Neutral Citation Number [2005] IEHC 218

**THE HIGH COURT**

**[2003 No. 919 JR]**

**IN THE MATTER OF THE REFUGEE ACT 1996, THE IMMIGRATION ACT 1999, THE ILLEGAL IMMIGRANTS (TRAFFICKING) 2000 AND BUNREACHT NA HEIREANN**

**BETWEEN**

**SOLOMON OLUGBADE MOYOSOLA**

**APPLICANT**

**AND**

**THE REFUGEE APPLICATIONS COMMISSIONER, MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL AND THE REFUGEE APPEALS TRIBUNAL**

**RESPONDENTS**

**AND**

**[2003 No. 920 JR]**

**IN THE MATTER OF THE REFUGEE ACT 1996, THE IMMIGRATION ACT 1999, THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 AND BUNREACHT NA HEIREANN**

**BETWEEN**

**ADETOUN MOYOSOLA AND SUZAN MOYOSOLA (A MINOR) SUING THROUGH HER NEXT FRIEND AND MOTHER ADETOUN MOYOSOLA**

**APPLICANTS**

**AND**

**THE REFUGEE APPLICATIONS COMMISSIONER, MINISTER FOR JUSTICE EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL AND THE REFUGEE APPEALS TRIBUNAL**

**RESPONDENTS**

**Judgment of Mr. Justice Clarke delivered 23rd June, 2005.**

1. Both of these proceedings are connected and were argued together. In the first proceedings the applicant ("Solomon Moyosola") is a national of Nigeria. He has deposed to the fact that he arrived in the State on 17th June, 2003 and made application on the following day for refugee status. The stated basis for his application was as set out in response to questions 26 in the "Information Questionnaire for Refugee Status Application" which Solomon Moyosla filled out and which specified the basis for his application. His reason was stated as follows:-

> "The main reason why I fled my country (Nigeria) with my family to seek declaration as a refugee in the State is that my life was in danger and at the point of elimination in my home country. I was being persecuted simply for my religious belief. My family belonged to an occult society which is devilish. I tried to stand out from the family due to my education which broadened my knowledge to choose the right way of life. There are many family traditions which I never accepted and being the only surviving son of my father they tried to initiate me to the devilish occultism which I rejected.

2. In specifying the type of prosecution feared Solomon Moyosola answered as follows:-

> "My family's life is in danger. The first tradition I rejected before my father died was the female circumcision of female in the occult shrine. The blood is used for ritual. I declined this and stand on it, though my wife was threatened to be killed and my children if I refused to comply with the family traditions. Secondly being the only surviving child in my family they want me to be the sole representative of my family since my father was one of them. They threatened to kill me and my offspring if I eventually refused to be in the family tradition way of life. I believe my religion made me see light from darkness but the group one so powerful that I fear persecution.

3. Solomon Moyosola attended for interview with an authorised officer of the Refugee Appeals Commissioner ("RAC") as required by s. 11(2) of the Refugee Act, 1996 ("the 1996 Act"). Following the interview it would appear that he received no further communication or correspondence from the RAC until the 5th November, 2003 when he received a letter on that date from the RAC confirming the recommendation that he should not be declared a refugee.

4. In the second proceedings the first named applicant ("Adetoun Moyosola") is also a national of Nigeria. She is the wife of Solomon Moyosola and deposes to the fact that she arrived in this State on 28th February, 2003 with her daughter the second named applicant in the second proceedings ("Suzan"). On the same date she made an application for refugee status and similarly completed and submitted a questionnaire on 12th March, 2003. In her questionnaire she stated that she feared persecution "because they said they will kill me with the pregnancy". In subsequent questions she makes it clear that the relevant fear relates to persecution by her husband's family. She too attended for interview, as required by s. 11(2) of the 1996 Act, with an authorised officer of the RAC on 3rd October. In the course of that interview, she indicated that the reason why she fled Nigeria was by reason of the fact that her husband's family sought to impose and apply ritual tribal cults and traditions to her and her family which she did not accept either as a mother or a Christian. She specified that the fear that her daughter would be subjected to female genital mutilation was a primary basis for her fears.

5. She too received no further communication from the RAC until (in her case) the 11th November, 2003 when she received a letter of that date advising of the recommendation that she should not be declared a refugee.

