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HM (Somali Women - Particular Social Group) Somalia [2005] UKIAT 00040

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 10 September 2004

Date Determination notified:

26/01/2005

Before:

Dr H H Storey (Vice President)

Mr G Warr (Vice President)

Mr H G Jones, MBE, JP

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representatives: Ms L Hooper of Counsel, instructed by South West Law Ltd for the appellant; Mr J Morris, Home Office Presenting Officer for the respondent

DETERMINATION AND REASONS

1. The appellant is a national of Somalia. She appeals against a determination of Adjudicator, Mrs S.M. Walker, dismissing on asylum grounds her appeal against a decision giving directions for removal following refusal to grant asylum. The Secretary of State also lodged an appeal against the Adjudicator's decision to allow the appeal on Article 3 grounds. The latter appeal was limited to the contention that the Adjudicator wrongly equated the position of the appellant, who was a married woman, with that of a single woman.

2. On 22 January 2004 a Tribunal chaired by His Honour Judge Huskinson dismissed the appeal of the Secretary of State. However, in respect of the asylum grounds of appeal, the Tribunal chaired by the Judge could not agree and, accordingly, an order was made for a fresh hearing before a differently constituted Tribunal.
3. It is arguable that it was not open to that Tribunal to have made an order in such terms. However, that matters not now, since Mr Morris stated that the Secretary of State accepted the ruling of that Tribunal on the Article 3 issue. The only appeal before us, therefore, concerns the appeal against the decision of the respondent refusing asylum.
4. It is important that we spell out precisely what was the Adjudicator's finding which has been accepted by the Secretary of State in this case. It was that the appellant would face a real risk of ill-treatment contrary to Article 3 by virtue of having to return to Mogadishu as a lone woman. Had we been considering this case at first instance, we would not have agreed with this finding. But in the context of this appellant's appeal we are required to accept it. Mr Morris for his part emphasised that the Secretary of State was conceding his appeal for technical reasons only, to do with the fact that the grounds as drafted had only taken issue with the Adjudicator's treatment of the appellant as single albeit she was married. The Secretary of State, therefore, did not accept that lone women were generally at Article 3 risk.
5. Given that the Adjudicator accepted a real risk of treatment contrary to Article 3, it must also be accepted that he found a real risk of persecution under the Refugee Convention. Thus, artificial though it is, the only issue in this appeal is whether the real risk of persecution facing the appellant would be by reason of ("for reasons of") a Refugee Convention ground. This issue subdivides into the question of whether there exists a Refugee Convention ground and whether there is a sufficient causal nexus between this ground and the persecution feared.

The Refugee Convention Ground Issue

6. The appellant's grounds of appeal submitted that the Adjudicator should have found a Refugee Convention ground of (1) race or other ethnic origin; and/or (2) membership of a particular social group.
7. In relation to (1), we see no merit in the grounds. The Adjudicator gave sound reasons for concluding that the appellant had failed to give a credible account of membership of the Tunni Brava clan.
8. It is true that one point she stated that "I cannot conclude that she is not [of the Tunni Brava clan]". However, this was merely to make

clear to the reader that she had considered the issue in the light of the approach set out in Karanakaran [2000] 2 All ER of taking into account even mere possibilities in deciding whether there was a reasonable degree of likelihood of what was claimed having occurred. The Adjudicator made very plain in the same sentence that, even bearing this possibility in mind, she did not consider it was reasonably likely the appellant was of the Tunni Brava clan.

9. We have examined the report of Dr Luling and consider that it was open to the Adjudicator to find that it gave no positive support to the appellant's claim to be a Tunni Brava. We also think it was open to the Adjudicator to find the appellant showed a lack of relevant knowledge of her clan and of its language. She was quite entitled to treat as a relevant factor, in assessing clan identity, the fact that the appellant and her mother had been able to survive for a lengthy period in Mogadishu: this was properly seen by the Adjudicator as a factor which did not suggest that they had been targeted as a minority clan.
10. We see no proper basis of challenge, therefore, to the Adjudicator's conclusion that there was no Refugee Convention ground related to race.

