

# **Asylum and Immigration Tribunal**

PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046

## **THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> November, 2008  
And on 7<sup>th</sup> January, 2009  
And on 13<sup>th</sup> January, 2009**

**Before**

**Senior Immigration Judge Chalkley  
Senior Immigration Judge A Jordan  
Mrs M L Roe**

**Between**

**PO**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

### **Representation:**

For the Appellant: Ms P Chandran of Counsel instructed by Wilson & Co

For the Respondent: Mr E Tufan, Home Office Presenting Officer

- (1) *In general terms, women and girls in Nigeria do not face a real risk of serious harm from human traffickers, but the risk is heightened for females under 40 years of age living in suburban areas with a poor level of education. However, where it can be shown that an individual does face a real risk of being forced or coerced into prostitution by traffickers, the issue of whether she will be able to access effective protection from the*

*authorities will need to be carefully considered in the light of background evidence.*

- (2) *There is in general no real risk of a trafficking victim being re-trafficked on return to Nigeria unless it is established that those responsible for the victim's initial trafficking formed part of a gang whose members were to share in the victim's earnings or a proportion of the victim's target earnings in circumstances where the victim fails to earn those target earnings. It is essential that the circumstances surrounding the victim's initial trafficking are carefully examined.*

## **DETERMINATION AND REASONS**

1. The appellant is female, a citizen of Nigeria and was born on 5<sup>th</sup> July, 1979. She appeals against the decision of the respondent, taken on 19<sup>th</sup> April, 2005, to direct her removal as an illegal entrant.

### **Immigration history**

2. This appeal has a lengthy history. The appellant entered the United Kingdom on 10<sup>th</sup> January, 2005, and claimed asylum on 1<sup>st</sup> April, 2005. The appellant travelled to the United Kingdom with a "Mr Osagie" who, unbeknown to the appellant at the time, brought the appellant to the United Kingdom for the purposes of working as a prostitute. Mr Osagie retained the appellant's passport, which he had obtained in her name and which included a visa for the United Kingdom. She is an orphan who had been cared for by her aunt "Becky" for whom she had worked since the age of 12, selling water in her home city, Benin City, Edo State.

### **Basis of the appellant's claim to asylum**

3. The appellant met Mr Osagie who, like the appellant, lived in Edo State and she sometimes met him at her church, although, when there was no Sunday church service, he used to visit her. He was, apparently, well-known in Benin City and he told her when they arrived in the United Kingdom that he was bringing girls into the United Kingdom for prostitution. He had previously told her that he was a businessman in Nigeria and persuaded the appellant to travel to the United Kingdom, because he had promised her a job working in his factory in the United Kingdom.
4. The appellant fears return to Nigeria, because, she claims, she is at risk from people traffickers. She fears being re-trafficked,

either by the same people or by a different gang and also fears retribution from members of Mr Osagie's trafficking gang who, because the appellant escaped, will not have been paid for the various roles that they have played in her transportation to the United Kingdom. Additionally, the appellant believes that she would have difficulty in obtaining accommodation and employment and this would increase the risk to her from the people trafficking gangs.

### **Appeal history**

5. The appellant's appeal was first heard on 27<sup>th</sup> September, 2005, at Hatton Cross before IJ Malins. On 21<sup>st</sup> November, 2006, a panel of the Tribunal (Waumsley and Spencer SSJ) concluded that IJ Malins had materially erred in law in her determination and ordered a reconsideration hearing before a different Immigration Judge. In doing so, the panel decided that IJ Malin's findings of fact, recorded by her at paragraphs 12.1 and 12.2 of her determination, were to be preserved, *"unless further evidence emerges during the stage two reconsideration hearing which demonstrates that the appellant's account is not in fact true"*.
6. We have set out at paragraph 9 below, IJ Malin's findings at paragraphs 12.1 and 12.2 of her determination.
7. The appeal was then heard on 26<sup>th</sup> February, 2007 by IJ Elizabeth Grant. She dismissed the appellant's asylum appeal, humanitarian protection appeal and human rights appeal in a determination promulgated on 5<sup>th</sup> March, 2008. The appellant sought an order for reconsideration, which was refused.
8. The appellant subsequently appealed to the Court of Appeal. In granting leave to appeal on 24<sup>th</sup> October 2007, Sedley LJ said this:
  - "1. The appellant, represented today by Ms Chandran, is a young Nigerian woman who was brought to this country by a man who I think can be briefly and accurately described as a Nigerian gangster, for the purposes of enforced prostitution. After months of repeated rape she escaped and, with the help of the Poppy Project, sought refuge and protection here. Her reward has been the decision of the Home Office to send her back to Nigeria.
  2. An Immigration Judge (Mrs Malins) allowed her appeal, holding her entitled to both refugee and humanitarian protection. The Home Office's appeal to the AIT, however, secured a reconsideration on all issues except certain specified facts which had been determined by Mrs Malins in the appellant's favour. Although it now appears from the pink form (as it is called) that the reconsideration was formally directed to be before a panel of two Immigration Judges, one of them to be a Senior or Designated

Immigration Judge, in the event it was re-heard by a single Immigration Judge, Mr Grant (sic) who reached a decision opposite to that of Immigration Judge Malins.

3. This question of the constitution of the Tribunal, in my view, itself calls for investigation. In the reasons given by the judges conducting the first stage of the reconsideration decision, at paragraph 21, reference is made to 'a full stage II reconsideration before a different Immigration Judge' – which conflicts with the order itself to which I have referred. This is a matter which I think requires attention because it is arguable that if the direction was for a two judge panel, the single judge second-stage reconsideration was a nullity.
4. This is a ground which I have given Ms Chandran leave to add because it is only on the late disclosure of the pink form that it has come to her attention. But she seeks permission to appeal against the determination on a number of grounds, which I have to say at once Auld LJ, on consideration of the papers, considered to be no more than challenges to fact-finding in what was, for better or worse, a thorough and careful determination.
5. On renewal, however, Ms Chandran submits that her case is, in more than one respect, a viable legal challenge and not merely a dispute about the facts. The first ground is that the first stage Tribunal – having found two discrete errors of law, namely in relation to internal relocation and sufficiency of protection - ought to have limited the second stage to these two matters and not to set the whole case (bar the fact-findings in paragraphs 12.1 and 12.2) at large again. She cites in her skeleton argument sufficient authority in this court to give the point life, albeit it is a point which she has been able to take only (in relation to the other point) on sight of the pink form.
6. The submission which needs to be added to the grounds (and again, for which she needs and has my leave) is that the second Immigration Judge ought therefore not to have re-determined the issues of whether the appellant's fears were well-founded and whether she was a member of a particular social group, both of which had been determined in her favour and as to which no error of law had been found.
7. If the well-foundedness of the appellant's fears was legitimately before the second Tribunal, it is submitted that the Immigration Judge's decision on it is flawed by his failure to take into account the expert in-country evidence of Ms Olateru-Olagbegi, which had been accepted and accorded weight by the first Immigration Judge. This, too, with great respect to the contrary view of Auld LJ, I consider to be arguable as an issue of law and not merely of fact because it is evidence which is capable of having had a critical impact on the outcome. With it goes a submission that other in-country evidence going to the sufficiency of protection and emanating from the US State Department and UNHCR has also been ignored. There may, in my view, be substance in Ms Chandran's contention that the second Immigration Judge has cherry-picked unfairly among the in-country evidence to which he did give attention.
8. There are then submissions that the second Immigration Judge ignored relevant and undisturbed fact-findings made by the first Immigration

Judge; that he erred in his approach to the relationship of internal flight to the objective foundation of the fear of persecution; that his re-determination of the applicant's membership of a particular social group was deficient, and that evidence about her mental state and the impact on it of removal was dismissively treated by him. These submissions too appear to me viable; the remainder probably less so; but since they interlock I do not propose to sever any of them at this stage. It will be for Counsel to make the most realistic and economic presentation that she can of her points when the appeal, for which I propose to give permission, comes on.

9. There is, however, in my judgment, another reason for granting permission to appeal. This woman was brought to this country by a criminal who should not have been allowed in, and was compelled by force to provide sexual services to men living here. Her reward, now that she has finally escaped, is to be returned to a country where she will certainly be without social or familial support, will be expected to move to a strange region and to try to find work there and might still be at risk from the same predator. Some might think she is owed better than this. This court is not a court of morals, but is a court which, in my view, will want to look with great care at an outcome such as was arrived at here by a single Immigration Judge in sharp contrast to that of another Immigration Judge and at a hearing which it appears was intended to be conducted by a two-judge panel, one of them senior in status.
10. I would add this. The test applied by the second Immigration Judge was the test of exceptionality which is now known to be an incorrect application of Article 8(2). Although this error was not at present one of Ms Chandran's grounds, it may be that the moral case which I have mentioned would have been accorded rather more weight if the correct exercise of assessing not exceptionality but proportionality had in fact been gone through. This too may deserve attention."

9. By order dated 7<sup>th</sup> January, 2008, Laws LJ ordered that IJ Elizabeth Grant's determination should be set aside. In a Statement of Reasons it appears that the order of the Court of Appeal was by way of consent of the parties. Paragraphs 5 and 6 of the Statement of Reasons say:-

"5. The parties are agreed that the determination of 5<sup>th</sup> March 2007 is flawed, insofar as the findings on the issue of sufficiency of protection and internal relocation were insufficiently clearly reasoned. It is further agreed that the issues of:

- a. whether or not the appellant would be exposed to a real risk of persecution from her former trafficker in her home town; and
- b. whether the appellant was a member of a 'social group'

had been determined in the appellant's favour by the first Immigration Judge and were not matters which fell to be reconsidered at the second stage.

6. The parties are therefore agreed that the matters for re-determination on remittal should consist of:-
  - a. whether or not the Nigerian authorities could offer a sufficiency of protection to the appellant, whether in her home town or elsewhere in Nigeria;
  - b. whether internal relocation would be unduly harsh;
  - c. whether the appellant's claim under Article 8 and/or 3 should succeed, including whether the medical statement issues raised by the appellant entitle her to succeed under these provisions.
7. It is further agreed that the AIT's findings at paragraph 12.1 and 12.2 of the first determination of 10<sup>th</sup> October 2005 should stand in any reconsideration hearing. In addition, the evidence of Ms Hove (paragraphs 11, 12, 13, paragraph 20 – excluding the last sentence of that paragraph – and paragraph 27), in the re-determination of 5<sup>th</sup> March, 2007 should also stand, to avoid the need for Mrs Hove to have to give evidence for a third time.
8. The AIT is requested to give further consideration to the listing notes of 21<sup>st</sup> November 2006 from Senior Immigration Judge Waumsley, which advised that the reconsideration hearing should take place in front of a two Judge panel, including one Senior Immigration Judge or one District Immigration Judge (sic)."
10. It is necessary to set out the findings of IJ Malins at paragraphs 12.1 and 12.2 of her determination, because they have been preserved. They are as follows:-

**"12.1 Credibility**

I found the appellant to have been a credible witness and accept almost all her evidence. It is common ground that she was trafficked from Nigeria to the UK for sexual purposes and there is nothing in the appellant's evidence, nor the supporting expert evidence, which is inconsistent with this situation.

I also accept that from the seriously disadvantaged position of an escaped penniless victim of trafficking in a foreign country, the appellant faced a desperate challenge surviving at large in the UK, until she was befriended by the impressive Polly Project. It may be that the sheer desperation inherent in the appellant's position, explains the only section of the appellant's story which I have difficulty in accepting – namely, her detailed account of her treatment by Leeds Police. But this is no core issue.

Having accepted the appellant's 'status' as a trafficked woman, I must now determine whether in Nigeria, she faces a serious possibility of persecution for a Convention reason in the event of her return and further, whether there is a real risk of Article 3 or 8 harm befalling her in Nigeria, in that event.

To assist in reaching my conclusions, I first make some relevant findings of fact:

## 12.2 Findings of Fact

- (a) I find that the appellant is a woman of 26, of basic education and no qualifications. She gave me the impression of being meek, vulnerable and generally unable to cope with the harsh situation in which she finds herself and possibly, too, with situations less harsh;
- (b) the appellant has no family at all in Nigeria. Her father died before she was born and her mother in childbirth. There are no siblings;
- (c) the appellant came willingly to the UK in total ignorance of the true purpose of her journey arranged by Mr Osagie but rather, expecting to secure mainline employment to improve her life and that of Aunt Becky – then still living;
- (d) that consequently, the appellant did not flee Nigeria due to having there, a well-founded fear of persecution. She is accordingly, if a refugee, a refugee *sur place*;
- (e) that the man who so efficiently arranged the appellant's trafficking, is a professional violent criminal with a power base in Nigeria and probably in the UK and with easy ingress to and egress from the UK – however arranged. The report of Ms Bisi Olateru-Olagbegi LLB., MCI.Arb (UK) contained the following opinion on Mr Osagie, relevant to his profile:-

*'[P's] description of her trafficker fits the description of traffickers generally, as they usually pretend to be wealthy by wearing heavy and expensive jewellery and parading in posh expensive cars. It is common knowledge in Nigeria that wealthy people wield power and sometimes have security men with or without uniforms. Consequently, [P's] account of the profile of her trafficker with bodyguards is very plausible. In any case, traffickers, especially for international trafficking, usually move with syndicated gangs with different categories of criminal players. For example, different actors are involved in recruitment, forging of travel documents, facilitating issuance of visas or accompanying the trafficked victims.*

*The traffickers who actually accompany victims, usually have some clout so facilitate their passage through immigration both in Nigeria and foreign countries. Therefore, I am of the opinion that [P's] trafficker, who in fact accompanied her to Manchester, must be a wealthy man with a significant amount of influence and clout.'*

11. It is also necessary for us to have regard to paragraphs 11, 12, 13 and paragraph 20, (excluding the last sentence of that paragraph) and paragraph 27 of the determination of IJ Grant. Those paragraphs stand, in order to avoid the need for Ms Hove

to give evidence for a third time. Those paragraphs are as follows:-

“11. I heard evidence from Ms Silva Hove of The Poppy Project. Ms Hove adopted her witness statement which can be found at page 3 of bundle D. In her witness statement Ms Hove states as follows:

- ‘1. *I make this statement in support of [PO’s] application for asylum.*
2. *I refer to my previous statement of 27/09/05 for details of my involvement with the appellant. The purpose of this witness statement is to provide the court with an update of the appellant’s case since my witness statement of 27/09/05 was submitted to the court.*
3. *I see [P] at least once a month and speak to her on the phone every two weeks. Further [P] knows she can contact me whenever she needs anything. Recently with her medical problems and her hospital appointments I have been seeing her more regularly.*
4. *[P] attempted to have counselling again with WAGM, in November 2005. Unfortunately this again was too upsetting for her and also she began to have serious problems with her health. I know that she was suffering from continuous bleeding and she was taken to hospital on two occasions in an ambulance in February and March 2006. She was subsequently diagnosed with suffering from fibroids. As a result [P] told me she did not wish to continue counselling as it was getting too much for her. In addition her health problems were causing her great distress and actually making it physically difficult for her to attend her counselling sessions. In my view this made her reluctance to attend counselling perfectly understandable.*
5. *Further the difficulty in discussing past experiences is not uncommon amongst the women I have worked with especially when they feel unsettled. When there is an outstanding asylum application it is common for trafficked women to put their emotions on hold. It is as if they function on survival mode. Some women take up counselling at a later stage when they become more settled and they feel safe enough to discuss their experiences. It is not uncommon that at the point asylum or some kind of leave is granted, that women’s emotional issues surface as the worry of being returned home to a traumatic past often makes them put everything else on hold. Once this has been dealt with a woman is now able to express the suppressed emotions. Women at this stage require high level of support and assistance.*
6. *In terms of [P’s] emotional and mental state it remains precarious. She is still in my view operating on survival modes. After her operation in September 2006 to treat her fibroids she had expected to recover quickly and when the bleeding continued she was very distressed. The outstanding asylum matter is also causing her great distress. However [P] is making effort with her studies. She has obtained a mini IT qualification and she has enrolled on another course, English, Maths and IT. These are all positive steps that*



*help [P] not to dwell on her past but this is only a temporary measure. She can only truly get on with her life and begin her emotional healing once she has stability in respect of her immigration status.*

- 7. In terms of the police investigation the police were unable to conclude their investigation positively. Therefore [P's] file has been stored away and in the event that a similar case arises which provides more details about Mr Osagie and his associates then [P's] case can be re-investigated. It is common in trafficking cases for cases to remain unresolved until a further complaint is made where further information or details can be provided.[P] was very disappointed when she heard this news.*
- 8. Poppy supports victims of trafficking for as long as there are specialist needs related to trafficking. We conduct regular reviews every three months and we assess what provisions are required. Poppy Projects focuses on women who need a high level of support such as [P]. When this need subsides to a low level of care we have a resettlement worker who continues to support women until they access other local support services or have become more independent. This support diminishes according to the needs of our clients. In my view [P] still needs a great deal of support. As I explained earlier even if she is granted some kind of status leave in the United Kingdom [P] will likely require great support especially emotionally.*
- 9. I believe that it is highly likely that if [P] is returned she will be at serious risk not only from her trafficker but other traffickers who prey on vulnerable women. [P] is highly vulnerable as she has no family, no contacts and therefore no social network. She has never had a job independently. She has limited education.*
- 10. Moreover [P's] mental state and her physical problems make her even more vulnerable to exploitation and re-trafficking. [P] still reports that she has nightmares; she is easily startled and finds it difficult to cope with minor disturbances to her routine. [P] still finds it difficult to access support independently as she lacks confidence in herself – she easily puts herself down. All these are consistent with someone who has gone through a traumatic experience. These factors are highly problematic for her and make her an easy target for other traffickers. In my view these ongoing psychological effects would make [P's] return to Nigeria intolerable as they heighten the risk of her being harmed*
- 11. [P] will need safe accommodation and ongoing support in order to begin to live a normal life. Based on the information available to me from IOM London who we liaise with in arranging voluntary return the support for trafficking victims in Nigeria in my view is inadequate and not sufficient to protect [P] from being re-trafficked. Any support that's temporary is not sufficient as victims of trafficking suffer an extremely wide range of health problems of which many are severe and enduring. It is therefore essential for women to have the appropriate assistance and support available that fosters their well-being, independence and re-integration.'*

12. In evidence-in-chief Ms Hove was asked to explain what risks there were to the appellant if she was returned to Nigeria and Ms Hove was honest and candid in explaining that this depends on the support available to her on return because at the present time the appellant has not started dealing with any of her emotional problems and has stopped counselling and due to her physical health problems if she does not have adequate support this will increase her vulnerability and increase her risk of being trafficked. Ms Hove is only aware of what is available in Nigeria from conversations with IOM (the International Organisation for Migration) and they have told her that temporary accommodation is available but because of limited funding there is not always space as only two shelters are available. Ms Hove does not think the provision in Nigeria is adequate and she is basing her opinion on the information she has received from IOM. Because of the appellant's particular needs they have had to refer her to specialist doctors having to deal with so many things and because of this she has not started engaging with a counsellor to deal with her emotional problems and as a result Ms Hove believes she needs long term support of more than three to six months and where there is no outside support or only temporary support Ms Hove takes the view that she is more at risk on return.
13. In cross-examination Ms Hove confirmed that she had no expertise on risk on return for young women in Nigeria but was basing her comments on evidence to the Poppy Project on women they have worked with who have been re-trafficked and who have no-one to protect them in terms of family.
20. I have considered the submissions raised by the appellant's representative in seeking to distinguish JO [JO (internal relocation – no risk of re-trafficking) Nigeria [2004] UKIAT 00251] and I have also considered the appellant's claim in the context of the evidence given by Ms Hove. Ms Hove was candid and honest in her evidence before me that the Poppy Project have no particular experience of women returning to Nigeria and Ms Hove herself has no personal experience of returning women to Nigeria. She does have some general knowledge of re-trafficking through the work of the Poppy Project but nothing which is specifically relevant to Nigeria. She was genuinely concerned about the appellant's mental and physical health issues and the availability of adequate support for the appellant on return and was candid and honest in indicating in answer to a question as to the risks, if any, the appellant would face if returned to Nigeria that her answer would depend on the support available to the appellant on return because she has not yet started dealing with any of her emotional problems and has stopped counselling and her physical health problems mean that if she does not have adequate support this will increase her vulnerability and increase her chance of being re-trafficked.  
.....
27. Ms Hove of the Poppy Project has had conversations with IOM (an international organisation also referred to by the respondent in the refusal letter). Ms Hove was able to confirm what is already set out in the refusal letter and in the background material placed before me, which is that IOM operate two shelters for trafficked women in Nigeria. IOM have told Ms Hove that the accommodation available is inadequate and that victims of trafficking are only entitled to remain in sheltered accommodation for up to two weeks. The accommodation is temporary accommodation."

12. At the commencement of the hearing, the Tribunal clarified with Ms Chapman which of the documents quoted or referred to in the expert report of Ms Bisi Olateru-Olagbegi had been included within the bundle of background evidence and which had not. She agreed to provide the Tribunal with copies of those documents that had not been included. We pointed out to her that in paragraph 11 of the determination of IJ Grant, Ms Sylva Hove's statement makes reference to an earlier statement. Ms Chandran confirmed that the earlier statement was included within the bundle at page 24. She confirmed also that copies of all medical reports prepared in respect of the appellant had been reproduced and started at page 111 of the bundle. The 2008 United States Trafficking People Report was in the bundle, although the 2007 bundle was not. Ms Chandran advised the Tribunal that a copy of the Home Office Operational Guidance Note on Nigeria was in the second bundle at pages 136 to 142.
13. Mr Tufan advised us that he had only been served with the bundle the day previously (as, it transpired, had the Tribunal), despite the fact that clear directions had been issued several weeks previously. The Tribunal agreed that, if necessary, it would allow additional time for him to digest it before making submissions.

### **Oral Evidence of Ms Bisi Olateru-Olagbegi**

14. We then heard oral evidence from Ms Bisi Olateru-Olagbegi. The witness was in Nigeria and a telephone link had been established to enable a conference call to take place in the British High Commission in Lagos. The Chairman ensured that Ms Olateru-Olagbegi was able to hear the Tribunal properly and she agreed to let the panel know if she had any difficulties at any time.

### **Evidence in chief**

15. Ms Olateru-Olagbegi confirmed her full names and that she was employed as an executive director of the Women's Consortium of Nigeria (WOCON). She explained that she had qualified as a solicitor to the Supreme Court of Nigeria in 1976 and was a Member of the Chartered Institute of Arbitrators in London. She confirmed that she had prepared reports in respect of the appellant. The first report was at page 70 of tab B of the appellant's bundle and was dated 7<sup>th</sup> July, 2005. The second report was at page 80 of tab B of the appellant's bundle and was dated 26<sup>th</sup> July, 2005. Her most recent report was reproduced at page 193 of the bundle and was dated 11<sup>th</sup> September, 2008.

16. The witness confirmed that she had read her most recent report and that she did not wish to alter or amend it, or any of the earlier ones.
17. Counsel referred the witness to her most recent report and, in particular, to paragraphs 2.1.5 and 2.1.6 of it. She agreed with the quotation from the Norwegian Fact-Finding Mission to Nigeria of March 2006 when it referred to trafficking and human smuggling gangs being notoriously "*loosely organised*". She also agreed with the Nigerian Report when it referred to the fact that the networks are, "*often very efficient*" and this made it more difficult for the police to fight crime. She suggested that the issue of trafficking is an emerging issue in Nigeria and the reality is that the police simply do not know how to tackle crime. They find it extremely difficult to prosecute traffickers. She emphasised that trafficking networks comprise teams of different people, each of whom perform a different role within the group, such as photographers, forgers and those responsible for transporting people across the borders.
18. In referring to paragraph 2.2.1 of her most recent report, the witness explained that there were complex reasons for what she had described as being, "*the alarming growth of the phenomenon of human trafficking in Nigeria*". Undoubtedly, the economy features large, as does globalisation; everyone is trying to move to better their prospects. A third reason is gender; victims of trafficking are invariably women because of endemic discrimination within Nigeria. The majority of women suffer discrimination and this discrimination in society makes them more vulnerable to exploitation than males. Finally, she suggested, there has simply been no effective implementation of the laws and strategy against trafficking, partly because of the inability to arrest those involved; partly because the victims are offered no effective protection to prevent re-trafficking; and lastly because there are no effective measures to prevent those at risk from being trafficked in the first place.
19. Ms Olateru-Olagbegi explained that the Nigerian police simply have an inability to arrest people traffickers. They are ill-equipped and the ordinary policeman on the street is not aware of any trafficking laws in Nigeria. It is only those members of the Anti-Trafficking Unit who have any semblance of understanding in the law.
20. Ordinarily, in Nigeria when it comes to crime, the police are simply inefficient. Crimes against highly placed personalities, such as murders, are simply not detected. For example, the Attorney General and Minister of Justice was murdered, as was

the candidate for the Governorship of Lagos State, but she explained, no one was ever arrested or prosecuted.

21. The position deteriorates, as Ms Olateru-Olagbegi suggested, in relation to women. This is because of the general discriminatory attitude in Nigerian society. The police treat crimes against women with gender bias and levity, simply because the crimes involve women. The police themselves are widely corrupt and wealthy criminals can and do use their influence with the police. Women are poorer than the perpetrators and whoever is wealthier comes out better. This is a finding of fact, she said, by the United Kingdom, Danish Fact-Finding Mission referred to in paragraph 2.3.2 of the latest report, where the Mission said, *"Any prosecution which is brought as a result of police action will invariably be in favour of the wealthier party to the complaint."*
22. Counsel then referred the witness to what she had said in her report, concerning the availability of shelters for the victims of human trafficking at paragraph 2.2.3. The witness agreed that there are seven shelters, but, she said, not all of them are operational. The only operational ones are those referred to in the latest report. The other shelters are only just beginning and not operational. The witness knows this from her own personal knowledge, because she has visited them. Her organisation works closely with Nigeria's National Agency for the Prohibition of Trafficking in Persons (NAPTIP). The only shelters are in Lagos, Benin and Abuja.
23. Ms Olateru-Olagbegi confirmed that she was involved in the preparation of the UNESCO Report at page 89 in the appellant's bundle. Page 93 of the bundle confirms that the Policy Papers for UNESCO (which the witness was involved in) were validated in Lagos in 2005. The Danish Report of April 2008 at page 223, confirms that her organisation was consulted by the delegation.
24. The witness confirmed that she did not believe that the appellant would obtain any protection from her traffickers in her home area of Benin. The shelter is smaller and run very much like an institution. Inmates are restricted in their movements and cannot leave the shelter. They are only permitted to stay for a maximum of between two weeks and one month. The witness explained that the NAPTIP shelters offered more in the way of protective custody for inmates.
25. She confirmed that human traffickers operate in and around Benin for the purposes of finding victims. The facilities offered at shelters are minimal. There are no psychiatric facilities or medical counselling and some of the shelters offer courses, but

not necessarily those appropriate to offer training for work which would generate income for the victims. In any event, NAPTIP has limited prospects. Because the number of victims is simply not known, NAPTIP have no idea when the number of places in the shelters on offer to victims is exceeded and it becomes a strain on the government; when the budget is spent, that is it.

26. Many of the victims do not wish to stay in shelters and at least two girls have jumped boundary fences to escape. The shelters operate very much like a boarding house and the inmates do nothing and simply sit around all day. Because of the bad past experiences which of them have had, they believe that they are still being further imprisoned.
27. For this appellant the shelters would not offer her protection. Now that she has a baby, she would not be accepted in a shelter because, as far as Ms Olateru-Olagbegi is aware, they do not have facilities for the care of babies. She did not believe that the appellant would be safe in her home area, because her local shelter is in Benin and it is easy for traffickers to find her there, because they operate there. Over the last three years Ms Olateru-Olagbegi did not think anything has changed, or the risk to her from them had diminished, because the gang who were involved in trafficking the appellant were not able to maximise their profit and recoup the £50,000 which she was supposed to make before she escaped. As long as members of the gang have not received the money they expected to make from her, then she is at risk from them. Now she has a baby and is older the position is not changed. She was trafficked when she was 25 or 26, but 29 is not a hurdle to being trafficked. Forty year old women are trafficked. The appellant will be at risk whatever age she is, 18, 29 or 40. If she fits the picture of those who can make money, she is at risk, said Ms Olateru-Olagbegi.
28. The witness was then referred to paragraph 2.2.8 of her report and, in particular, to the Committee of the Elimination of Discrimination against Women (CEDAW) Report on Nigeria, reproduced at page 204 of the appellant's bundle. The provisions relating to the protection of victims are simply inadequate. The findings have been quoted in other NGO Reports. The witness agreed that she chaired the Review Committees of the NGO Reports.
29. Ms Olateru-Olagbegi said that there is no long term, or adequate, long term protection, available for the appellant throughout Nigeria, or in Benin itself. There has been no significant change in the situation since 2005. For those less

privileged, there are no shelters and no social security. No adequate protection is offered by the police from violence and there are no NGOs who can offer long term adequate protection for victims of violence either.