6. In both cases (that is to say Solomon Moyosola and Adetoun Moyosola) the respective letters informing them that the recommendation of the RAC was to the effect that in each case the applicant should not be declared to be a refugee included a copy of the report required by s. 13 of the Refugee Act 1996 and also enclosed a copy of "all information relating to the investigation of your application which has been submitted to the Commissioner or otherwise came to her notice in the course of investigating your claim".

7. In both cases the letter also drew attention to the fact that, amongst the findings contained in the s. 13 report, is "one of the findings set out in s. 13(6) of the Refugee Act. For this reason, if you appeal against this recommendation you must do so within 10 working days from the sending of this letter and, any such appeal will be dealt with without an oral hearing".

8. I should not leave the s. 13 reports without noting that the RAC correctly referred to Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights. It is implicit that the RAC found that the above

support the view that a fear of torture amounts to a fear of persecution and that a well founded fear of female genital mutilation does, subject to the other normal considerations such as state protection and the like, form the basis of a proper refugee claim. I did not understand the respondents to suggest otherwise. It is clear that in a case where there is a well founded fear of either an applicant or a child of an applicant being subjected to female genital mutilation, same will provide, subject to other normal considerations, a basis for a finding in favour of refugee status. This case was not, therefore, about whether a well founded fear of such mutilation is a proper basis for granting refugee status. It is about whether, on the basis of the appropriate criteria and procedures for the consideration of refugee applications, it can be said that the applicants in this case have such a well founded fear.

**The case of Suzan**
9. Suzan's claim was treated as part of the claim of Adetoun Moyosola. The Section 13 Report in the case of Adetoun Moyosola would also appear to apply to her case. There is no separate or independent reference to her situation in the report.

**The Proceedings**
10. In both cases the application for leave (which is, of course, required to be on notice to the respondents pursuant to the provisions of the Illegal Immigrants (Trafficking) Act, 2000 and in respect of which substantial grounds for the granting of leave must be established) came before this Court (Butler J.) on 19th October, 2004. As the orders in both cases note, the respondents consented to the grant of leave in respect of some (but not all) of the reliefs sought in the statement of grounds and also on some, but not all, of the grounds specified therein. As the applications for refugee status stemmed from very similar circumstances and as the respective decisions of the RAC in each case are broadly similar it is not surprising that the grounds upon which the respective decisions of the RAC are challenged are themselves similar.

11. At its simplest the challenges contend for three main propositions:-

> (a) that certain features of the procedures followed which are, it is said, mandated by amendments to the statutory regime (to which I will refer in more detail) fail to comply with the principles of constitutional justice. In those circumstances it is contended, in the alternative, that the relevant statutory regime must be construed in a manner which is consistent with the principles of constitutional justice or, if that is not possible, a declaration is sought to the effect that the relevant provisions are inconsistent with the Constitution.
>
> (b) Insofar as the decision of the RAC considered the merits of both cases and came to conclusions which rejected the credibility of the applicants' claims it is contended that the process by which credibility was assessed did not conform with law.
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> (c) In the case of Suzan an independent and additional ground is put forward to the effect that no separate consideration was given to her case.

**The Statutory Regime**
12. When originally enacted s. 11(3) of the 1996 Act provided as follows:-

> "The applicant concerned, the High Commissioner or any other person concerned may at any time but not later than 7 working days after the conduct of the interview under subs. 2, make representations in writing to the Commissioner in relation to any matter relevant to an investigation by him or her under this section and the Commissioner shall take account of any such representations".

13. In the 1996 Act the "High Commissioner" refers to the United Nations High Commissioner for Refugees or the Irish Representatives of the High Commissioner. The "Commissioner" refers to the RAC.

14. Section 11(6) as originally enacted provided that the applicant (and the High Commissioner if he or she so requested) was to be furnished by the Commissioner with "copies of any reports, documents or representations in writing submitted to the Commissioner under this section and an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Commissioner in the course of an investigation by him or her under this section".

15. Section 7 of the Immigration Act 2003 ("the 2003 Act") made significant amendments to that statutory regime. Firstly the original s. 11(3) was deleted and replaced by the following:-

> 11 (3)(a) The applicant concerned, the High Commissioner or any other person concerned may make representations in writing to the Commissioner in relation to any matter relevant to an investigation by him or her under this section and the Commissioner shall take account of any such representations made before or during an interview under subsection (2).
>
> (b) The High Commissioner may, whenever he or she so requests be present at an interview under subs. (2).

16. It can therefore be seen that instead of an entitlement to make representations up to 7 days after the conduct of the interview under subs. (2) in order that they might be considered by the Commissioner it is, since the amendments brought about by the 2003 Act, necessary that any such representations be made "before or during an interview" under subs. (2).