The Issue of Women as a Particular Social Group

11. The thrust of Ms Hooper's submission was that the Adjudicator should have concluded that the appellant in this case faced a real risk of persecution on account of her membership of a particular social group (PSG), namely, women in Somalia. Whilst she considered it arguable that more narrowly defined groups might also qualify for Refugee Convention purposes e.g. young, single (or unprotected) women, she accepted that these would be more susceptible to the criticism of circularity i.e. being groups defined by the fact of their persecution.
12. We are bound to say that the Adjudicator did not give any clear reasons why she rejected submissions put to her based on the existence of a PSG composed of women (or some women) in Somalia.
13. However, it remains to consider whether she erred in law in concluding there was no PSG in existence in this case. The appeal arose under s.69(5) of the 1999 Act and not under s.82 of the 2002 Act. Nevertheless the Court of Appeal in CA [2004] EWCA Civ 1165 has established that the critical date is not when the decision was made, but whether the promulgation of the Adjudicator's determination was before or after 9 June 2003. Since the determination in this case was notified on 12 June 2003, the jurisdiction of the Tribunal is confined to considering whether there was a material error of law. As a result, unless we are satisfied there is a material error of law, we are

prevented from admitting evidence dealing with events after 12 June 2003 even though adduced in accordance with Tribunal directions. This restriction does not, however, exclude anything of particular significance in this case, since the evidence relevant to the issue of women as a PSG is substantially the same whether one refers to pre- or post-12 June 2003 sources.

14. We should perhaps mention at this stage that we did look at a judgment of the Australian Federal Court, in which it was accepted that young women in Somalia were a PSG: Minister for Immigration and Multicultural Affairs v Cali [2000] FCA 1026 (3 August 2000). This was submitted by the appellant's representatives after we had completed our hearing. However, even aside from procedural difficulties with accepting it into evidence late, we did not find it of any particular assistance, since the principal concern of the Court was not whether (young) women in Somalia were a PSG, but simply whether the Refugee Review Tribunal (RRT) had based its decision to this effect on evidence.
15. Ms Hooper urged us to find that in the light of the principles set out by their lordships in the Shah and Islam judgment, as recently clarified by the President of the Tribunal, Mr Justice Ouseley in ZH (Women as a Particular Social Group) Iran CG [2003] UKIAT 00207, women in Somalia did constitute a particular social group. The main grounds on which she advanced this argument were as follows. Firstly, they faced significant legal discriminations in that they typically live under a system of law comprising three levels, Sharia, (regional) governmental and tribal, in respect of each of which they are treated unequally.
16. Secondly, they suffer from widespread societal discrimination.
17. Thirdly in a country in which there was no effective national system of protection, they are frequently left in an unprotected situation. Domestic abuse is prevalent.
18. Based on this combination of factors, argued Ms Hooper, women should be seen to constitute a PSG.
19. Mr Morris chose not to make a submission on the PSG issue, stating that he was content to leave it up to the Tribunal. In our view it was unfortunate that Mr Morris saw fit to make no submissions. Whilst it is true that the parties had not been notified in advance (as now happens) that the case is considered to raise an issue or issues of general application, it should have been obvious to him that the PSG issue loomed large. As it has turned out we did not find it possible to resolve

this case without reaching a view on the general issue of women as a PSG in Somalia.

The relevant legal Principles on PSG

20. The start point for any post-Shah & Islam analysis of PSG is the Court of Appeal judgment in Montoya [2002] EWCA Civ 620; [2002] INLR 399. The Court noted at paragraph 15 that it had been addressed by both sides on the basis that the Tribunal's summary of the basic principles as set out in their paragraph 55B was a broadly correct summary of the existing law binding on the Court and that it was content to proceed on that basis. The Tribunal in Montoya (01/TH/00161) stated:

"55. Summary of Conclusions

A. The Adjudicator was correct to conclude that the respondent could not show a Convention ground of political opinion but incorrect to conclude that he had made out the ground of membership of a particular social group (PSG). In deciding that private landowners were a PSG in current-day Colombia the Adjudicator overlooked the judgment of the House of Lords in Shah and Islam [1999] 2 A.C. 629 and in consequence applied the wrong criteria for evaluating the PSG category. She also erred in failing to consider whether there was a causal nexus between the respondent's well-founded fear of persecution and this alleged PSG.

