

Female circumcision was not persecution

TUESDAY LAW REPORT

14 JUNE 2005

**Fomah v Secretary of State for the Home Department
([2005] EWCA Civ 680)**

Court of Appeal, Civil Division (Lord Justice Auld, Lord Justice Chadwick
and Lady Justice Arden) 9 June 2005

The pointers were away from, rather than towards, female genital mutilation of young, single and uncircumcised Sierra Leonean women constituting persecution “for reasons of” their membership of a “particular social group”, for the purposes of the Geneva Convention Relating to the Status of Refugees 1951.

The Court of Appeal (Lady Arden dissenting) dismissed the claimant’s appeal against a decision of the Immigration Appeal Tribunal that she would not suffer persecution if returned to Sierra Leone.

In 2003, the claimant, a 15-year-old girl from Sierra Leone, claimed asylum on the ground of her fear that, as a member of a particular social group, namely “young Sierra Leonean women”, she would be subjected against her will to female genital mutilation if she returned to her home country, and would therefore be liable to persecution contrary to the provisions of the Refugee Convention.

Her claim was refused by the Secretary of State, although he had since granted her leave to enter for three years on humanitarian grounds under article 3

of the European Convention on Human Rights.

The claimant’s appeal against the refusal of her asylum claim was allowed by an adjudicator, who found that the practice of female circumcision amounted to persecution, of which she had a well-founded fear, and that the feared persecution was for a Convention reason, namely her membership of a “particular social group”, which he described as one of “young, single Sierra Leonean women, who are clearly at considerable risk of enforced . . . [female genital mutilation]”, and in respect of which the state provided them with no protection. The Immigration Appeal Tribunal allowed the Secretary of State’s appeal against the adjudicator’s decision, and the claimant appealed.

Kathryn Cronin (Brighton Housing Trust) for the claimant; Robin Tam (Treasury Solicitor) for the Secretary of State.

Lord Justice Auld said that,

when considering whether there was persecution for reasons of membership of a “particular social group”, a useful starting and finishing point was to consider whether, apart from the persecution, the claimed group was discriminated against by the society of which it formed part, or was perceived by that society as being set apart from it in some way. The pointers were away from, rather than towards, female genital mutilation of young, single and uncircumcised Sierra Leonean women constituting persecution “for reasons of” their membership of a “particular social group”.

The practice of female circumcision, however repulsive to most societies outside Sierra Leone was, on the objective evidence before the adjudicator and the tribunal, clearly accepted and/or regarded by the majority of the population of that country, both women and men, as traditional and part of the cul-

tural life of its society as a whole.

Far from ostracism by society and discrimination by the state in its failure to protect human rights, the persecution in the present case would result in a full acceptance by Sierra Leonean society of those young women who underwent the practice into adulthood, fit for marriage and to take a full part as women in the life of their communities.

Considered on its own, a critical common characteristic of the claimed “particular social group” was that its members had not been circumcised. However, as soon as they had undergone the practice, they ceased to be members of the group. To confine the grouping to young, single girls who, for the time being, had not been circumcised, would be contrary to the general rule that it was impermissible to define the group solely by reference to the threat of the persecution.

Kate O’Hanlon, Barrister