17. Furthermore s. 11(6) which provided for the furnishing to the applicant, and if appropriate the High Commissioner, of all relevant documentation was also deleted. A new s. 13(10) was inserted by s. 7 of the 2003 Act and provides as follows:-

> "Where a report under subsection (1) (other than a report to which subs. (2) applies) includes a recommendation that the applicant should not be declared to be a refugee, then, subject to subsection (11) the Commissioner shall furnish the applicant (if known) and the High Commissioner, whenever so requested by him or her, with copies of any reports, documents or representations in writing submitted to the Commissioner under subsection (11) and an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Commissioner in the course of an investigation by him or her under that section".

18. Thus the net effect of the above amendments introduced by the 2003 Act is to remove from an applicant the ability to make representations after the interview and furthermore to remove from the applicant an entitlement to see, prior to the decision of the RAC, all of the materials upon which the RAC might rely in coming to his or her view.

19. I should not leave a consideration of the statutory scheme without noting a curious feature of the current system (post 2003 Act). It would appear that where the RAT hears an appeal in a case to which s. 13(6) applies the only options open to the Tribunal are to allow the appeal or affirm the decision of the RAC. It does not appear that the case can be referred back to the RAC. This raises difficult questions as to the jurisdiction of the RAT in a case where there is a s. 13(6) finding which is based in material part on a view as to credibility. If the RAT feels, for example, that such a finding (i.e. a s. 13(6) finding) was not justified but nonetheless has doubts as to the credibility of the applicant the RAT cannot, apparently, conduct an oral hearing to satisfy itself on credibility. How should it then act. I would leave a consideration of this question to a case where it directly arises.

20. The effect of the above changes is aptly demonstrated on the facts of this case. In both cases the report in respect of each applicant made findings as to the credibility of the applicant, by reference to what it found to be inconsistencies between the accounts of the respective applicants as given both in the questionnaire and at the interview when compared with so called country of origin information. In both cases the relevant country of origin information was not supplied to the applicant. In those circumstances a significant ground for rejecting the application stemmed from the view formed by the RAC that both applicants accounts were inconsistent with Nigerian data which data was not put to either applicant and in respect of which neither applicant had any reasonable opportunity to proffer any explanation which they might have as to the applicability of the data concerned to their case.

**Section 13(6)**
21. The combined effect of s. 13(5) and 13(6) (as inserted by s. 7 of the 2003 Act) is to impose significant limitations on the extent of the appeal which will be available to an applicant to the Refugee Appeal Tribunal ("RAT") where, in addition to making a recommendation that the applicant concerned should not be afforded refugee status the RAC makes one of a number of specified findings.

22. The relevant sections provide as follows:-

> 13(5) Where a report under subsection (1) includes a recommendation that the applicant should not be declared to be a refugee and includes among the findings of the Commissioner any of the findings specified in subsection (6) than the following shall, subject to subsection (8) apply:-
>
> > (a) the notice under paragraph (b) of subsection (4) shall, notwithstanding that subsection, state that the applicant may appeal to the Tribunal under section 16 against the recommendation within 10 working days from the sending of the notice and that any such appeal without an oral hearing;
> >
> > (b) notwithstanding paragraph (c) of subsection (4) where the applicant has not appealed against the recommendation within 10 working days after the sending of a notice under paragraph (b) of that subsection, the Commissioner shall, as soon as may be, furnish the report under subsection (1) to the Minister.
>
> 13(6) the findings referred to in subsection (5) are:-
>
> > (a) that the applicant showed either no basis or a minimal basis for the contention that the applicant is a refugee;
> >
> > (b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
> >
> > (c) that the applicant, without reasonable cause failed to make an application as soon as reasonably practicable after arrival in the State;
> >
> > (d) the applicant had lodged a prior application for asylum in another state party to the Geneva Convention (whether or not that application had been determined, granted or rejected;
> >
> > (e) the applicant is a national of or has a right of residence in, a safe country of origin for the time being so designated by order under section 12(4)

23. The position is, therefore, that if the report of the RAC contains any of the findings specified in s. 13(6) any appeal from such finding will be determined without an oral hearing.

24. As has been pointed out, in both of these cases, the respective reports of the RAC under s. 13(1) contains a finding under s. 13(6)(a) to the effect that in the view of the RAC "the application showed either no basis or a minimal basis for the contention that the applicant is a refugee".