B. Taking stock of post-Shah and Islam cases both here and abroad, the Tribunal considers that the basic principles that should govern assessment of a claim based on the PSG category are as follows:

(i) in order to succeed under the Refugee Convention a claimant who has a well-founded fear of persecution must show not only the existence of a PSG (the "PSG question"), but also a causal nexus between his membership of the PSG and that fear (the "causal nexus question");

The PSG Question

(ii) the PSG ground should be viewed as a category of last resort;

iii) persecution may be on account of more than one ground. If the principal ground is membership of a PSG, then focus should be on that;

(iv) the PSG ground must be interpreted in the light of the basic principles and purposes of the Refugee Convention;

(v) if the PSG ground had been intended as an all-embracing category, the five enumerated grounds would have been superfluous;

(vi) the PSG ground is further limited by the Convention's integral reliance on anti-discrimination notions inherent in the basic norms of International Human Rights Law;

(vii) applying the *eiusdem generis* principle to the other 4 grounds, the PSG category must be concerned with discrimination directed against members of the group because of a common immutable characteristic;

(viii) a broad range of groups can *potentially* qualify as a PSG, including private landowners;

(ix) but whether any particular group is a PSG *in fact* must always be evaluated in the context of historical time and place;

(x) in order to avoid tautology, to qualify as a PSG it must be possible to identify the group independently of the persecution;

(xi) however the discrimination which lies at the heart of every persecutory act can assist in defining the PSG. Previous arguments excluding any identification by reference to such discrimination were misconceived;

(xii) a PSG cannot normally consist in a disparate collection of individuals;

(xiii) for a PSG to exist it is a necessary condition that its members share a common immutable characteristic. Such a characteristic may be innate or

non-innate. However, if it is the latter, then the non-innate characteristic will only qualify if it is one which is beyond the power of the individual to change except at the cost of renunciation of core human rights entitlements;

(xiv) it is not necessary, on the other hand, for such a group to possess the attributes of cohesiveness, interdependence, organisation or homogeneity;

(xv) there is nothing in principle to prevent the size of the PSG being large (e.g. women), but if the claim relies on some refinement or sub-category of a larger group, care must be taken over whether the resultant group is still definably independently of their persecution;

(xvi) a PSG can be established by reference to discrimination from state agents or non-state agents (actors) of persecution;

(xvii) it is not necessary in order to qualify as a PSG that a person actually has the characteristics of the group in question. It is enough that he will be perceived to be a member of the group.

The Causal Nexus Question

C. The words "for reasons of" require a causal nexus between actual or perceived membership of the PSG and well-founded fear of persecution. Caution should be exercised against applying a set theory of causation. In Shah and Islam and the Australian High Court case of Chen no final choice was made between "but for" and "effective cause" tests, but the "but for" test was said to require a taking into account of the context in which the causal question was raised and of the broad policy of the Convention."

21. We next turn to consider the further elaboration of Shah and Islam (and the Court of Appeal judgment in Skenderaj [2002] All ER (d) 267 (which pre-dated Montoya) as given in ZH in which at paras 63-67, Ouseley, J stated:

"63. In our judgment, the following conclusions ought to be drawn. First, women in Pakistan formed a social group not just because they were women, but because they were also discriminated against. This appears in the speeches of all three in the majority, and indeed from the rejection of that proposition by Lord Millett. Second, it appears inescapably from the way in which the discrimination has been described that it includes legislative, judicial and police discrimination in the way in which women could obtain, and indeed suffer from seeking, state protection. The lack of state protection is inherent in the discrimination relied on.

64. Third, the women were not persecuted "*for reason of*" their membership of their group by the husbands against whom the state was unwilling or the women were afraid to seek the state's protection. Whilst that would have been a possible analysis, the majority, confirmed by the rejection of their reasoning by Lord Millet, clearly rejected as unrealistic the view that the husbands were persecuting their wives for a Convention reason. It was the serious harm done by the husbands in combination with the states inaction in providing protection or reinforcing of the harm when protection was sought, which gave rise to the persecution and to the persecution for a Convention reason.

65. Fourth, whether such circumstances give rise to or evidence a particular social group depends very much on the circumstances within any country at the relevant time, and the extent, nature and intensity of the social and state discrimination including the real risk that seeking protection would result in further serious ill-treatment. The same is true of whether there is persecution, or persecution for a Convention reason or a lack of state protection.