30. If the appellant were to avoid Osagie, the trafficker, in Benin, she would still be at risk from the network. If she has no immediate protection she would be homeless and if she becomes homeless, she would be at risk of being re-trafficked or of prostitution in order to survive. Given her circumstances, as an unskilled unqualified single mother with no family ties, she runs the risk of being homeless. It would be difficult for her to obtain accommodation, or the money to buy it. She would be homeless. As a single mother in Nigeria she would be regarded as someone who is promiscuous, because of gender bias. Nigerian culture expects every young woman to be living at home with her parents or guardians until she gets married. A single woman would not be offered accommodation, because she would be viewed as being a prostitute. She would have no adult male to pose as her husband or father and in order for her to obtain accommodation she would have to have an adult male, or she would be homeless.
31. On being referred to the appellant's certificate in IT, the witness suggested that the appellant may have a possibility of obtaining a job, but in Nigeria the rates of employment are very high and the employers always prefer males for job vacancies. She would have no family to introduce her to an employer and it would be difficult for her to find any employment without connections. Her computing certificate would not help her to obtain employment.
32. The victims of trafficking who return to Nigeria used to have to undergo HIV tests on arrival. This was because of the numbers of returnees from Italy, but HIV testing is no longer carried out. However, Ms Olateru-Olagbegi confirmed that this had not changed the stigma which society in Nigeria attaches to those returnees from abroad. When HIV testing was being undertaken, the public perception of returnees from Europe was that they were infected with HIV and were prostitutes. This, she suggested, would be the case in the appellant's case. She would be viewed with suspicion. If she were to need accommodation, then she would have to disclose her background. A landlord would want to know something about her background as a prospective tenant, to ensure that she was not involved with crime. The landlords of premises let to people involved in criminal acts are themselves at risk and they would want to avoid letting to somebody involved in criminal acts. She would invariably have to explain that she had returned

from Europe and that would be sufficient for her to be perceived as being a prostitute with HIV/AIDS. No one in Nigeria wishes to be associated with such persons.

33. In Nigeria people are dying from stigmatisation. People do not have access to help from hospitals etc and because of this they die of stigmatisation.

**Cross-Examination by Mr Tufan**

34. The witness confirmed that she went in search of Mr Osagie, but could find no trace of him. The difficulty she had was that she did not have his full name. "Osagie" is a common surname. The appellant's description of Mr Osagie fits so many people with that name in that church. Traffickers do, in any event, use pseudonyms and often use many different names. "Osagie" might not have been his real name. This witness did not know of the appellant's family friend, "Sarah".
35. At NAPTIP-run shelters, children from the age of 8 upwards are admitted Ms Olateru-Olagbegi said, if they are trafficked, but mothers who have babies are not accepted. They do not admit orphans. They do not have facilities for babies.
36. Victims of trafficking are offered protection by NAPTIP, but it is simply inadequate. It is stated at page 74 of the bundle, in the Danish Report, that victims actually leave the shelter before they can be certain to be out of danger, because many victims do not wish to stay. The same report, at page 76, reports that NAPTIP receive people at the airport. This is true, but they are only permitted to stay for two nights and then they are asked to leave.
37. The witness said that she was aware of the Committee for the Support of the Dignity of Women (COSUDOW) and knows Reverend Sister Florence, who in the Danish Report, suggests that victims are offered protection, but the shelter can only accommodate eighteen women. The shelter was opened in September last. They opened the shelter, because there had been a shelter for a couple of years, but there was no electricity there until September. They helped one or two girls prior to September, but they had no shelter until it opened recently. They now have a house but they have no facilities for babies and they do not offer inmates any mental counselling. They are hoping to improve the shelter.
38. The witness was referred to paragraphs 2.2.20 and 2.2.23 of her report and confirmed that, "Abbey" who was referred to in



paragraph 2.2.20 subsequently had to have her leg amputated. Another was buried alive; it is recorded in the newspaper.

39. Mr Tufan referred the witness to paragraph 2.2.24 of her latest report in which the Reverend Sister Florence admitted that she had no information about the killing of a victim by the traffickers in Nigeria. The witness explained that the last incident occurred in September, more recently.

#### **Re-examination by Ms Chandran**

40. Ms Olateru-Olagbegi confirmed that the COSUDOW shelter was non-functional until September 2008. The witness and Reverend Sister Florence did not give evidence together. The shelter was only formally opened in September, 2008. The Reverend Sister Florence says that she refers cases to the Anti-Human Trafficking Unit, but Ms Olateru-Olagbegi said that she had no evidence that this unit was able to offer any protection to the victims of trafficking. The case of a woman who was burned alive was treated as a victim of trafficking and it did not help her.

#### **Questions Put to the Witness by the Tribunal**

41. The Tribunal put several questions to the witness, in order to clarify her evidence.
42. The Lagos population was, she suggested, in the region of 20 million people. In Nigeria, women undertake all types of work, including shops and as street traders, carers etc. Women also work in executive positions, but the proportion of females compared to men, is much larger in the informal work sectors. Women account for only some 20% of the working population in executive positions.
43. The witness agreed that not every job would call for the appellant to produce a reference. She suggested that there were many homeless in Lagos and the additional problem for the appellant is that she does not know who is in the trafficking network that was responsible for bringing her to the United Kingdom. Most trafficking networks operate in Lagos. In 2002, Ms Olateru-Olagbegi met two trafficked women who had returned from Italy. On their return the traffickers were waiting and almost took them. The traffickers followed the victims to a trafficking shelter.
44. Ms Olateru-Olagbegi did not know how traffickers become aware that trafficking victims are being returned to Nigeria but, she said, they are well placed people who use bribery and

corruption and do become aware of the return of a trafficked victim. They follow up on the victim and know when the victim is being returned to Nigeria from abroad. Women are simply viewed as being a commercial commodity. They are not trafficked in groups or in large numbers; they normally are trafficked singly.

45. There were clinics in Lagos for the treatment of minor ailments and if a victim in a shelter needed to go to hospital, the shelter would provide the means to attend. The number of people trafficked in Nigeria is the most difficult thing to calculate because Nigerian records are so poor. The records showed that some 50,000 women were trafficked for sex during last year, Ms Olateru-Olagbegi added.
46. In the five years of action since the existence of NAPTIP, there have been over 200 arrests of suspected traffickers, but only 17 traffickers have been prosecuted.
47. This appellant runs the risk of falling into the hands of other members of the same group who trafficked her. The police do attempt to investigate crimes, but only if the victim agrees to pay the police a bribe. The police have no money, they have no equipment and they rely on bribes.
48. The shelters provided by other NGOs in Nigeria include one in Abuja, but they would not be able to give the appellant adequate protection. They would not be able to offer a full package of integration, long term with healthcare facilities. A trafficked person needs counselling as a result of the experiences she has undergone. They would not be able to offer halfway homes for two or three years. Two or three talks by an unqualified counsellor are simply insufficient.

#### **Further Questions Put by Ms Chandran**

49. The number of convictions for trafficking in Nigeria are negligible, said Ms Olateru-Olagbegi. She confirmed that Europe is the main place that people are trafficked to from Nigeria.
50. Ms Olateru-Olagbegi said that she understood that prior to the appellant's escape she was told by her traffickers that she would be made to earn £50,000 before she would be released. Since she has not made that money, she would, therefore, be at risk of re-trafficking from the same gang. Nigerian officials are complicit in re-trafficking. They are able to obtain visas and assist in the movement of victims across borders. This is an additional risk for the appellant. Ms Olateru-Olagbegi said that

earlier this year she met a Spanish returnee and while the returnee was still at the airport, a strange woman appeared and asked the returnee not to go with NAPTIP.

51. Returnees are documented by the Immigration Service who take their history and take all their records. There is complicity between traffickers and the Immigration Service. The Immigration Service in Nigeria is itself very corrupt.

### **Oral Evidence of the Appellant**

#### **Evidence in chief**

52. The appellant confirmed her full names and address and identified her signature at the foot of her witness statement at pages 20 and 22 of the bundle. She confirmed that the statement was true to the best of her knowledge.
53. Counsel indicated that the appellant was only relying on the most recent statement of the appellant and not her earlier ones.
54. The appellant confirmed that she had not had any contact with anybody in Nigeria since she left. Aunt's friend, Sarah, told her about her aunt's death. The appellant's son is now 14 weeks old. The appellant confirmed that she had no friends or accommodation that she can live with anywhere in Nigeria.

#### **Cross-examination by Mr Tufan**

55. The witness confirmed that she was now housed by NASS. She had been housed by The Poppy Project between April 2005 and June 2006. She confirmed that Mr Osagie never tried to contact her in the United Kingdom, but added that it was because he does not know where she is. He could, however, easily find her in Nigeria, because it is not like this country. The law in this country is strong, but in Nigeria the police can do nothing to stop him and he can buy them.
56. The appellant explained that she hid Sarah's telephone number by placing it in a tear in the seam of her jeans. It was not in her jeans pocket when she escaped, because she knew that she would be in trouble as soon as she arrived in the United Kingdom.
57. In Nigeria her aunt's house had been rented by her aunty, but the appellant did not know what had happened to it. The witness had not contacted Sarah since, although she did try to

call her three days after she left Osagie. She tried again two weeks later but was not able to get through. The appellant believed that Sarah might be frightened of traffickers herself.

58. The witness confirmed that in her most recent statement she refers to someone with a similar name having been arrested, but she did not believe that he was the same person. In Nigeria she studied for six years and completed primary school. She did not complete secondary school. Primary school is like nursery school here. She confirmed that her aunt had been ill with cancer while she was in Nigeria. The appellant had been selling water for her aunt. That took care of them both.
59. When referred to the computer course she had undertaken, the appellant confirmed that it was a basic course but that she could not complete her studies. She went to several colleges but was told that she needed papers. She cannot do any further study because she does not have leave. She did Level 1 English and is trying to undertake level 2.

#### **Re-examined by Ms Chandran**

60. The piece of paper with Sarah's name on it was in her luggage when she arrived in the UK. During the first week Osagie started telling her about prostitution and on the fifth day the appellant removed the paper from her things. There was a split in the seam of her jeans and most of the time the piece of paper remained there. The appellant had it when she left Osagie's house and called Sarah three days later and two weeks later she phoned again and the phone went dead.
61. Her aunt rented the accommodation that they lived in in Nigeria and her aunt paid the rent. Her aunt did not pay the appellant anything for selling water; she did not earn any money. She handed over all the money she took from selling water to her aunt. Her aunt also sold water.
62. The appellant was a Roman Catholic when she was in Nigeria, but now she no longer practises. She did not know that she would be able to obtain help in Nigeria from the church, because that does not happen in Nigeria. She now attends a Pentecostal Church in the United Kingdom.
63. Between 2005 and 2006 she was receiving counselling, but had to stop it when she suffered from fibroids and was not able to leave the home since, she has given birth to her baby. She now regularly sees a health worker who comes once a week. The appellant has told the health worker about counselling and the health worker has called her recently to say that she would

provide the appellant with the telephone number of a counsellor.

### **Further Cross-examination by Mr Tufan**

64. Last year the appellant was being prescribed anti-depressant medication but she stopped when she became pregnant and has not resumed it. It was her first general medical practitioner who prescribed it. She has not seen a psychiatrist. There was no further re-examination by Counsel.

### **Oral Evidence of Nelda Johnson**

#### **Evidence in chief**

65. The witness is a senior support worker at the Poppy Project. She was referred to her statement at pages 42 to 53 of the appellant's bundle and confirmed that it was her signature at the end. She has read the statement recently and the contents are true. Ms Hale is now the team leader of the Acute Team at the Poppy Project. The Poppy Project accepts women needing both accommodation and support. The witness began working with the appellant in 2007. The appellant is on "step down support", because of the length of time she has received it. The witness and the appellant meet once a month face-to-face and at other times there is an out of hours service provided.
66. The witness has noticed a difference since working with PO (the appellant). A lot of pressures on the appellant have been brought about by a deterioration in her mental health. The Poppy Project has no control over NASS accommodation. PO's first accommodation was a one bedroom flat, provided by landlords who won a tender with NASS. They have since lost the tender. The appellant was then transferred to shared accommodation. The accommodation was inadequately maintained. The accommodation had rats and there were holes in the flooring and inadequate lighting. The appellant was moved to another property where she occupies a downstairs room. Unfortunately, it is tiny, comprising one room and this is impacting on her mental health because her property is in boxes piled together. She suffers from outbursts of crying and insomnia. She refuses to talk.
67. The witness confirmed that she only knows about the circumstances in Nigeria from the Poppy Project, Research and Development Team. From her own personal knowledge she has no information at all about people returned who were supported by the Poppy Project. Part of the Poppy Project function is to facilitate returns to other countries and in order to do this, work

with the International Organisation for Migration. IOM speak to victims and IOM then tell the Poppy Project if they have adequate information or not and about other facilities in the country of destination. If they do not, then the women are not returned. Nigeria is the second largest service user destination in relation to trafficked women. There are no returns there. The largest destination is Lithuania. There are no returns to Ukraine. The Poppy Project deals with a number of countries, at least 30.

### **Cross-examination by Mr Tufan**

68. The witness stated that she had referred in her report to the appellant having tried to attend short courses. Her report is correct. She would have to pay for the courses herself until she has leave to remain. There are, according to the Danish Report (page 48 of the appellant's bundle) numerous shelters available for trafficked women in Nigeria but they are not specifically reserved for trafficking victims. This raises doubts in the witness's mind as to whether or not there is adequate support for different client groups in one shelter. Within the Poppy Project there is one research worker dedicated to undertaking research about the countries with whom the Poppy Project is working. This is a permanent role. The Poppy Project is funded by the Office for Criminal Justice Reform.
69. In relation to education, generally asylum seekers are sometimes limited in the courses they can do if they do not have leave to remain. They may not be able to attend a course because they cannot pay the course fees. In the appellant's case, the appellant had difficulty in completing the course. She was suffering from fibroids and sometimes had to be taken by ambulance to hospital.

### **Questions put by the Tribunal in order to clarify the Witness's Evidence**

70. Each client is offered a "needs" assessment on the basis of an assessment of the availability of services in the country to which they are to be returned. Returns by the Poppy Project are voluntary returns. Clients are asked what they want. IOM help to set up loans, accommodation and jobs for people returning to their own country.

### **Re-examination by Counsel**

71. The witness believed that the appellant is a very vulnerable person. The appellant is unable to help herself and the witness has to ask for support for her. The doctor's report also causes

the witness to be concerned, because the Doctor raises concerns as to how the appellant will progress on her return to Nigeria.