25. It is clear from a consideration of the operative part of the report in each case that the view of the RAC was to a significant extent based upon a general finding of lack of credibility in respect of the applicants, the lack of consistency, in the view of the RAC, of the accounts given by the respective applicants with certain country of origin information and the view of the RAC that the applicants could have availed of the option of relocation within Nigeria in all the circumstances of the case.

26. Against that background it is necessary to assess whether the statutory regime as it now stands is fails to comply with the principles of constitutional justice.

27. In *Nguedjdo v. Refugee Appeals Commissioner* (Unreported, High Court, ex tempore judgment of White J. 23rd July, 2003) this Court made an order granting leave to seek an order of certiorari quashing the decision of the RAC in that case on the basis that same was made in breach of constitutional and natural justice by virtue of the failure to give the applicant concerned the opportunity to deal with matters which would appear to have been crucial to the determination in the case then under consideration. In applying that principle to a decision of the Refugee Appeals Tribunal in *Idiakheua v. The Minister for Justice Equality and Law Reform and Another* (Unreported judgment of Clarke J. 10th May, 2005), I said the following:-

> "It seems to me that an inquisitorial body is under an obligation to bring to the attention of any person whose rights may be affected by a decision of such a body any matter of substance or importance which that inquisitorial body may regard as having the potential to affect its judgment. In that regard an inquisitorial body may, in many cases, be in a different position to a body which is simply required to adjudicate upon the contending positions of two competing parties in an

adversarial process. In the latter case the adjudicator simply decides the issues on the basis of the case made whether by evidence or argument by the competing parties. However the principles which have been developed by the courts since the decision of the Supreme Court in *Re Haughey* [1971] I.R. 217 are equally applicable, in principle, to inquisitorial bodies. The precise way in which those principles may be applied may, of course, differ. However the substantial obligation to afford a party's whose rights may be affected, an opportunity to know the case against them remains. In those circumstances it seems to me that whatever process or procedures may be engaged in by an inquisitorial body, they must be such as afford any person who may be affected by the decision of such body a reasonable opportunity to know the matters which may be likely to affect the judgment of that body against their interest. In the course of argument in this case it was suggested on behalf of the RAT that it would be inappropriate for the Tribunal either to direct the line of questioning which should be adopted on behalf of the Commissioner or to engage in questioning itself (on the grounds that such questioning might give rise to an appearance of bias). I am afraid I cannot agree.

If a matter is likely to be important to the determination of the RAT than that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal member is considering his or her determination an issue which was not raised, or raised to any significant extent, at the hearing appears to the Tribunal member to be of significant importance to the determination of the Tribunal then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford the applicant an opportunity to deal with it. This remains the case whether the issue is one concerning facts given in evidence by the applicant, questions concerning country of origin information which might be addressed either by the applicant or by the applicants advisors or, indeed, legal issues which might be likely only to be addressed by the applicant's advisors".

28. While *Idiakheua* was also a leave application so that only issue was as to whether the applicant had satisfied the court that there were substantial grounds for any of the propositions relied upon, I am satisfied that the above represents an appropriate principle by reference to which the procedures of inquisitorial bodies should be judged so as to determine whether such bodies have complied with the principles of constitutional justice in cases where an obligation to act in accordance with those principles applies.

29. While it is true to state that an applicant in the refugee process has the opportunity to appeal a recommendation of the RAC to the RAT it is clear that, since the enactment of the 2003 Act and in cases where the findings of the RAC contain, as here, one of the findings specified in s. 13(6), the applicant concerned is deprived of the opportunity of an oral hearing on such appeal.

30. The combination of the legislative position brought about by the 2003 Act and the procedures followed has led, on the facts of this case, to the following sequence of events.

1. In each case the applicant has had his or her claim to refugee status rejected at least in significant part on the basis of a finding of lack of credibility.

2. The lack of credibility in each case was at least in significant part influenced by the fact that assertions made by each of the applicants were, in the view of the RAC, contradicted by country of origin information.

3. Prior to the making of that determination by the RAC none of the applicants had had the fact that it might be contended that their assertions were contrary to such country of origin information brought to their attention nor, indeed, was the relevant country of origin information itself brought to their attention.

4. As a result of the decision by the RAC (at least in part based upon the above factors) to go further and find that the case was one to which s. 13(6)(a) of the Act applied (that is to say that in each case "the application showed either no basis or a minimal basis for the contention that the applicant is a refugee") the applicants concerned will not have the opportunity to have their credibility assessed again by the RAT at an oral hearing where they will be given the opportunity to attempt to persuade the RAT as to their credibility in the light of any contended for contradiction between their claim and country of origin information.