66. Thus, this is a case, on the particular evidence as to the circumstances in Pakistan, of state persecution for a Convention reason. Discriminatory lack of state protection was a component of persecution, and of the reason for the persecution and the availability of state protection, but it was also part of the definition of the social group through its relevance to discrimination.

67. The crucial issue which is relevant to the definition of the group, though not necessarily determinative of it, relevant to persecution, to the ascertainment of the Convention reason, and indeed to the final component of the overall refugee definition is the nature of the state's protection."

22. It is clear from the above that for the PSG requirement to be met in respect of women in a particular country, there must not only be a combination of measures of legal and societal discrimination; these must also reach a certain level and intensity: see paragraphs 65 and 79: 'What is striking about evidence in Pakistan was the widespread and intense nature of the discrimination'.
23. We turn to consider the issue of women as a PSG in current-day Somalia in the light of the criteria identified previously.
24. In assessing the issue of how legal frameworks impact on women in Somalia it is first necessary to recall that since the collapse of central government in 1991 and the period of civil war between warring clans, no national framework of government has been re-established despite over fourteen major peace initiatives and the establishment of a Transitional National Charter (TNC) and selection of a Transitional National Assembly (TNA) in 2000 and a national reconciliation conference process begun in Nairobi in 2002. These existing and emergent structures co-exist with the "South Western State of Somalia" (Bay & Bakool) regional administration, the (self-proclaimed state of) "Puntland State of Somalia" (north-eastern Somalia) regional body established under the Puntland Charter and the self-declared "Republic of Somaliland" (north-western Somalia) which has its own Constitution. The April 2003 CIPU at paragraphs 5.6-5.7 summarised matters as follows:

'5.6 Since the fall of Siad Barre in 1991, Somalia has remained without a central, functioning or internationally recognised government. Clan-based factions, traditional leaders and militia in different areas of the country have established various local administrations, some unrealistically claiming national authority. No single group controls more than a fraction of the country's territory. In some areas, notably Puntland and Somaliland, local administrations function effectively in lieu of a central government. In these areas the existence of local administrations, as well as more traditional forms of conflict resolution such as councils of clan

Elders, helps to prevent disputes degenerating rapidly into armed conflict.

5.7 However, this process of rebuilding state-like institutions or local administrations in various parts of Somalia has been slow and heterogeneous, and according to the UNDP Somalia 2001 report the political decentralisation and the political entities in Somalia are still fragile and evolving. The report states that “the development of governmental forms of political authority in regional administrations and the growth of urban centres such as Hargeisa, Garowe, Bossaso, and Baidoa, point to a process of consolidation”.

25. In some cases local Sharia courts operate (e.g. in Hiran: see 5.19], in others civil administration, such as it is, is carried out by Councils of Elders. The CIPU April 2003 section dealing with the Judiciary states:

‘5.31 Until 1991 the Constitution provided for the independence of the judiciary from the executive and the legislative powers. Laws and acts having the force of law were required to conform to the provisions of the Constitution and general Islamic principles. There has been no national judicial system since the fall of Siad Barre’s government in 1991. The judiciary in most regions relied on some combination of traditional and customary law, Shari’a law, the Penal Code the pre-1991 Siad Barre Government, or some elements of the three. Some regions have established local courts that depend on the predominant local clans and associated factions for their authority. Under the system of customary justice, clans often held entire opposing clans or subclans responsible for alleged violations by individuals. In Bossaso (Puntland) and Afmadow (Lower Juba) during 2002, criminals were reportedly turned over to the families of their victims, who then exacted blood compensation in keeping with local tradition.

5.32 The legal framework throughout the country is inconsistent and weak, however in Somaliland, Puntland and areas controlled by TNG the court system has been regularised to some extent. The UN independent expert on the situation of human rights

noted in his 2002 report that challenges include under-qualified staff, low salaries, a lack of training and reference materials, gender inequalities and incoherence insofar as secular, customary and Islamic laws are all applied in conflicting and overlapping areas. Consequently, he concluded that this environment lends itself to significant degrees of corruption and inefficiency. It is reported that the Islamic group, Al-Itihaad, has brought the influence with judges in some areas of Somalia.

