FB (Risk - Class - Midgan) Somalia CG [2002] UKIAT 06753 (previously known as Beldeq [2002] UKIAT 06753)  
-AH (Midgan - Disabled Woman - Relocation - Mogadishu) Somalia CG [2002] UKIAT 07343 (previously known as Hirsi [2002] UKIAT 07343).

(ii) Each appeal must be decided on its own facts but the following should be treated as authoritative guidance on cases concerning the Midgan (also called the Migden, Midgaan and Madhiban and Madiban) in Somalia. One version of their name translates as “harmless”.

(iii) This decision is also authoritative guidance for the consideration of cases of members of other small caste groups identified in paragraph 42 above.

(iv) Midgan are expected to perform low status jobs in Somali society and are usually poor. However, they are not slaves.

(v) Midgan living in rural communities can generally expect to receive patronage and therefore protection from noble clans.

(vi) Midgan who have left rural communities to settle in cities will sometimes have gained the patronage and protection of noble clans.

(vii) Midgan who enjoyed the patronage and protection of a noble clan when they left Somalia can normally be expected to regain such patronage and protection in the event of their return. The protection afforded would extend to provision being made upon return for their internal safe travel back to rural areas.

(viii) A Midgan who has lost the protection of a local patron (or local patrons) and who had not found alternative protection in a city would be vulnerable to persecution.

(ix) A Midgan who has lost protection from a noble clan patron or patrons in his or her home area would not be able to relocate safely within Somalia.

(x) Being a female Midgan increases the level of risk on return but does not on its own increase it to the level of real risk under the Refugee Convention and the ECHR.

**DR H H STOREY  
VICE PRESIDENT**



## **Appendix A: Principal Background Materials considered by the Tribunal**

- Joint British, Danish and Dutch Fact Finding Mission to Nairobi, Kenya; Report on minority groups in Somalia, 17-24 September 2000 (elsewhere `2000 Joint Report`).
- Amnesty International: Somalia, No lasting peace without human rights covering events January-December 2002, May 2003.
- UNCU/UN - OCHA - Somalia, A Study of Minority Groups in Somalia, August 2002.
- Professor Asha A Samad, Brief Review of Somalia Caste Systems: Statement to the Committee on the Elimination of Racial Discrimination, August 2002 [a summary of research].
- IRIN, Somalia: Review of 2002, 17 January 2003.
- US State Department Report: Country Report on Human Rights Practices - 2002, March 31, 2003.
- April 2003 CIPU Report on Somalia.
- UNHCR Position on Return of Rejected Asylum Seekers from Somalia, January 2004.
- April 2004 CIPU Report on Somalia.
- Joint Danish, Finnish Norwegian and British Fact Finding Mission to Nairobi, Kenya 7-21 January 2004, Human rights and security in central and southern Somalia (elsewhere `2004 Joint Report`).
- US State Department: Country Report on Human Rights Practices 2003, February 25, 2004.
- October 2004 CIPU Report on Somalia.
- Dr Virginia Luling, Report on the Midgan and Other Caste Groups in Somalia, June 11, 2004.
- CIPU Somalia Country Report, October 2004.

## **Appendix B: Cases cited to the Tribunal**

- MA (Risk - Jaaji Clan-Benadiri) Somalia CG [2002] UKIAT 04084 (previously cited as Amin [2002] UKIAT 04084).
- HF (Persecution - Discrimination - Yibir - Occupation - Caste) Somalia CG [2004] UKIAT 05520 (previously cited as Farah [2002] UKIAT 05520).
- IJ (Risk - Midgan) Somalia CG [2004] UKIAT 06314 (previously cited as Ibrahim Abdi Jama [2002] UKIAT 06314).
- FB (Risk - Class - Midgan) Somalia CG [2002] UKIAT 06753 (previously cited as Beldeq [2002] UKIAT 06753).
- AH (Midgan - Disabled Woman - Relocation - Mogadishu) Somalia CG [2002] UKIAT 07343 (previously cited as Hersi UKIAT 07343).
- AJH (Minority group-Swahili speakers) Somalia CG [2003] UKIAT 00094.
- SH (Return-Gedo-Burden of Proof) Somalia [2004] UKIAT 00164.
- KS (Minority Clans-Bajuni-ability to speak Kibajuni) Somalia CG [2004] UKIAT 00271.