31. It seems to me that that the above sequence of events demonstrates clearly that the procedures followed are in breach of the fundamental principle set out in *Haughey* to the effect that a person is entitled to know the case against them.

32. Whether the absence of some of the above elements might be sufficient to save the procedure from being inconsistent with the principles of constitutional justice is a matter which I would leave for determination to an appropriate case. I therefore express no view on the question as to whether the procedures now mandated by s. 13 (as amended) would be inconsistent with the principles of constitutional justice in a case where the report of the RAC made no finding in respect of any of the matters specified in s. 13(6) so that the applicant concerned would have the opportunity to have a full oral hearing before the RAT at a time subsequent to the receipt by them of all of the relevant materials which were likely to be relied on at such a hearing. Nor does it necessarily follow from the view which I have expressed above that the relevant procedures would be inconsistent with the principles of constitutional justice in cases where the view taken by the RAC so as to bring the application within the ambit of s. 13(6) was not one based upon the credibility of the applicant but rather was based on, for example, a finding under s. 13(6)(d) that the applicant had lodged a prior application in a Geneva Convention country or that the factual grounds put forward by the applicant concerned were not such that even if accepted same would give rise to a finding consistent with the granting of refugee status. In many such cases the applicant might not be said to be at any impermissibly distinct disadvantage in not having the opportunity to have an oral hearing. Neither might, in such cases, all of the materials before the RAC be relevant to its determination.

33. For the purposes of this case it is only necessary for me to find, as I do, that where a report of the RAC contains a finding in relation to one of the matters specified in s. 13(6) so as to deprive the applicant concerned of an oral appeal in circumstances where that finding is at least in material part influenced by a finding of lack of credibility on the part of the applicant concerned, it is necessary, in accordance with the principles of constitutional justice, that prior to the making of any such recommendation including any such finding the RAC will have afforded the applicant concerned the opportunity to deal with any matters which might influence such adverse credibility finding.

34. This leads to the question of whether it is possible to construe the Refugee Act in its current form in a manner which would permit such a procedure to be followed.

35. In my view it is. As I pointed out in *Idiakheua* there may be situations where a decision maker in an inquisitorial process is obliged to bring matters to the attention of a party whose rights may be affected even after the ordinary course of the inquisitorial process has, apparently, come to an end where some matter comes to the inquisitors attention (or indeed where a matter which was

tangentially referred to during the process looms larger in the mind of the decision maker as he or she contemplates making the decision concerned). Fair procedures may require that the person whose rights may be affected by the decision should be given an opportunity to deal with the matter concerned.

36. Subject to one issue of construction, to which I will turn in early course, there is no reason in principle why the RAC could not, in an appropriate case, bring such matters to the attention of the applicant in circumstances which would permit the applicant a reasonable opportunity to deal with same. I should again emphasise that I am here dealing only with a case, such as this, where the RAC is contemplating making a finding under s. 13(6) which is based at least in material part on a credibility finding adverse to the applicant and where that credibility finding is, itself, based at least in material part on a consideration of materials which were not available to the applicant.

37. The question of interpretation to which I have referred concerns the interaction of s. 13 and s. 11(2). Section 11(2) deals with the manner in which the RAC is required to conduct an investigation into an application for the purposes of ascertaining whether the applicant is a person in respect of whom a declaration as to refugee status should be given. The section provides that an authorised officer or officers of the Commissioner should, on a direction from the Commissioner, interview the applicant concerned and report thereon.

38. As has been pointed out above the former provisions of the 1996 Act concerning the supply of relevant documentation have been repealed and replaced by an obligation under s. 13(10) which makes it clear that the obligation to supply such documentation only arises after a report under s. 13(1) has been made (because the documentation is only required to be supplied where the s. 13 report includes a recommendation that the applicant should not be declared to be a refugee – a fact which will not be known until such time as the decision of the RAC is made). However the Act does not preclude some or all of that information being made available to an applicant at an earlier stage. It seems to me, therefore, that in any case where it is necessary, so as to comply with the principles of natural justice, that some or all of the relevant information must be supplied to an applicant at a time prior to the RAC reaching its conclusions then same can and should be done. In that regard I have had some minor difficulty with the fact that s. 11(3) refers to the consideration of representations "made before or during an interview under subs. (2)". On one view that section might be taken to mean that the process is at an end once the first interview under s. 11(2) has taken place. If that were to be the case then, it might be said, there is no statutory entitlement to re-open the matter where the authorised officer of the RAC is minded to question the credibility of the applicant by reference to materials that were not referred to at the interview and in circumstances where the RAC is likely to consider making a finding under s. 13(6). However that seems to me to be an unduly narrow construction of the section. There is no reason in principle why the interview required by s. 11(2) cannot be reconvened. Indeed for the reasons which I set out in *Idiakeua* there many well be circumstances where it might be said that there is an obligation to reconvene such an interview.