72. At this stage the appeal was adjourned for lack of time until 7<sup>th</sup> January. Ms Chandran confirmed that there were no further witnesses.

### **Hearing on 7<sup>th</sup> January 2009**

74. The Tribunal pointed out that following the adjournment of the hearing on 6<sup>th</sup> November, 2007, a direction had been issued in the following terms:-

“The appellant shall, no later than 12<sup>th</sup> December, 2008, serve on the respondent and file with the Asylum and Immigration Appeals Tribunal full copies of all reports referred to or quoted by Ms Bisi Olateru-Olagbegi, unless full copies of such documents are already in the bundle prepared for the Tribunal at its hearing on 6<sup>th</sup> November last.”

75. The Tribunal enquired whether this direction had been complied with since it did not appear that any such documents had been submitted.
76. Counsel explained that her instructing solicitors had not forwarded a copy of the direction to her, but she said that the direction would be complied with this afternoon.
77. Ms Chandran then drew the Tribunal’s attention to the fact that the Presenting Officer, apart from submitting the Tribunal’s decision in FB (Lone Women – PSG – internal relocation – AA (Uganda) Considered) Sierra Leone [2008] UKIAT 00090 and a copy of the Country of Origin Information Report for Nigeria dated 5<sup>th</sup> December, 2008, had also submitted e-mail correspondence between the Presenting Officer and Mrs L N Oguejiofore, Director of Counselling and Rehabilitation at NAPTIP. Counsel explained that since the Presenting Officer had received the expert witness’s report prior to the hearing, any such enquiries with NAPTIP could and should be carried out prior to the hearing. As a result, Counsel submitted that if the Tribunal were minded to accept the e-mail correspondence from the Director of Counselling and Rehabilitation at NAPTIP, then, she submitted, the Tribunal also ought to consider and take into account an up-to-date witness statement by way of response, from Mrs Olateru-Olagbegi.
78. Mr Tufan explained that he had sought clarification from NAPTIP because, during cross-examination, it had been claimed by Mrs Olateru-Olagbegi that a person with a child would not be

admitted to a shelter in Benin. Counsel suggested that these points had already been made by the expert in her written report which was available to the Presenting Officer prior to the commencement of the hearing.

79. After adjourning briefly, we decided to admit the additional evidence on behalf of the respondent in the form of the e-mail correspondence with the Director of Counselling and Rehabilitation at NAPTIP, Ms L N Oguejiofore, and advised Counsel that we would also accept the expert's response, being a third addendum to her original expert report subject to the right of the Presenting Officer to re-examine the expert.
80. The Presenting Officer confirmed that he had no such application to make.

### **The evidence**

81. **Medical notes from Prime Care Forensic Medical with entries for 4<sup>th</sup> and 5<sup>th</sup> April, 2005**

Unfortunately the medical notes are handwritten and not entirely legible. They appear also to have been written in some form of "shorthand". However, an entry on 4<sup>th</sup> May, notes that the appellant complained of being subjected to torture by means of regular beatings and burning with cigarette ends. It also notes that the appellant has "voodoo marks". Scars were said to be visible on the appellant's left upper thigh and right buttock.

82. **Psychological Report by Dr Nicoletta Capuzzo 6<sup>th</sup> July 2005**

In this report, the author, a Chartered Psychologist specialising in Post-Traumatic Stress, reported that the appellant was suffering from Post Traumatic Stress and a Major Depressive Disorder. At paragraph 5 of her report, Dr Capuzzo said this:-

"5.01 The first issue was to assess [the appellant's] current mental state. Based upon my interview of [the appellant], my observation of [the appellant's] emotional and behavioural reactions to her experiences and from my experience of having worked with trauma survivors for an extended period of time, I am of the opinion that she presents with **Post Traumatic Stress Disorder**. In addition she presents with a major **depression**, which is moderate to severe in nature.

5.02 As I outlined in Appendix 2 above, both are recognised psychiatric disorders and are codified in the *Diagnostic and Statistical Manual*



*for Psychiatric Disorders iv* (DSM iv American Psychiatric Association, 1994).

- 5.03 Furthermore, I am of the opinion that [the appellant's] current psychological difficulties have originated from the traumatic events she had experienced in Manchester. Specifically her experiences of being repeatedly physically and sexually abused at the hands of Mr Osagie and his colleagues.
- 5.04 My opinion is based on the following facts: Firstly, as indicated in my curriculum vitae (Appendix 1), I have extensive clinical experience of working with survivors of trauma. In light of this I firmly believe that [the appellant's] verbal reports of the horrific events she experienced and her cognitive, emotional and behavioural reactions to these experiences are wholly realistic.
- 5.05 Secondly, as outlined in the research section of this report (paragraphs 3.04 to 3.10) the psychological difficulties with which [the appellant] presents are in accordance with the empirical literature for the development of PTSD and co-morbid problems (e.g. depression) with survivors of traumatic life events such [as] rape.
- 5.06 [The appellant] has yet to receive any professional help for her psychological difficulties. Although [the appellant] said that she finds it difficult to talk about her experiences due to painful memories and their associated distressing emotions, she felt that she would like some guidance in how to manage her difficult feelings and behaviour.
- 5.07 I would strongly recommend that she receives formal psychological intervention. Cognitive Behavioural Therapy (CBT) is seen as the treatment of choice for those who are suffering from PTSD and has recently been advocated in guidelines drawn up by the National Institute for Clinical Excellence (Department of Health and British Psychological Society, 2005).
- 5.08 Cognitive Behavioural Therapy is available on the National Health Service. Given that [the appellant] resides in East London and City Mental Health Trust she can be referred, by a Consultant Psychiatrist, to the Institute of Psycho-trauma, St Bartholomew's Hospital, William Harvey House, 61 Bartholomew Close, London EC1 7BE. This is a tertiary service which provides CBT to those who have PTSD as a result of a traumatic life event. An interpreter will be provided if a patient's first language is not English.
- 5.09 Briefly, treatment would last between ten and sixteen sessions and would focus on educating the patient about the nature of PTSD and its associated disorders, reconstructing negative appraisals of the trauma and its consequences and re-living and re-constructing traumatic memories through imaginal exposure.
- 5.10 It was evident from the interview that [the appellant] found it extremely painful to discuss her experiences of physical and sexual abuse. Firstly, discussing the past brought up painful memories

and overwhelming feelings, which she was unable to manage. Moreover, [the appellant] is ashamed of her experiences. She believes that perhaps she could have stopped her perpetrators from abusing her and perhaps she should have foreseen what would happen to her.

- 5.11 She said that she feels disgusted with herself (e.g. she cannot bear to look at herself in the mirror). She also believes that she is a “dirty and bad person”. [The appellant] said that she fears others will find out about her past and will also see her in a negative light. Consequently, she has refrained from discussing these events to others.
- 5.12 I am of the opinion that as a consequence of these beliefs [the appellant] found it difficult to independently disclose what had happened to her. This would have been particularly so had a man questioned her.
- 5.13 Throughout my clinical career of working with sexually abused women this is a typical clinical picture.
- 5.14 At the time of my interviewing [the appellant] she had yet to undergo an HIV test. She told me that she was afraid of what the results would show. She added that if she had HIV this would indicate how disgusting a person she was.
- 5.15 Since my interviewing [the appellant] she has plucked up the courage to be tested for HIV. The results have yet to be confirmed. However, given her current mental state, I am concerned that a positive result would compound her psychological state. Specifically [the appellant] suffers from a moderate to severe depression. Her depression is characterised by suicidal ideation. It is possible that a positive result would exacerbate this particular problem and could lead to her attempting to take her own life.
- 5.16 [The appellant] fears returning to Nigeria. She believes that Mr Osagie or other traffickers will force her back into sexual slavery as she has no means of protection (e.g. living relatives, social network or knowledge of agencies that could protect her). Given her current mental state, it is possible that being forcibly returned to Nigeria and given her fears; her mental state would rapidly decline.
- 5.17 The Poppy Project and Eve’s Housing for Women have so far helped [the appellant]. In combination they have provided her with emotional and physical security. This to some degree has stopped [the appellant’s] mental state from deteriorating further. Should they be withdrawn I am of the opinion that [the appellant’s] psychological state will deteriorate to the extent that she will no longer be able to function in any aspect of her life (e.g. socially, occupationally or educationally) with support from these two services and a psychological therapy programme [the appellant] may have a chance of reconstructing her life.”

**83. Medical Report from Dr Chris Lacey dated 14<sup>th</sup> July, 2007**

- a) This referred to the appellant claiming to have been subjected to repeated assaults after having been abducted and falsely imprisoned between January and mid-March 2005. The appellant claimed that apart from being abducted and held against her will, she was physically assaulted and raped on a daily basis by her abductor. She was punched and slapped across the face and all over the body, kicked by the booted feet of her assailant, burnt with cigarettes, hit with a belt and dragged by the hair during these assaults. She also claimed that her assailant inflicted “voodoo” marks on her body using a razor blade and black powder commonly found in Nigeria. The appellant reported a poor appetite resulting in loss of weight, much sleep disturbance, and mood changes with tremendous resulting anxiety, night sweats and frequent palpitations. She expressed the fear that her abductor would find her and the consequences for her would be dire.
- b) A number of cigarette burns were noted on the appellant’s body, one on her right buttock, one on the left lower anterior thigh, one on the inner aspect of the left mid-thigh, one in the upper third aspect of the left inner thigh and one in the right groin difficult to delineate because of the presence of stretch marks. These wounds were said to be consistent with healed cigarette burns.
- c) Dr Lacey also noted a vertical pigmented flat scar 0.6 cm long and 0.2 cm wide on the lateral aspect of the appellant’s right arm consistent with a fingernail impression. She also noted a pigmented irregular scar overlaying the mid-inguinal region in the right groin consistent with a friction burn from having been dragged along the floor. There were a number of multiple linear small pigmented superficial lesions over the appellant’s body which were caused, claimed the appellant, by a razor blade and then being rubbed with black powder. In her summary and conclusion, Dr Lacey says:-

“[The appellant] reports a horrific period of internment and physical and mental abuse over a period of approximately two months at the beginning of 2005. This resulted in a number of physical injuries which are documented in the above section. The history given by [the appellant] is consistent with the lesions described above. The circular/ovoid lesions on the left leg and groin are consistent with healed burn lesions caused by a lighted cigarette being held to the skin. The pigmented lesions listed on

the torso are consistent with tattooing caused by an unknown substance and with the history given.

[The appellant] is obviously depressed and quite psychologically traumatised by this ordeal. However a full psychological assessment was beyond the remit of my instructions and therefore not undertaken. I would, however recommend that she receives formal psychological assessment and support following this most traumatic event."

84. **Letter of 23<sup>rd</sup> February, 2007 from Dr Dorman, Homerton University Hospital**

The author of this report, is the appellant's consultant gynaecologist. He reported that the appellant attended gynaecology outpatient clinic on 25<sup>th</sup> January, 2006 giving a history of worsening problems with heavy painful periods over the past year. The appellant disclosed a history of having been bought to the United Kingdom and sexually exploited. An ultrasound scan showed the appellant to have multiple uterine fibroids.

85. **Psychological Report of Dr Roxanne Agnew-Davies 19<sup>th</sup> March, 2008**

a) In a lengthy, and at times rather repetitive report, the author expressed the opinion that the appellant is suffering from a complex and severe form of Post Traumatic Stress Disorder and that she has additional symptoms which cannot be subsumed under this diagnosis. This, Dr Agnew-Davies said, is not unusual. The author suggests that there is sufficient evidence to conclude the presence of a Major Depressive Episode and to diagnose Major Depressive Disorder in addition to Post-Traumatic Stress Disorder. She believed that the appellant was extremely vulnerable from a psychological perspective and suggests that the appellant access symptom-focused cognitive behaviour therapy which might help her address her negative thoughts, sleeping problems, appetite loss and fear symptoms.

b) Under the heading, "Implications of Disorders for Vulnerability" the author said this:-

"4.3.1 Such a severe psychological reaction as noted in this case has been associated with biological factors or the way the body reacts in response to danger (Yehuda et al, [1998]), not just in the present but with respect to memories of past danger and the anticipation of future harm. For instance [the appellant] is easily terrified and triggered by 'little things' to record past abuse and hence to experience associated distress. Research

has shown that trafficked women exist in a heightened state of arousal. Instead of the normal response to danger, which would be to fight or flee, people held against their will are unable to do either. After repeated abuse, instead, they become unable to turn off their basic biological alarm mechanisms (Saporta and Van Der Kolk, [1992]) and they are locked into 'red alert'. For example, Zimmerman et al [2006] state (p76):

*'As traffickers made women believe they were in imminent danger, women existed in a heightened state of alert, recognising the limits of their ability to protect themselves. In response to this type of lethal danger, the normal human reaction triggers integrated physical and psychological responses that prepare the individual to either flee the situation or to defend herself from imminent danger. When the threat is chronic, individuals are often able to 'turn off' their 'basic biological and safety alarm mechanisms and remain constantly prepared to defend themselves against life threatening events'. Some experts have speculated that repetitive helplessness of this kind may 'disorganise cognitive process' or disable an individual's instinctive ability to respond appropriately.'*

4.3.2 These women are at risk of recurrence of or heightened symptoms of PTSD particularly if they encounter stressful or traumatic events (Marshall et al [1999]; Osuch et al [2001]) such as being asked to recall their experiences or to enter situations with which past trauma is associated. This would include trauma focus therapy or return to country of origin, in which she believes Mr Osagie will await her. [The appellant] is particularly vulnerable to becoming psychologically overwhelmed because her memories of the abusers are easily triggered, if not omnipresent. In other words, she has an extremely low threshold for the experience of intrusive symptoms.

4.3.3 When triggered, any client with PTSD is likely to experience hyper-vigilance (extreme and constant scanning of the environment to anticipate danger) and hyper-arousal (pronounced startle reactions, panic symptoms) as well as Avoidance symptoms, which impede her capacity to cope. Symptoms of hyper-arousal and hyper-vigilance (particularly in the context of [the appellant's] symptoms of anxiety) are likely to include the following: breathing faster (hyper-ventilation), heart rate acceleration, chest pain, slowing of the digestive system, nausea, urge to urinate and defecate and increased visual and auditory sensitivity. I think that it is likely that these in turn would exacerbate [the appellant's] existing symptoms of sleeping difficulties, loss of appetite and reports of physical pain. When these symptoms become so intense, many people are pre-occupied with their internal experience and are more likely to experience a panic attack.