5.33 Information obtained by a Nordic fact-finding delegation to Mogadishu in 1997 suggested that Shari'a court is divided into civil and criminal court. However, the judicial system is not man made but based on rules handed down by Allah. Shari'a courts also have a "Court of Appeal" though one appeal court may serve a number of courts, a final appeal may be made to a "Revision Court" whose ruling is final.

Southern Somalia

5.34 The Transitional Charter provides for an independent judiciary and for a High Commission of Justice, a Supreme Court a Court of Appeal, and courts of first reference; however, the Charter still had not been implemented by the end of 2002. In Mogadishu, businessmen withdrew much of their funding for the Shari'a courts that had previously operated in Mogadishu under the influence of Al-Itihaad in favour of funding the TNG; the Shari'a courts soon collapsed as a consequence. The TNG announced in June 2001 that Shari'a courts would come under the jurisdiction of its Ministry of Justice and cease to function independently. The move was an attempt by the TNG to set up a functioning judicial system for Mogadishu. However, as of mid 2002 a few Shari'a courts are still reported to be operating outside the TNG's control, especially in northern Mogadishu. However, it is reported that some of the leaders of Al-Itihaad are members of the TNG's judiciary system.

5.35 In its report covering events during 2001 Amnesty International (AI) referred to the process to gradually bring Islamic courts, established by faction

leaders, into the national judicial system began in Mogadishu. However, the human rights organisation expressed concern that these courts did not meet recognised standards of fair trial and judicial competence. The Mogadishu based NGO, Dr Ismail Jumale Human Rights Centre (DIJHRC) protested at the treatment of prisoners before Shari'a courts during 2000.

5.36 In Belet Weyne a Shari'a court was established in January 2002 on the eastern side of the town though its functions are primarily administrative (see the section: Political System - Hiran). The court has achieved certain things, such as the removal of roadblocks but cannot do anything. In terms of controlling and dealing with criminal actions and clan disputes much still depends on the clan Elders.

5.37 There were reportedly no Shari'a courts in Bay and Bakool as of mid 2002. Here, Elders still play a role in local disputes on a sub-clan level, but when it comes to serious crimes such as murder a code of conduct supervised by RRA panels effectively constitutes the court.

Puntland

5.38 The Charter provides for an independent judiciary; however, the judiciary was not independent in practice. The Puntland Charter provided for a Supreme Court, courts of appeal, and courts of first reference. In practice the clan Elders resolved the majority of cases using traditional methods. However, those with no clan representation in Puntland were subject to the Administration's judicial system.

Somaliland

5.39 The Constitution provides for an independent judiciary; however, the judiciary was not independent in practice. There was a serious lack of trained judges and of legal documentation in Somaliland, which caused problems in the administration of justice. Untrained police and other persons reportedly served as judges. Within Somaliland secular law is generally applied with Shari'a being retracted to family cases.

Legal Rights/Detention

5.40 The Transitional Charter provides for the right to be represented by an attorney while the authorities in Puntland and Somaliland continued to apply the former government's Penal Code which contains a similar provision. It was in those areas applying the former Penal Code that the right to representation was more often respected. The right to representation by an attorney and the right to appeal does not exist in several areas that apply traditional and customary judicial practices or Shari'a law. In Somaliland the accused can generally be assisted by a lawyer and there is some form of appeal, even in the Shari'a courts. Amnesty International referred in their annual report covering events in 2001 to reports by human rights defenders in Somaliland of arbitrary detentions and unfair trials. Amnesty International also expressed concern that during 2001 judicial administrations and police forces in both Somaliland and Puntland displayed inconsistent respect for human rights.

5.41 Throughout the country juveniles, who have been detained at the request of families in order to be disciplined, are held without charge. In mid 2002 officials of the human rights organisation, ISHA, informed a British/Danish fact-finding delegation that lengthy detention of criminal suspects was the main problem in the RRA controlled Bay and Bakool region. They explained that the court system was weak, mainly because of a lack of funds and capacity. During his 2002 visit to Puntland UN independent expert for human rights successfully requested the release of prisoners detained without charge.

Death Penalty

5.42 The death penalty is retained in Somalia. In their 2001 report Amnesty International report that Islamic courts established by faction leaders imposed death sentences; these sentences were reportedly immediately carried out. In September 2002, a court in Hargeisa, Somaliland, sentenced two children, aged 16 years, to death for murdering a 16-year-old. As of the end of 2002 the death sentence had not

been carried out and the government had asked the court of review the case.