39. In those circumstances it does not seem to me that there is any statutory prohibition on the RAC from reconvening such an interview in circumstances where, in the light of the consideration which the RAC is giving to the recommendation which it might make in respect of the application, it is necessary so to do to afford the applicant concerned the opportunity to deal with matters concerning that applicant's credibility which are such that they might give rise to a finding under s. 13(6). It should be noted that nothing in what I have said imposes an obligation on the RAC to make all of the documentation referred to in the legislation available prior to making its decision. That obligation (that is to say the obligation in respect of all of the documentation) is governed by s. 13(10). This judgment simply requires that in the cases to which it is specifically applies (i.e. cases where it is contemplated that a s. 13(6) finding may be made on the basis of a lack of credibility which is in turn influenced in material part by a consideration of materials not available before or raised at the interview) there is an obligation to reconvene the interview and give the applicant concerned a reasonable opportunity to deal with the material that may give rise to such an adverse finding.

40. It is clear that no such opportunity was given in this case. The fact that the issue of the reasonableness or otherwise of the applicants seeking the protection of the Nigerian State was, to some extent, raised at the interview was not, in my view, sufficient. The decision of the RAC was specifically based in material part upon the finding that the explanations given by the applicants for not seeking protection were not to be regarded as credible because, in the view of the RAC, those explanations were inconsistent with country of origin information. The applicants were not given an opportunity to deal with that country of origin information. There was a fundamental unfairness in making an adverse credibility finding with significant adverse consequences in circumstances where the applicants did not have that opportunity.

41. Being satisfied, as I am, that appropriate procedures could have been applied consistent with the statute so as to afford the applicants such an opportunity I am, therefore, satisfied that the RAC was in breach of its obligations to conduct its investigation in conformity with the principles of natural justice on the facts of this case and, as a consequence, it seems to me that the decision of the RAC must necessarily be quashed.

42. In those circumstances the constitutional issue does not appear to me to arise.

43. As one likely consequence of my decision to quash the determination of the RAC is that the matter will return for a proper consideration and investigation by the RAC it seems to me that it would be inappropriate for me to embark upon a consideration of the merits or otherwise of the specific issues concerning the facts which were raised by the applicant as an alternative ground.

44. While the independent ground raised on behalf of Suzan does not arise as she must obtain the benefit of the determination in respect of Adetoun Moyosola I do propose to deal with it. It is clear that where an application of a child for a declaration in respect of refugee status is treated as being part of an application made by a parent or guardian, the application of the minor concerned is entitled to proper consideration. The extent to which it is necessary to give a detailed separate consideration to the position of such child is a matter which depends on the facts of each individual case. There may well be cases where, even on similar facts, it would be necessary to give additional consideration to the position of a child not least because of the potential additional vulnerability of children.

45. However where, as have, the specific ground upon which it is asserted that the child may be persecuted, i.e. the risk of female genital mutilation, is itself, and in respect of the child concerned, a ground advanced for the well founded fear of her parent (in this case her mother's fear that she (Suzan) will be subjected to female genital mutilation) it does not seem to me that there is any basis for requiring a separate detailed consideration. If there was a sustainable finding of the RAC to the effect that Adetoun Moyosola did not have a well founded fear of persecution in the form of a risk of female genital mutilation to her daughter Suzan then it would equally follow that there was a sustainable basis for making the same finding in respect of Suzan herself.

46. As already indicated there is not a sustainable finding adverse to Adetoun Moyosola and that decision applies equally to Suzan. I am not satisfied that Suzan has, however, an independent ground in addition to that sustained in the case of Adetoun Moyosola.

That being said I am of the view that it would be far preferable if the Section 13 Report (or decision of the RAT) in cases involving a minor made clear the basis upon which the decision maker reached conclusions as to the minor concerned so as to enable the court to determine, in the event of review being sought, the additional considerations (if any) which were applied in the case of such minor.