Consequently, they cannot focus on external events such as a conversation or take appropriate actions in situations of risk.

4.3.4 Symptoms of Avoidance create a different set of challenges for the patient. Post Traumatic Stress Disorder (as defined in the Diagnostic and Statistical Manual of the American Psychological Association) is characterised by ‘persistent avoidance of triggers or numbing of general responsiveness’ including efforts to avoid ‘thoughts, feelings or conversations about the trauma’ and ‘inability to recall an important aspect of the trauma’. In other words (Dutton [1992] ‘Denial is often used to cope with the emotional aftermath’ (P107). These are exacerbated by feelings of shame, as in this case. Whether or not they make conscious efforts, victims of sexual abuse like [the appellant] adopt internal avoidance strategies (dissociation) because they re-experience being trapped. Dissociation means that clients experience unconscious, automatic reactions over which they have no control and of which they may not even be aware. In basic terms, they ‘switch off mentally’, to cope with what is perceived as repetition of the assault. I witnessed this phenomenon more than once in my interview with [the appellant] and she described behaviours consistent with this occurrence.

4.3.5 In effect, because she cannot run away or fight, the victim absents herself from the scene, or its memory, and although she may continue minimal function, essential aspects will not be available to her conscious mind. I found evidence that this is already a problem for [the appellant]. The critical nature of dissociation is that it is unconscious and not amenable to the client’s conscious control without skilled therapeutic intervention over time. Moreover, no matter how willing a client is to try to cope, if she imagines that she is at risk, it is likely that she will dissociate at an early stage, and therefore she will remain in the situation and unable to take appropriate action.

4.3.6 It is a common sign of severe trauma that victims have a foreshortened sense of future and often consider death as a preferable option, which is controlled in this case by [the appellant’s] religious convictions. In addition I do not think [the appellant] presents a current suicidal risk, because of her hope for a family life with her child. This opinion is despite clinical research (summarised by Humphreys, 2003; Golding, 1999) which shows that women who experience violence are at least four times more likely to attempt to take their lives than women in the wider population and the after effects of sexual assault suggest at least 20% of rape victims make an attempt to kill themselves (Foa and Rothbaum, 1998). However, I would not feel confident if there was a problem with the birth or she returned to Nigeria that this would not become an issue, particularly in the light of her depressive symptoms. Suicide attempts are most likely when hopelessness is coupled with low self esteem, and there is

evidence in this case that [the appellant's] self esteem is fragile (Dutton, 1992).

4.3.7 Additional symptoms of complex and severe PTSD, especially in trafficked women, include lack of self determination (after it has been dictated by others) and feeling detached from people (Zimmerman et al, 2006). [The appellant] has shown remarkable resilience in holding on to her belief that she is a good person and that Mr Osagie's abuse was unfair and unjust, to the extent that she resisted his efforts to force her into prostitution. While evidence of strength of character that she attributes to growing up in Africa, there is no doubt that her self regard has been damaged and the mistrust that she now experiences is profound, even to the extent that she is suspicious about her pastor's motives. A distinct but related psychological phenomenon in traumatised victims is that they tend to perceive people, events or situations categorically, rather than in degrees; people are divided into 'enemies' or 'heroes' and a person cannot appropriate degrees of trust (Herman, 1992). In turn, these symptoms result in a maladaptive response. In effect, [the appellant] is likely to continue to isolate herself and is likely to continue to experience a sense of ongoing helplessness, passivity, and in-action; such that with repeated failure, she may simply give up attempts to respond appropriately (Saporta and Van Der Kolk, 1992). In the past, these phenomenon led to Battle Women Syndrome (Walker, 1984).

4.3.8 The depressive symptoms in conjunction with PTSD impact on her concentration and memory and her decision that she cannot cope with college, is also negative for her prognosis. Her trouble controlling her misplaced anger further jeopardises the chance of informal social support; this is a clinical concern, because social support is one of the best predictors of recovery (or deterioration) in mental health.

4.3.9 In summary, I found this client to be particularly vulnerable. As one instance, my clinical experience has shown that victims of sexual abuse, especially those with symptoms of depression like [the appellant] adopt Avoidance Strategies when they feel trapped. This renders them less capable of escaping a potentially dangerous situation. In basic terms, a 'freeze' to cope with anticipated assault, rather than adopting a normal 'fight' or 'flight' response (confronting the aggressor and appropriate escape action), which would be more typical of people who had not previously been abused. This 'freeze' reaction is particularly likely in someone like [the appellant] who was unable to escape from abusive situations over prolonged periods."

- c) Discussing the likely impact of return, the author said that she believed that the appellant's:

“Current symptoms render her less able to adjust to return to Nigeria than a healthy person, or one who has not experienced abuse. She is likely to be triggered to heightened flashbacks, which in turn would increase her symptoms in a spiralling fashion. These would not just include hyper-vigilance and hyper-arousal (anxiety and fear symptoms) but she is more likely to experience a worsening of her already severe depressive symptoms, including despair, hopelessness and suicidal ideas. My professional opinion is that [the appellant’s] return to Nigeria would cause significant detriment to her mental health and jeopardise her recovery prospects.”

**86. The Second Report of Dr Agnew-Davies dated 15<sup>th</sup> September, 2008**

- a) In the summary of her conclusion, the author reports that she found that the appellant:

“Continues to present with a complex, chronic and severe form of Post Traumatic Stress Disorder (PTSD) and Major Depressive Disorder. I found a deterioration in her degree of arousal and in her capacity to manage interpersonal relationships, resulting in breakdowns in her primary support systems and increased isolation. Her psychiatric conditions are extremely unlikely to resolve spontaneously and render her vulnerable in the longer term. I think that she needs specialised trauma-focused therapy to recover. [The appellant] is highly likely to continue to suffer clinically significant and prolonged psychological problems until this occurs. She will remain vulnerable to relapse when her current symptoms are resolved. Her psychological conditions impair her coping strategies and render her vulnerable in situations of risk. My professional opinion is that [the appellant’s] return to Nigeria would cause further detriment to her mental health and undermine her parenting capacity.”

- b) Dr. Agnew-Davies went on to suggest that the author found that there had been no improvement in the appellant’s mental health since the first report and two incidences of deterioration including a substantial increase in her symptoms of anxiety or arousal. In discussing the prognosis and implications for behaviour and vulnerability, the author said:-

“4.2.1 My opinion outlined in Section 4.2 of my first report still holds. I reiterate my prognosis in 4.2.3, formed on the basis of research, that I anticipate that [the appellant] is likely to experience longer term difficulties (over six to nine years once she feels safe and has access to specialist support), because of the severity and complexity of her symptoms. I think it is extremely unlikely that she can recover her mental health spontaneously without long term professional help. When this help has been obtained, I also think she will continue to experience residual problems, which are less amenable to change.



4.2.2 In my first report (4.2.4) I recommended that [the appellant] access CBT Therapy with a view to longer term specialist trauma-focused therapy as Dr Capuzzo also recommended in her report in 2005. Since I believe she is extremely vulnerable from a psychological perspective, I would hope that arrangements could be made either with the appropriate mental health service or through social services for them to provide baby care or home visits. I also think that any supportive/therapeutic contact, such as those provided by women and girls network, a planned London service for sexual abuse survivors or social groups such as mother and baby groups provided by Sure Start or a combination, would be of help (as indicated in the literature e.g. Gordon, 1996) particularly in view of [the appellant's] isolation. This is because the disorder of PTSD has been associated with 'impairment of the person's ability to function in social or family life' (National Centre for PTSD, 2005) and it bears repetition that social support is a significant predictor of recovery, whilst isolation is likely to cause deterioration in mental health (e.g. Department of Health, 2003).

4.2.3 In Section 4.3 of my first report I outlined various aspects of the client's psychological profile which was associated with vulnerability, deterioration in mental health and/or to the risk of further harm. [The appellant's] profile at that time, which has not improved, included hyper-vigilance, arousal (indeed this has deteriorated); Avoidance including Dissociation; lack of self determination and detachment from people (which has also shown deterioration) and depressive symptoms. In short, the implications are that this client cannot take appropriate action in situations of risk and becomes quickly overwhelmed by internal processes that disable her from responding appropriately."

- c) She went on to suggest that the appellant would not gain full recovery without developing assurance that she is safe and secure. It said that the appellant was a responsible and caring mother and that her child's birth has given the appellant a reason to live and a purpose to which she is very committed. Dr. Agnew-Davies recommended that services like Sure Start or Home Start were put in place for the appellant immediately. She confirmed that she did not wish to revise any part of her opinion about the likely detrimental impact of return to Nigeria on the appellant's mental health, but added that she did not believe that the appellant was fit to work and anticipates that on return to Nigeria her capacity to parent her baby appropriately would be disabled. She did not believe that she would be able to manage his age appropriate developmental needs without

specialist trauma-focused therapeutic help to recover her mental health.

**Expert Opinion of Ms Olateru-Olagbegi dated 26<sup>th</sup> July 2005**

87. In her initial opinion, Ms Olateru-Olagbegi sets out her impressive curriculum vitae. She is a Nigerian practising lawyer (with, at that time, some 29 years post-qualification experience), a Notary Public and a member of the Chartered Institute of Arbitrators. She is also a gender consultant and expert on issues involving human trafficking. Ms Olateru-Olagbegi is, very clearly, a lawyer committed to combating human trafficking in Nigeria and committed to the welfare of women and children. She is Executive Director of the Women's Consortium of Nigeria (WOCOM), a non-governmental organisation committed to the promotion of the rights of women and children and the attainment of equality, development and peace. WOCOM holds a special United Nations consultative status and is focused on the issues of human trafficking at national, regional and international levels.
88. In 1996 Ms Olateru-Olagbegi was appointed one of the two researchers commissioned by the United Nations Special Rapporteur on "Violence against Women, Its Effects and Consequences" to conduct the first study on the issue of trafficking in women in Nigeria, as part of the African study on the issue. As a result of the research of the organisation, WOCOM pioneered the launch of the campaign against human trafficking in Nigeria in 1997. Since that time, she has been personally involved in several research studies and publications on the issue of human trafficking in Nigeria and has made several presentations at national, regional and international levels on the issue.

89. **Third Further Addendum to Expert Opinion by Bisi Olateru-Olagbegi**

This addendum was prepared by the expert following the conclusion of her having given evidence to the Tribunal on 6<sup>th</sup> November. Following the hearing, the appellant's solicitors forwarded copy correspondence to her sent by Mr Tufan to NAPTIP and the reply from Mrs Oguejiofor. In her report, Ms Olateru-Olagbegi, explains that she was asked to comment on the following issues:-

- "1. Whether a returning victim of trafficking with a young baby will be admitted to NAPTIP shelters and whether the shelters have the relevant adequate facilities for such victim and baby.
2. Whether a returning victim with a baby would be met at the airport.

3. Whether a NAPTIP shelters have counselling or medical facilities for victims who suffer from post-traumatic stress disorders.”

90. Ms Olateru-Olagbegi said this in her report:-

***“Issue 1***

- 1.1 First I wish to adopt my opinion as stated in my second further addendum dated 11<sup>th</sup> September, 2008 especially paragraph 2.2 on ‘*Government/state and civil society capacity to protect returnee trafficked persons*’ in particular I wish to reiterate as stated in paragraph 2.2.15 that I do not doubt the willingness and enthusiasm of NAPTIP officials to admit any returnee victim including victim with child who so consents to its shelter, though I am not aware of any previous admission of trafficked victims and their babies in the NAPTIP shelters. However the shelters as they are presently designed do not have facilities for childcare such as crèche and necessary privacy for a nursing mother. The response of the NAPTIP official Mrs Oguejiofor to the issue raised by the Home Office did not state that there are such facilities for childcare. The mere admission into a temporary and institution-style shelter without the necessary facilities for rehabilitation and reintegration will not provide adequate care, assistance or protection to any returning victim of trafficking.
- 1.2 Furthermore, NAPTIP reliance on its collaboration with Federal Ministry of Women Affairs for the Provision of Temporary Fostering is in my opinion not adequate care, assistance or protection for a victim and a child. From my experience victims of violence or who have had traumatic experiences usually suffer worse trauma if separated from their children and in any case there is no fact to support that the appellant would give up her baby for fostering albeit even temporarily. Although the Nigerian Government has exhibited political will to address the issue of trafficked victims in reality the government shelters and its personnel, lacked the adequate facilities and capabilities for a variety of reasons, including inadequate funding, to care for, assist or protect the trafficked victims. The incapacity of Nigerian government to care, assist or protect the victims was alluded to in the recent Country of Origin Information Report dated 5<sup>th</sup> December 2008 at 31.07 where it states and I quote ‘*While Nigeria assisted an increased number of victims, the quality of care provided was compromised by inadequate funding to shelters*’ (see [HTTP://www.homeoffice.gov.uk/rds/pdfs08/nigeria-081208.doc](http://www.homeoffice.gov.uk/rds/pdfs08/nigeria-081208.doc)).

***Issue 2***

2. I am aware that NAPTIP will meet returning victim at the airport if it has prior knowledge and information of such return.

***Issue 3***

- 3.1 I wish to restate my opinion in paragraph 2.216 of expert report dated 11<sup>th</sup> September 2008 and wish to state further that NAPTIP shelters only have first aid clinics within their premises with opportunity for referrals to hospitals in case of emergencies.