Internal Security

5.43 Clan and factional militias, in some cases supplemented by local police forces function with varying degrees of effectiveness in the country.'

26. As regards measures of legal discrimination, it is true that in an unimplemented TNG charter and in the Somaliland Constitution there are provisions prohibiting discrimination on the grounds of sex. In the unimplemented TNG charter and the Puntland and Somaliland legislation there is also provision for universal suffrage. However, these provisions only cover parts of Somalia. Furthermore and in any event, the objective country materials do not consider that anywhere in Somalia such provisions properly reflect the general situation of women in terms of their legal status. We agree with Ms Hooper that for most women in Somalia, there are very significant measures of legal discrimination. As stated in CIPU October 2003 (and the earlier April 2003 CIPU Report before the Adjudicator is to very similar effect):

'6.105 [6.99 of 2003 Report] Women and children suffered disproportionately heavily in the fighting following the fall of Barre's administration. There were large numbers of rapes, abductions and forced marriages of women by the warring militia, especially in 1991-92, which has stigmatised the victims. Many women, who would traditionally have had the protection of men in their parents' and husbands' clans, have been left to head their families with the breakdown of normal structures. Most vulnerable have been women who have been internally displaced within Somalia, who have lacked the protection of powerful clan structures, and those from minority clans and ethnic minorities.

6.106 In the June 2003 report of the Secretary-General on the security situation in Somalia, reference is made to a rapid assessment of women's justice. According to this, women are generally disadvantaged under all three systems of law that operate in Somalia. It is noted that whilst each provides a measure of protection, all systems (namely civil, customary and Shari'a) remain inadequate and contradictory to an extent,

leaving women vulnerable and insufficiently protected. The report notes that there are an “almost negligible number of women in service within the judicial process”.

6.107 [6.100 of 2003 Report] Laws made by the former central government allowed female children to inherit property but only half the amount to which male siblings were entitled. In the traditional practice of blood compensation and under Shari’a law, those found guilty of killing a woman must pay only half as much to the victim’s family as they would if the victim was male. While polygamy is allowed polyandry is not. The TNG charter, not implemented at the end of 2002, contains provisions that prohibit discrimination on the basis of sex or national origin. The Somaliland Constitution also contains provisions that prohibit discrimination on the basis of sex or national origin. The TNG charter provides for universal suffrage as do both the Puntland and Somaliland administrations.

...

6.113 [6.105 April 2003 Report] Violence against women in Somalia is widespread; robbery and rape are particularly common. The UNDP Human Development Report of 2001 noted that sexual violence against women during the civil war did not end with the war. According to the report there is some evidence that sexual violence is a persistent crime even in areas of stability. The US State Department report that rape is common in inter-clan disputes; in April 2002 there were allegations that militia members loyal to warlord Hussein Aideed had been responsible for the rape of numerous women in 15 villages in the southern Qoroley district. There were also reports of numerous rapes of Somali women and girls in refugee camps in Kenya during the 2002. Although laws do exist prohibiting rape they are not enforced. A few rapes were prosecuted during 2002. Many women consider the traditional punishment of forcing the offender to marry their victim and to pay compensation to

the family of the victim for “their” loss to represent a further degradation for the victim herself.

6.114 [6.106 April 2003 Report] Domestic violence against women exists, although there are no reliable statistics on its prevalence. There are no laws that specifically address although both customary law and Shari’a law address the resolution of family disputes. There are no laws against spousal rape.’

27. These passages identify a number of measures of legal discrimination: disadvantages and inadequate protection under all three systems of law specifically in respect of: inheritance of property; blood compensation; plural marriage; frequent non-enforcement of laws against rape; abusive application of the system of compensation for victims of rape; an absence of laws specifically addressing domestic violence; and discriminatory lack of state protection.
28. As regards societal measures of discrimination, these passages together with others also identify that women are in an inferior position. The October 2003 CIPU Report states (largely replicating the earlier CIPU Report that was before the Adjudicator) that:

‘6.110 [6.103 April 2003 Report] The position of women in the patriarchal Somali society is largely subordinate and societal discrimination is widespread. Several women’s groups in Mogadishu, Hargeisa (Somaliland), Bossaso (Puntland), and Merka (Lower Shabelle) are actively involved in promoting equal rights for women. Such organisations advocated the inclusion of women in responsible government positions and participate in peace building programmes. UN agencies work with women’s groups in Somalia and are actively involved in initiatives aiming to promote the elimination of all forms of discrimination against women.’