- 3.2 The shelters do not have qualified mental health therapist to treat victims with post traumatic stress disorders (PTSD). All the services that such nurses and social workers can render is some counselling as was attested to by Mr Morka head of the NAPTIP Lagos shelter who in response to a fact-finding mission in 2007 who was quoted as follows: ‘According to Mr Morka, the women and children housed in the shelter receive food, necessary treatment and *some counselling*’ (Italics mine) (see *Country of Origin Information Report Nigeria 13<sup>th</sup> November, 2007 paragraph 31.12*). In my opinion social workers or nurses who undergo some ad hoc training in counselling would not have the necessary capacity, expertise and skills to provide the mental health therapy for a trafficked woman who has post traumatic stress disorder the nature of which the appellant has.
- 3.3 An assessment of this situation of Nigerian NAPTIP shelter and its incapacity and lack of trained personnel was referred to in a USAID study on the rehabilitation of victims of trafficking in group residential facilities in foreign countries a study conducted pursuant to the trafficked victim protection Reauthorisation Act, 2005 published in September 2007. On page 25 of chapter 19 of the report it states and I quote: ‘*The majority of shelters reviewed in this study had some form of counselling services available to victims. However, an assessment of a government-run shelter in Nigeria found that counsellors often lacked specialised training in trafficking-related trauma. This assessment also noted that the shelter’s atmosphere is an important element in the psychological well-being of trafficking victims. Residing in a facility that is similar to one’s home, rather than an ‘institution’ and having access to recreational facilities may help shelter residents achieve emotional release from the trauma they have experienced.*’ See [HTTP://www.usaid.gov/our\\_work/cross-cutting\\_programmes/wid/pubs/ShelterStudy\\_aug2007.pdf](http://www.usaid.gov/our_work/cross-cutting_programmes/wid/pubs/ShelterStudy_aug2007.pdf)”

## Conclusion

Although the Nigerian Government through the NAPTIP officials is willing to address the situation of trafficked returnee victims, the reality is such that it lacks the capacity and facilities presently will be inadequate protect and re-integrate the appellant in this case as a returnee trafficked victim [Sic]. The reality is such that in the case of the appellant, a highly vulnerable victim of trafficking who suffers from significant mental health illnesses as a result of her experiences and has particular needs for specialist forms of assistance for herself and care for her very young child, the temporary nature of shelter that NAPTIP asserts it is able to provide, together with a lack of specialised counselling, is inadequate to her needs. In addition the removal of her child from her even by way of temporary fostering arrangements by NAPTIP cannot be considered an adequate form of assistance, rehabilitation or protection for the appellant in view of her bonds with her child especially considering the fact that she has no other family at all and the conditions of her on-going mental trauma. Further, in the absence of any clear and specialist provision of counselling and re-integration assistance for the appellant in this case by NAPTIP it is perfectly possible that her trauma will continue and may indeed worsen in the NAPTIP shelter, which it is recalled, is an institution-style temporary shelter that does not provide any long-term or durable care, protection or assistance for a woman with the appellant’s family background, her history of severe exploitation, her lack of any family support in Nigeria and her current high level needs, not only as a returning victim of sex trafficking, but as the vulnerable mother of a young infant child.”

### **Further Addendum to Expert Opinion dated 7<sup>th</sup> July, 2005**

91. Included within the appellant's bundle at page 193 to page 220 was a further addendum to the expert report of Ms Bisi Olateru-Olagbegi. In it she explains that she has been asked to comment further on the following issues:-

- Whether the appellant's level of vulnerability to be re-trafficked has increased now that she is a lone female with a child and no family support;
- whether there is support for the appellant as a returned former victim of trafficking by the Nigerian authorities including NAPTIP the agency in charge of human trafficking cases;
- whether any NGOs in Nigeria would be in a position to help the appellant and her child if returned and, if so, to what extent;
- the appellant is from Benin City, Edo State if returned to Nigeria would avoid returning to her home area in order to avoid being targeted by the same criminals who trafficked her into the UK (sic). How feasible would be it for the appellant to relocate from Edo State to other parts of the country, particularly as a lone female with a dependant child and no support;
- what is the rate of criminal convictions against traffickers in Nigeria from the time of the first application of the appellant to date and to highlight any steps that had been taken to tackle trafficking and in particular the corruption inherent in it and whether said changes have had any impact; what is the data on any re-trafficking statistics;
- what are the details of any government support networks, such as social services that the appellant can avail herself of together with a child in Nigeria, given that she has no practical skills, is virtually uneducated and has no access to family support and has been diagnosed with post traumatic stress disorder and major depressive disorder;
- what stigma if any is faced by former victims of trafficking as a group and whether this stigma is equivalent to that faced by prostitutes in Nigeria."

92. In the addendum, Ms Olateru-Olagbegi explains that thousands of Nigerians, especially women and children are victims of human trafficking to various parts of the world, especially to Europe for sex-related work. She quoted Mr Godwin Morka, the Lagos zonal head of NAPTIP, suggesting in September 2007 that

over 50,000 Nigerian women have been trafficked to various countries in Europe. Women and children constitute the largest percentage of victims and female children and young adult women are more trafficked than their male counterparts because they are considered better suited for domestic labour and the sex trade.

93. She explained that women are regarded in Nigeria as being inferior and subjected to gender bias. As such, the Nigerian female in particular is more vulnerable to being trafficked than male counterparts. Most victims are said to be predominantly from Edo State. The United Nations Office on Drugs and Crime suggested that an estimated 94% of women trafficked for commercial sexual exploitation to Europe come originally from Edo State.
94. Ms Olateru-Olagbegi believed that having been born in Benin City, Edo State, where the appellant lived at all material times before she was trafficked, the appellant would be at greater risk of being re-trafficked. Her poor socio-economic background coupled with the fact that she is an orphan increases her vulnerability to being trafficked.
95. Ms Olateru-Olagbegi suggests that the victims of trafficking face risk, not only from those people who had direct contact with them at the time of the transaction, but also others involved in the trafficking transaction, such as recruiters, forgers and producers of travel documents and fake identities, corrupt immigration officials who facilitate travels, foreign collaborators, the receivers of the destination and accompanying transit agents, the Juju priests in the case of traditional oaths and family members who facilitate negotiations. However, in the appellant's case, nobody else was involved in her trafficking, apart from Mr Osagie. There is no question of her having been recruited by agents or family members, of there being anybody producing any forged travel documents or fake identities, or any corrupt immigration officials having facilitated the appellant's travel, or of any foreign collaborators in the United Kingdom.
96. The appellant was an orphan and brought up by her aunt. She was engaged in the sale of water. Her poor socio-economic conditions, suggested the report, made her vulnerable to being trafficked. The fact that she has no family ties with anybody in Nigeria makes her more susceptible and were she to be deported this would compound her vulnerability to further abuse or being re-trafficked.

97. Ms Olateru-Olagbegi suggested also that because the appellant does not know of the identity and location of the members of the Nigerian trafficking criminal network responsible for her being trafficked, this will place her at an even greater risk. She suggested that the appellant risks reprisals from those members of the network who assisted her passage from the Nigerian borders, all of whom have a monetary interest in her.
98. The NAPTIP shelters are regarded more or less as institutional custody where the movements of victims are said, to be restricted. This is because NAPTIP agencies are a protection as well as a prosecution agency and the protective custody which in effect restricts the movements of residents is designed to safeguard the rescued trafficked persons temporarily from the traffickers and/or further abuse. She said that NAPTIP has only recorded a marginal number of convictions. The US State Report on Trafficking in Persons, 2008 states that during the last year NAPTIP reported investigating 114 trafficking cases, 62 of which were prosecuted. Of the 62 cases, seven resulted in convictions and 51 are pending in the courts. Ms Olateru-Olagbegi suggested that there have only been 34 convictions over the five years operation of NAPTIP. Given that there are thousands of trafficked women and children, the number of arrests and convictions constitute a negligible percentage. This, she said, means that the traffickers continue with impunity.
99. She is firmly of the opinion that a deportee trafficked woman returned to Nigeria will not receive adequate protection to prevent further abuse or attack from her traffickers and/or agents or enable her proper re-integration into society.
100. At paragraph 2.2.15, Ms Olateru-Olagbegi suggests that if the appellant consents to stay in a shelter she will only be accommodated for a maximum of twelve weeks which is insufficient for her to be fully integrated and to recover from the trauma of trafficking. She suggested also that the shelters, as presently designed, are not conducive to accommodate mothers with infant children such as the appellant and her child as there are no facilities for babies such as crèches and shelters.
101. She criticised the NAPTIP shelters for their lack of necessary facilities for mental health counselling, medical and societal integration and explains that qualifying psychiatrists are not currently employed within the shelters. The ability of the Nigerian government to protect victims of trafficking is, she suggested, below the standard for adequate protection.

102. Ms Olateru-Olagbegi suggests that the Law Enforcement Agencies were usually reluctant to investigate violent crimes, especially those against women and children unable to pay for the costs of investigation or bribe investigating officers because of the corruption. The power of wealthy people to influence the action of police has been attested to in the British Danish fact-finding Mission Report.
103. She said that in her opinion, the appellant's fears of reprisals from the trafficker and his network members in any part of Nigeria are well-founded as to date; there is still no adequate state structure to protect victims of violence or trafficking. The risk to the appellant is greater because she has also failed to repay the total sum for the debt bondage. Another dimension to the risk suffered by the appellant if returned is societal stigmatisation and persecution. Stigma is associated with deported or repatriated women and girls who are generally perceived as trafficking persons with prostitution, irrespective of the reasons for their deportation. The media initially portrayed deportees as "prostitute who had brought shame to the country" and publicly paraded them in the media. Deported trafficking persons are also initially forced to undergo HIV/AIDs tests and so this has also fuelled the public perception that deportees are not only prostitutes but carriers of HIV and AIDs virus leading to further stigmatisation.
104. This appellant will be regarded by her community as someone who has been trafficked to the UK for prostitution and stigmatised as a person with HIV/AIDs. She will therefore suffer rejection and persecution in consequence of her perceived status in any part of Nigeria, suggested Ms Olateru-Olagbegi.
105. Accommodation will be difficult for the appellant. Single women, no matter how wealthy, find it difficult to rent properties for accommodation and exercise their rights as men would do. This is due to the age-long patriarchy and gender-bias against women. Women who live alone are regarded as being promiscuous and of low moral standard. Single women are either never married or divorced and, if widowed, are expected to live with members of the deceased's husband's family. At best they are therefore regarded as divorced women and also regarded as flirts and generally as "bad women". The situation of a deportee victim of trafficking will eventually become known in any community in which she resides in Nigeria. Her bid to secure accommodation will result in prospective landlords wanting to know her background because they would not wish to accommodate armed robbers and criminals who might implicate the landlords. Faced with the need for the appellant to disclose her background and



perspective landlords, especially because she would need to seek accommodation in an area with some cultural affinity with her, she will be in danger of being found out by members of her trafficker's criminal network. The absence of strong family ties coupled with the lack of necessary educational skill and no safe home to go to will cause further difficulties for the appellant. Being unable to access employment and without any skills the appellant will suffer hardship, including hunger, lack of clothing and a low standard of living which will adversely affect her welfare. Without employment she will be unable to access the high cost of health services in Nigeria. There is no health insurance currently operational for the benefit of the poor or low income earners and the appellant, who would be homeless and destitute in Nigeria, would have no access to good health facilities especially mental health facilities which she needs as well as proper health facilities for her infant child.

### **Submissions**

106.Mr Tufan suggested that the three issues for the Tribunal were:-

- “1. To decide whether the Nigerian authorities would be able to offer protection to the appellant on return to Nigeria; alternatively
2. would internal relocation be unduly harsh; and
3. the appellant's Article 3 and Article 8 claims.”

107.Mr Tufan reminded us that the Tribunal found the appellant credible on the last occasion but, he submitted, the appellant had not been credible in respect of her evidence to this Tribunal in relation to her aunt's friend when she referred to having her aunt's friend's telephone number sewn into her jeans. He suggested that this part of the appellant's evidence was not credible.

108.The Tribunal asked Mr Tufan if he was able to explain with reasons why he suggested that the appellant's evidence was not credible. He responded by saying that, “the likelihood of such matters occurring is unlikely”.

109.Mr Tufan pointed out that the expert evidence claimed that she had sought the appellant's trafficker, Mr Osagie in Nigeria, but he asked us to note that the expert had apparently not made any attempt to seek or make contact with the appellant's aunt's friend. Mr Tufan asked us to consider whether the trafficker was likely to have a network of contacts or the power to find the appellant on her return to Nigeria and submitted that the fact that he could not himself be found did not suggest that he did.

110. At the moment, the appellant is living in NASS accommodation. Despite this, she met the father of her child at a church function. There was, he submitted, no evidence to suggest that the trafficker had attempted to make contact with the appellant in the United Kingdom. He suggested that the risk to the appellant from the trafficker was minimal.
111. However, Mr Tufan submitted, on return it is clear from the background evidence that there are numerous organisations who are available in Nigeria to assist trafficking victims. He referred us to page 7 of the Danish Immigration Service "*Protection of Victims of Trafficking in Nigeria*" report written as a result of the Danish Immigration Services Fact-finding Mission to Lagos, Benin City, and Abuja, Nigeria between 9<sup>th</sup> and 26<sup>th</sup> September, 2007, published in Copenhagen, April 2008.
112. We pointed out to the representatives that the Tribunal were in some difficulties with regard to the bundles. Unfortunately the appellant's bundle had been paginated in a quite unnecessarily complicated and unclear way, such that it was extremely difficult to find any documents to which we had been referred by the representatives. Additionally, other documents which were said to have been handed in appeared to be missing.
113. Counsel suggested that if we were to grant a brief adjournment she would be able to provide a further clean copy of a bundle from her chambers. We granted a brief adjournment but on resuming the hearing it appeared that such a bundle was not available.
114. Mr Tufan asked us to note page 7 of the Danish Immigration Service Report which referred to a number of non-governmental organisations who assist victims of trafficking in Nigeria, the most prominent of whom are GPI (Girls Power Initiative) COSUDOW (Committee for the Support of the Dignity of Women), IRRRAG (International Reproductive Rights Research Action Group, WOCON (Women's Consortium of Nigeria), WOTCLEF (Women's Trafficking and Child Labour Extradition Foundation), AWEG (African Women's Empowerment Guild, IDIA Resistance and the Catholic Secretariat of Nigeria/CARITAS, Nigeria. The organisation, COSUDOW is headed by the Reverend Sister Florence. Mr Tufan asked us to note that Mr Tommaso De Cataldo, Chief of Mission of IOM in Abuja considered that COSUDOW and NAPTIP were two of the key institutions in Nigeria fighting trafficking and assisting victims of trafficking.

115. Mr Tufan asked us to note that COSUDOW is referred to at page 45 of his bundle. It was established in 1999 as a counter-trafficking project and its aims are prevention, protection and rehabilitation/re-integration.
116. He pointed out that the organisation seeks to prevent trafficking by educating different sectors of the public on the evils of trafficking. It offers re-integration including family tracing and counselling, it offers rehabilitation assistance, including protection and prosecution and also monitors returnees and follows up on their progress. Returnee victims of HIV/AIDs are counselled and supported. The organisation collaborates with the Anti-Human Trafficking Unit of the Nigerian Police and since its inception some 72 trafficking victims have been rehabilitated in one form or another.
117. The Danish Report spoke of the Reverend Sister Florence explaining that COSUDOW was part of an umbrella organisation of NGOs and governmental bodies addressing the problem of trafficking.
118. NAPTIP is a Federal Government Agency created by legislation in 2003 which started functioning in 2004 and is responsible for investigation, prosecution and protection. The Danish Report also spoke of WOTCLEF and other NGOs also offering such services as counselling, rehabilitation and integration. Mr Tufan suggested that it was established precisely to assist people such as this appellant. According to 2.2.2 of the Danish Report, NAPTIP not only has government funding, but also funding from UNICEF, UNODC/United Nations Inter-Regional Crime and Justice Research Institute (UNICRI), USAID, American Bar Association – Africa, ILO and the Canadian International Development Agency. The governments of Italy, France, Norway and the Netherlands also provide funding along with IOM and an Italian non-governmental organisation. Funding of NAPTIP by the government was said to have increased during the last years and the fact that it now owns its own headquarters building in Abuja implies, suggests the report that the financial situation for NAPTIP has improved, as NAPTIP no longer pays rent and the continuity and stability of the agency has been secured.
119. Mr Tufan then drew our attention to the report on the Convention on the Elimination of All Forms of Discrimination against Women, dated 5<sup>th</sup> October, 2006 in relation to Nigeria which, at article 6.2 explains that there is an Office of the Special Assistant to the President on Human Trafficking and Child Labour which compliments the agency for enforcement and monitoring of trafficking of persons, “National Agency for Prohibition of Trafficking In Persons (NAPTIP)” and its mandate

execution. Nigeria is said to have entered into a number of bilateral agreements with countries on trafficking in persons and to have ratified and domesticated the UN Convention on Trans-National Organised Crime as well as its Protocols to prevent, suppress and punish trafficking in persons, especially women and children. The Protocol against illegal smuggling of migrants has also been ratified.

120. NAPTIP is said to have produced a national policy on counselling and rehabilitation and its implementation strategy which has led to, “a more efficient counselling and rehabilitation services for victims of trafficking”. It currently manages shelter facilities in Lagos and Benin, although, Mr Tufan added, since the publication of the report more shelters have now been provided. Seven transit shelters were said to have been established in Canno, Edo, Akwa Ibom, Abuja, Enugu and Sokoto and Lagos States for the purposes of rehabilitation of victims of trafficking.

121. Paragraph 5.2 of the Danish Immigration Service Report refers to NAPTIP having access and working towards the establishment of seven shelters in Abuja, Lagos, Canno, Edo, Enugu, Sokoto and Akwa Ibom states which were said to have first aid capacities and also visiting doctors and referral capacity to hospital. Seven shelters are in operation. The largest in Lagos has a capacity of 120, but the others each have a capacity of 50. The Lagos shelter can be increased to 200 beds if necessary and since 2004 some 631 victims were said to have been passed through the shelter, of which 562 were women. 53 victims were said to be currently in the shelter.

122. Mr Tufan asked us to particularly note that at page 43 of the report, Ms Olateru-Olagbegi, speaking on behalf of WOCON, emphasised, “that the problem is not the victims are not offered protection by NAPTIP if in need, but that some victims actually leave their shelter before they can be certain to be out of any danger.” Mr Tufan submitted that that clearly demonstrates that protection is offered by the Nigerian Government, but if people choose to leave the shelter before they can be certain to be out of any danger then the Nigerian Government can hardly be blamed for it.

123. WOCAN, the Woman’s Consortium of Nigeria, is another NGO operating in Nigeria. It was explained by the Reverend Sister Florence of COSUDOW that COSUDOW is part of an umbrella organisation of NGOs and governmental bodies that address the problem of trafficking and the different groups that make up the co-operation carry out activities together, with each

contributing their strength to finding lasting solutions to the problem of human trafficking.

124. Commenting on the evidence of Ms Olateru-Olagbegi, Mr Tufan submitted that her reports were like those referred to by Collins J in Slimani (Content of Adjudicator Determination) Algeria \* [2001] UKIAT 00009. It is not entirely objective in its approach and has fixed opinions about the situation in Nigeria. The Expert was, he submitted, acting as an advocate rather than an expert. The witness is involved with an NGO and makes damning comments in relation to government agency. She is not objective. He referred us to the most recent statement of Ms Olateru-Olagbegi and the copy of a Nigerian Newspaper Report which appeared to be dated 30<sup>th</sup> September 2009 relating to the lady who was suffering from having burns inflicted upon her by her elder brother over her refusal to be sent overseas. This was, he suggested, the only instance of reprisals and it is not clear from the report that the victim was in fact a victim of trafficking. It appears that her attacker was her brother. He suggested that there had been no other reports at all of reprisals by traffickers against their victims in Nigeria.
125. Mr Tufan urged us to find that there was a sufficiency of protection within Nigeria for this appellant. He submitted that it was clear that the Nigerian Government were not only willing but were also able to offer effective protection to victims of trafficking. According to the Reverend Sister Florence, (page 19 of the Danish Immigration Service Report) she emphasised that the Anti-Human Trafficking Police Unit in Benin City is not infected by corruption in Nigeria and the Anti-Human Trafficking Police Unit is a special police force not influenced by corruption that prevails in the Nigerian Police Forces. Mr Tufan submitted that the justice system is clearly functioning as is evidenced by the fact that there have been prosecutions. Between 2004 and 2007, NAPTIP processed approximately 1,000 trafficked persons. Since 2004, some 320 traffickers have been arrested on a national scale by NAPTIP and this does not include arrests by the Nigerian Police Force and Nigerian Immigration Service. During the same period, 62 cases were filed in the courts and twelve traffickers have been convicted. Punishments range from one to seven years imprisonment and, at the time of the publication of the Danish Immigration Service Report, some 52 cases were still pending. This is clear evidence of a functioning justice system, Mr Tufan submitted.
126. As to whether the appellant would be admitted to a NAPTIP shelter, the evidence given by the expert was that she did not think the appellant would be accepted. In response, the evidence now submitted clearly shows that the appellant would

be admitted. The author of the e-mailed evidence is unequivocal. She says that a returning victim with a young baby will be admitted to a NAPTIP shelter without delay and that both returning victim and baby would be met at the airport. The shelters have resident nurses and clinics and have a medical doctor on call at the shelters. All the shelters have social workers and nurses who have undergone a series of training in areas of psychological and psycho-therapy and are ready to counsel and treat any victim suffering with Post Traumatic Stress Disorder.

127. He submitted that there clearly was a sufficiency of protection in Benin City, but she could, in any event, relocate elsewhere in Nigeria if she felt the need to. There was no evidence that it would be unduly harsh to expect the appellant to do so.

128. The Presenting Officer suggested that there was, in any event, no evidence that the appellant's trafficker would be able to locate her. Before she came to the United Kingdom she was able to make a living for herself by selling water. While she has been in the United Kingdom she has undertaken basic computer courses and basis English courses. She would be in a better position to be able to take care of herself now than she was before she came to the United Kingdom.

129. Referring to his e-mail correspondence with Mrs L N Oguejiofor, Mr Tufan drew our attention to the suggestion that NAPTIP works in collaboration with other agencies and temporary fostering is available should the need arise.

130. He then told us he relied on what Lord Menzies said at page 14 of his bundle in the decision of FO [2008] CSOH 80 at paragraph 14. We pointed out to Mr Tufan that that decision dealt very much with a case on its own facts and, in any event, the objective evidence before the court had not been identified. He drew our attention to the decisions in Unar [2008] EWHC 2385(Admin), to JO (Internal Relocation - no risk of re-trafficking) Nigeria [2004] UKIAT 00251, to AI (Nigeria) [2007] EWCA Civ 707 and to FB (Lone women - PSG - internal relocation - AA (Uganda) considered) Sierra Leone [2003] UKIAT 00090.

131. Mr Tufan then asked us to note that from the medical evidence the appellant was not a suicide risk. On return to Nigeria the appellant will be assisted by NAPTIP and clearly there is support available to the appellant.

132. When the medical evidence is taken into account, the effect on this appellant of return to Nigeria would clearly not reach the

high threshold identified by their Lordships in N v Secretary of State for the Home Department [2005] UKHL 31 and there was, therefore, no question of Article 3 being engaged. Insofar as Article 8 is concerned, the appellant's family life will of course continue because she would be removed with her baby. He asked us to dismiss the appellant's appeal.

133. Counsel advised us that she wished to rely on her written submission, comprising her 23 page "skeleton" argument. She referred us to the medical evidence before us including the reports of Dr Roxanne Agnew-Davies. It is clear from Dr Agnew-Davies' report that the appellant suffers from PTSD and that her removal from the United Kingdom would be detrimental to the appellant's health. It is clear from the report (see paragraph 3.05.13) that the appellant presents as a risk to herself (by thoughts of suicide or self harm) and that her ratings of anxiety and arousal related systems place her within the severe range of the Beck Anxiety Inventory. It is clear from the report that the appellant does still express considerable anxiety at the thought of returning and being found by her trafficker.
134. The doctor expresses the opinion that the appellant is suffering from a complex and severe form of PTSD. At paragraph 4.2.2 the doctor suggests that the appellant does not present more than a slight risk of suicide, but at paragraph 4.2.4 it is clear that the author believes that the appellant is extremely vulnerable from a psychological perspective. She suggests that cognitive behaviour therapy might be an appropriate intervention.
135. The most recent report of Dr Agnew-Davies is at page 166 of the bundle and is dated 15<sup>th</sup> September 2008. There the author expresses the view that the appellant needs specialist trauma focused therapy to be able to recover and it is highly likely that the appellant will continue to suffer clinically significant prolonged psychological problems until this occurs. It appears that there has been no improvement in the appellant's mental health between the dates of the two reports and indeed there is evidence to suggest a deterioration because there has been a substantial increase in her symptoms of anxiety or arousal.
136. Counsel reminded us of the evidence of Ms Johnson and the fact that she confirmed a deterioration in the appellant's mental health and a change in the living conditions of the appellant which had caused her distress. Currently the appellant is being supported by workers at POPPY and a support plan is in place.

137. Counsel asked us to remember that the appellant had been found to be credible and has had a consistent diagnosis of PTSD.

### **Hearing on 13<sup>th</sup> January, 2009**

138. Counsel referred us to the impressive qualifications of Dr Roxanne Agnew-Davies and reminded us of the summary of conclusions reached by the doctor at paragraph 1.04 of her report and the impact of parenting on the appellant at paragraph 4.3.1.

139. Referring us in some detail and at length to the background evidence, Counsel suggested that at pages 224 onwards in her bundle a number of documents refer to the widespread corruption throughout Nigeria. The Freedom House Report, *"Freedom in the World - Nigeria (2008)"* identifies Nigeria as being ranked 147<sup>th</sup> most corrupt country out of a total of 180 countries. The document, "Rural Poverty Portal" at page 237, identifies widespread poverty in Nigeria and suggests that it is especially severe in rural areas where social services and infrastructure are limited or non-existent. The report said:-

"Women and households headed by women are frequently the most chronically poor within rural communities. Women have lower social status than men and consequently less access to schooling and training, particularly in childcare and health practices."

140. Referring to the UNHCR Report *"Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nigeria (advanced unedited version)"* (CEDAW Report), Counsel drew our attention particularly to the areas of concern highlighted by the report. She emphasised that the report is independent.

141. Counsel pointed out that the appellant's expert, Ms Olateru-Olagbegi, was a member of the research team responsible for the UNESCO Policy Paper: *"Human Trafficking in Nigeria: Root causes and recommendations."* She also relied on the Amnesty International Report: *"Amnesty International Report 2008: Nigeria published on 28<sup>th</sup> May, 2008"* and in particular asked us to note that violence against women remained pervasive including domestic violence, rape and other sexual violence by state officials and private individuals. She suggested that those responsible for serious human rights abuses in Nigeria were seldom held to account and relied on the Human Rights Watch Report: *"World Report 2008: Nigeria"* published on 31<sup>st</sup> January, 2008 which suggested that even law enforcement agencies subvert the rule of law. Counsel suggested that Nigeria does not fully comply with the Trafficking Victims Protection Act's



minimum standards as is evidenced by the US State Department Report *“Trafficking in Persons Report 2008: Nigeria”* published on 4<sup>th</sup> June, 2008. The report spoke of inadequate funding for NAPTIP shelters, some of which were said to be not well maintained and offered limited rehabilitation care and no reintegration services.

142. The Integrated Regional Network News Report *“Nigeria: Trafficking of Girls Abuse Worsening”* published on 7<sup>th</sup> July, 2007, reports the head of the Kano office of NAPTIP as suggesting that, “The business of recruiting teenage girls as domestic help in rich and middle class homes is booming despite our best efforts to put a stop to it.” Counsel suggested that trafficking is increasing and the government is simply powerless to put a stop to the trade.

143. Counsel addressed us at considerable length and in some detail when making her submissions to us. She suggested in her “skeleton argument” that the issues for the Tribunal are:-

“- whether there is a sufficiency of protection available to the appellant on her return to her home area and if not;

- whether internal relocation would be unduly harsh?”

The answer to these two questions will determine whether the appellant is a refugee. Additionally the appellant relies on Articles 3 and 8. The skeleton argument relies on the same background material to which Counsel drew our attention during her lengthy submissions.

144. In terms of any assessment of the appellant’s claim under Article 8, the skeleton argument suggested that the first four questions posed by Lord Bingham in Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL have been satisfied and that in assessing the fifth question, the Tribunal is directed to address the “severity and consequences” of removal under Huang v Secretary of State for the Home Department [2007] UKHL 11, [2007] 2 AC 167. The Tribunal were reminded of the opinion of Sedley LJ in granting permission to appeal and, in particular, his view on the “moral case” which should be taken into account in any assessment under Article 8, in terms of the impact of the appellant’s proposed removal on her private life in the UK, having been sexually exploited in this country by a criminal who ought not to have been allowed in, and the impact on the appellant’s physical and moral integrity of the proportionality of her removal. The skeleton argument suggests that the expert country and medical evidence should be fully taken account of when assessing this.

145. Account should also be taken of the fact that the appellant was found credible some four years ago and, despite this, she has since that time been subjected to an uncertain immigration status which has adversely affected upon her mental health as is evidenced by the medical report and this must be taken into account in conducting the balancing exercise in considering the interests of the appellant and her son vis-à-vis the interest of the state.

### **The Law**

146. The test for evaluating whether sufficiency of protection exists in the appellant's home state is that set out at paragraph 3390 of Statement of Changes in Immigration Rules, HC 395, as amended. These provide as follows:

#### **“Internal relocation**

3390 (i) The Secretary of State will not make:

(a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.”

147. In Horvath v Secretary of State for the Home Department [2001] AC 489. As Lord Hope said at p. 499 g-h:

“the obligation to afford refugee status arises only if the person's own state is unable or unwilling to discharge its own duty to protect its own nationals. I think that it follows that, in order to satisfy the fear test in a non state agent case, the applicant for refugee status must show that the persecution which he fears consists of acts of violence or ill treatment against which the state is unable or unwilling to provide

protection. The applicant may have a well founded fear of threats to his life due to famine or civil war or of isolated acts of violence or ill treatment for a Convention reason which may be perpetrated against him. But the risk, however severe, and the fear, however well founded, do not entitle him to the status of a refugee."