29. Societal discrimination thus consists in women being subjected to a strongly patriarchal value system and is widespread.
30. As to whether there is a general lack of protection for women in Somalia, however, we do not agree with Ms Hooper’s submissions in all respects.

31. Firstly, we do not accept that the lack of any national system of government in Somalia means that women, or indeed the population generally, are wholly unprotected. As the Tribunal held in the starred determination, Dyli (00/TH/02186), and in the reported case of Farah [2002] UKIAT 07376 the question of whether protection can be afforded within a country of nationality is essentially a question of fact: there is no requirement that it can only be afforded by de jure state entities. This is particularly relevant in the case of Somalia, since although there is an absence of any national government, it is perfectly clear that in large parts of the territory of Somalia there are some areas under the control of regional administrations which perform the essential functions of government within their respective territories, albeit there remain significant levels of armed conflict and inter-clan fighting.

32. Secondly, it is clear that whilst inadequate viewed as a whole, there are ways in which the clan structure of Somali society ensures some degree of protection for some women. For example the CIPU Report at 6.111 states:

‘6.111 [6.103 April 2003 CIPU] A widowed woman would usually receive protection from her husband’s clan. A widow and her children may be taken in by the direct family of her husband, whose brother, under the “dumal” principle, would have the opportunity of marrying her. This traditional approach ensures that a widowed woman would only rarely find herself without protection. Although marriage is usually within the same sub-clan, intermarriage across clan lines does occur. Only in exceptional cases does this present a difficulty for a widow.’

33. Thirdly, whilst the objective country materials do highlight lack of protection as a problem for women, (particularly in the context of rape and domestic violence (see 6.113 and 6.114)), it is primarily in respect of three (admittedly significant) sub-categories:

‘6.105 [6.99 April 2003] Women and children suffered disproportionately heavily in the fighting following the fall of Barre’s administration. There were large numbers of rapes, abductions and forced marriages of women by the warring militia, especially in 1991-92, which has stigmatised the victims. Many women, who would traditionally have had the protection of

men in their parents' and husband' clans, have been left to head their families with the breakdown of normal structures. *Most vulnerable have been women who have been internally displaced within Somalia, who have lacked the protection of powerful clan structures, and those from minority clans and ethnic minorities.'*

34. Even so, we do accept as an important consideration that the existence of a partial lack of effective protection does add to the cumulative picture. Additionally, we think it is very clear that there is legislative, police and clan militia discrimination in the way in which women have to seek or obtain state protection.
35. What then is the cumulative picture? Women in Somalia form a PSG not just because they are women, but because they are extensively discriminated against. Second the measures of discrimination to which women in Somalia are exposed include legislative, judicial and police or militia discrimination in the way in which women can obtain and suffer from seeking protection from the (regionalised or local) clan-based authorities. Thirdly, the serious harms they face from male sources arise in the context of very limited ability by these authorities to protect them. Finally, the measures of discrimination they face are extensive, intense and sustained.

The Causal Nexus Issue

36. We must now place our finding on the PSG issue side-by-side with the Adjudicator's accepted finding that the appellant would face risk on return in the light of her "vulnerability as a young, single woman". In view of this finding we cannot see any basis for doubting that the appellant has established in this case that the real risk of persecution she faces is by reason of her membership of a particular social group, namely women.
37. Insofar as this case purports to give country guidance, it is confined to the finding that women in Somalia do currently constitute a PSG.
38. Although we have found that the appellant succeeds in her asylum appeal in this case, we would emphasise that Adjudicators must not equate a finding that there exists a PSG with a finding that there exists persecution or with a further finding that there exists a causal nexus between such persecution and the PSG. For unusual reasons this appeal proceeded on the basis of an acceptance of persecution, and hence, PSG was the only real issue, but in most cases each of these issues, albeit overlapping, will have to be decided in discrete fashion on the basis of the overall evidence at large.

**H.H. STOREY
VICE PRESIDENT**