148. Similarly, the level of protection in the home state is not such that it is expected to be absolute guaranteed immunity. As Lord Clyde said in Horvath at p. 510 f:

"that would be beyond any realistic practical expectation."

149. Lord Clyde adopted, at p. 511 a-b, as a useful description of what is intended, the formulation set out by Stuart Smith LJ at paragraph 22:

"In my judgement there must be in force in the country in question a criminal law which makes violent attacks by the prosecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from protection of the law. There must be a reasonable willingness by the law enforcement agencies that is to say the police and courts to detect, prosecute and punish the offender."

150. As to the test for internal relocation, Lord Bingham in Januzi v Secretary of State for the Home Department [2006] 2 AC 426 at paragraph 21 said

"The decision maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.....All must depend on fair assessment of the relevant facts."

151. Lord Hope, at para 47 said:

"The question where the issue of internal relocation is raised can, then, be defined quite simply. As Linden JA put it in Thirunavukkarasu v Canada (Minister of Employment and Immigration) (1993) 109 DLR (4<sup>th</sup>) 682, 687, it is whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words "unduly harsh" set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there."

### **The background material**

152. Both advocates referred us to extensive passages from the report of the Danish Immigration Service report: *The Protection of victims of trafficking in Nigeria: a fact finding mission to Lagos Benin City and Abuja, 9-26 September 2007* (April 2008). The report records in its background paragraphs that the extent of trafficking from Nigeria is difficult to estimate, but

the problem is a major concern for the authorities and a number of the NGOs in the country. The Government of Nigeria has recognised the problem and since 2003 the legal and institutional foundation for combating trafficking and support victims of trafficking has been in place in Nigeria. The principal organisation created by the Nigerian State to combat the problem is the National Agency for the Prohibition of Traffic in Persons and other related matters, universally referred to by its acronym, NAPTIP. The vast majority of female victims of trafficking are from Edo State in the south-western part of Nigeria. A number of Nigerian NGOs are based in Benin City – the capital of Edo State – and are addressing the problem of trafficking. NAPTIP has a regional office in the city, (p.5).

153. Mr Turfan drew our attention to the following passages in which the page references refer to the internal pagination of the document:

“A number of NGOs are assisting victims of trafficking in Nigeria. Among the most prominent of those are GPI [Girls’ Power Initiative], COSUDOW [Committee for the Support of the Dignity of Women], IRRRAG [International Reproductive Rights Research Action Group], WOCON [Women’s Consortium of Nigeria], WOTCLEF [Women Trafficking and Child Labour Eradication Foundation]], AWEG [African Women’s Empowerment Guild], Idia Renaissance and the Catholic Secretariat of Nigeria/Caritas Nigeria”, (pp. 7 and 58-9).

“Regarding the NGO COSUDOW, which is headed by Rev. Sister Florence, Tommaso De Cataldo, Chief of Mission, IOM, Abuja, considered that this NGO and NAPTIP are two of the key institutions in Nigeria fighting trafficking and assisting victims of trafficking. COSUDOW is a well-established institution that has been present in Nigeria for a number of years and will continue to be so for years to come. The catholic orientation of COSUDOW is also beneficial, as many victims will feel confidence in a religious NGO. De Cataldo (IOM) added that COSUDOW is a strong organisation and Rev. Sister Florence is fully aware of the entire and intricate problem of trafficking”, (p. 8).

“Rev. Sister Florence (COSUDOW) explained that COSUDOW is part of an umbrella organisation of NGOs and governmental bodies that address the problem of trafficking. This umbrella is a cooperation of Bonded Labour in Nederland (BLinN), Government and NGOs. The different groups that make up the cooperation carry out activities together with each contributing their strength to finding lasting solution to the problem of human trafficking. COSUDOW is also a member of the NGO Coalition in Benin City combating trafficking in human beings, as well as a member of a national organization that works to combat trafficking, especially child trafficking and abuse. The name of the organization is Network of Non-Governmental Organisations Against Child-Trafficking, Labour and Abuse (NACTAL).

Veronica K. Umaru, National Coordinator, Women Trafficking & Child Labour Eradication Foundation (WOTCLEF), Abuja, explained that NAPTIP is the federal government agency responsible for investigation, prosecution and

protection; however WOTCLEF and other NGOs also offer other services such as counselling, rehabilitation and integration”, (p. 9).

#### “2.2.1 The legal framework

De Cataldo (IOM) explained that the Federal Republic of Nigeria enacted the *Trafficking in Persons (Prohibition) Law Enforcement Administration Act, 2003* [hereafter the Law] (amended in 2005), and established NAPTIP in 2003. This Act is the fulfillment of international obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* supplementing the *United Nations Convention against Transnational Organized Crime* (Palermo Convention). The Law seeks to address trafficking in persons with its associated problems by creating a specific multi-disciplinary crime-fighting agency to address them”, (p. 10).

“The Act makes provision for the humane treatment, protection, and non-discriminatory practices towards victims of trafficking. These include access to rehabilitation facilities, temporary stay without valid documents and medical attention. (Sections 36–37). Trafficked victims even have rights to institute civil actions against their traffickers irrespective of their immigration status” (Section 38).

“NAPTIP is in charge of [amongst other things]

“Taking charge, supervising, controlling and coordinating the rehabilitation of trafficking victims and participating in proceedings relating to trafficking in persons.”

To assist the Agency in the exercise of its powers and functions, the Act also establishes in Sections 8 and 9 respectively, the following units with their specific duties [amongst which is] a Counselling and Rehabilitation Unit”, (pp. 12-3)

#### “2.2.2 Funding for NAPTIP’s activities

Lily N. Oguejiofor, Director, Counselling & Rehabilitation, NAPTIP Abuja Headquarters, explained that besides government funding, other sources for funding NAPTIP’s activities are UNICEF, UNODC/United Nations Interregional Crime and Justice Research Institute (UNICRI), USAID, American Bar Association - Africa (ABA-Africa), ILO and the Canadian International Development Agency (CIDA). The governments of Italy, France, Norway and the Netherlands also provide funding for NAPTIP. Finally, IOM, the Italian NGO TAMPEP Onlus and Terre des Hommes are also providing funding.

Oguejiofor (NAPTIP Abuja Headquarters) added that funding of NAPTIP by the Government has increased during the last years”, (p. 14).

“A.O. Abiodun, Barrister, Head, NAPTIP Benin Zonal Office explained that the Benin Zonal Office was the first zonal office to be established by NAPTIP. The U.S. Department of State reported that UNICEF continues to support additional funding for NAPTIP zonal offices”, (p. 15).

#### “Legal and Prosecution Department

Barrister Abiodun (NAPTIP Benin Zonal Office) explained that the Legal and Prosecution Department has concluded six cases. NAPTIP got judgement in its favour in most of the cases. Five cases are pending and are at various stages of hearing at the High Court.

### Counselling and Rehabilitation Department

Barrister Abiodun (NAPTIP Benin Zonal Office) explained that the Counselling and Rehabilitation Department had received 299 victims of trafficking since 2004. 58 of those have been rehabilitated while 241 victims are still awaiting rehabilitation. It was stressed that NAPTIP would greatly appreciate it if funds and equipments were made available for the reintegration of the remaining 241 victims”, (p. 16).”

“...Ndgauba (NAPTIP Abuja Headquarters) emphasized that intimidation by *ju-ju* is the main reason why many victims of trafficking are not ready to cooperate with NAPTIP and others against their traffickers.

Rev. Ejeh and Agbogun (Catholic Secretariat of Nigeria/Caritas Nigeria) explained that victims of trafficking are frightened by the oath of secrecy that they have taken at the shrine and because of the debt to the trafficker. However, the traffickers are aware that the victims rarely return to Nigeria by their own will and the trafficker will most likely not claim the debt by the use of threats of violence. However, if a victim returns voluntarily before the debt has been paid the trafficker may claim the debt from the family of the victim. Because of this there is a high risk that the victim will re-traffic in order for the family to pay the debt”, (p. 23).

#### *“3.2.1 Victims’ debt to traffickers*

Ndaguba (NAPTIP Abuja Headquarters) informed that usually the debt of the victim or her family to the agent is not a fixed amount and the total sum is not determined when the trafficking arrangement is agreed upon between the two parties. The victim may end up having to pay up to 50,000 or 60,000 Euros to her agent. Ndaguba (NAPTIP Abuja Headquarters) explained that the agent’s real expenses in each case of trafficking may be considerable lower and it could amount to 2,000 or 3,000 Euros. However, more debt is continuously added when the victim is abroad. Adding to the original debt serves to keep the victim under the control of the agent because the victim is always under the obligation to pay her debt to the agent until the oath is revoked.

Ndaguba (NAPTIP Abuja Headquarters) added that should a victim escape or disappear before the debt has been paid and the oath revoked, it is possible that a *ju-ju* priest, or an agent would try to collect the debt at the home of the victim’s family. It was emphasized that up to 90 % of the families affected would not call on the police or go to court, but they will do their utmost to pay the debt even though this kind of debt is illegal. Some families may even sell their land and property in order to repay the debt. There are also cases in which families have disowned their daughter because she is perceived to have brought the debt on the family. However, there are no known cases where such families have been killed or exposed their daughter to serious physical violence. Should NAPTIP be aware of such cases, the agency would do all it can to assist the victim and her family in order to reconcile and reunite the family, and to avoid re-recruitment taking place”, (p. 24).

“Jane Osagie (IRRRAG) stated that traffickers in Nigeria have a network in Nigeria that can be used to collect the remaining debt or persecute the victims or their families. The debt could be as high as 50,000 to 65,000 Euros.

Rev. Sister Florence (COSUDOW) explained that some victims of trafficking might be released after the debt has been paid but this is not very common. Instead, many are re-sold to another Madam or trafficker. Some of these may even establish themselves as Madams abroad, should they succeed in being

granted a residence permit in a foreign country, or they may become traffickers in Nigeria.

Rev. Sister Florence (COSUDOW) stated that whether the debt to the trafficker has been paid or not is much more relevant to the victim's security situation than if the victim has given evidence in court case. However, even if the debt has not been paid, the victim will always be able to seek and obtain protection from reprisals by traffickers in Nigeria", (p. 25)."

"Morka (NAPTIP Lagos Zonal Office) added that NAPTIP's witness protection programme exists throughout the country and it can be brought into use whenever it is necessary. Witness protection is included in the Nigerian law on trafficking. However, even though the trolley men's or trafficker's network in Nigeria is strong the local traffickers are insignificant, and they cannot successfully persecute their victims.

Regarding witness protection, Ndaguba (NAPTIP Abuja Headquarters) explained that no one, not even in European countries, could guarantee a witness 100 percent protection against intimidation such as *ju-ju*, which was described as psychological intimidation. Even though NAPTIP has a witness protection programme, this programme cannot guarantee protection against the traumas, which some victims suffer because of the oath of secrecy they have sworn, and their strong sense of obligation to the bidding of an agent or a Madam.

However, Ndaguba (NAPTIP Abuja Headquarters) emphasized that all victims, including victims that have testified against their traffickers or victims that are still indebted to their traffickers or Madams, would enjoy protection by NAPTIP against physical harm from traffickers if they wish. NAPTIP had never heard of any incidents in which agents of trafficking had killed or persecuted witnesses", (p. 42).

## **"5.2 Shelters, reintegration and rehabilitation facilities**

### *5.2.1 NAPTIP shelters*

According to De Cataldo (IOM) NAPTIP has access and is working toward the establishment of seven shelters in Abuja, Lagos, Kano, Edo, Enugu, Sokoto and Akwa Ibom states. The active shelters have first aid capacity, a visiting medical doctor and referral capacity to hospitals.

Oguejiofor (NAPTIP Abuja Headquarters) stated that NAPTIP has seven shelters in operation in Nigeria. The shelters are located in:

#### State/City : Capacity

Lagos	: 120
Abuja	: 50
Uyo	: 50
Kano	: 50
Sokoto	: 50
Benin City	: 50
Enugu	: 50

Morka (NAPTIP Lagos Zonal Office) explained that NAPTIP's Zonal Office in Lagos runs a shelter for victims of trafficking including a medical clinic. The shelter has a capacity of 120 beds and this number can be increased to 200 beds, if necessary. Since 2004, 631 victims have passed through the shelter, out of which 562 were women. 53 victims are currently in the shelter", (p. 42).

“According to Morka (NAPTIP Lagos Zonal Office), the security in the shelter is extremely good as both the police and State Security Service (SSS) are based close to it. It was added that some of the returned victims had been accommodated in the shelter for up to three months. All victims in the shelter are staying there voluntarily.

Barrister Abiodun (NAPTIP Benin Zonal Office) explained that the present NAPTIP shelter in Benin City is not permanent, as the tenancy of the shelter will come to an end by 2008. It was emphasized that there is a need for the Zone to have its own shelter.

Ndaguba (NAPTIP Abuja Headquarters) explained that NAPTIP’s shelter in Abuja can accommodate approximately 50 victims of trafficking and at the moment of writing this report 30 victims have their residence in the Abuja shelter.

It was emphasized by Olateru-Olagbegi (WOCON) that the problem is not that victims are not offered protection by NAPTIP if in need but that some victims actually leave their shelter before they can be certain to be out of any danger. Many victims simply do not wish to stay but wish to go home or they believe that staying at a NAPTIP shelter, i.e. a shelter, which is run by a governmental agency, might imply that they will be harassed. Olateru-Olagbegi (WOCON) emphasized that harassment or any other violations of the victims’ rights does not take place in NAPTIP’s shelters but of course NAPTIP would like to get information about the traffickers from the victims in order to investigate and prosecute the traffickers”, (p. 43).

#### *“5.2.2 NGO shelters*

Mrs. Umaru (WOTCLEF) informed that WOTCLEF has a shelter for victims of trafficking and the NGO has in the past received financial support from different partners including UNICEF ILO/PATWA and the World Bank”, (p. 43).

“Olateru-Olagbegi (WOCON) explained that WOCON does not have its own shelter, and victims of trafficking that are considered to be in need of protection are referred to NAPTIP’s shelter in Lagos by WOCON. This shelter is the only shelter for victims of trafficking in Lagos.

De Cataldo (IOM) explained that COSUDOW recently opened a new shelter in Benin City and that the Italian Catholic church funded its establishment.

Rev. Sister Florence (COSUDOW) informed that COSUDOW runs a shelter in Benin City and that victims can seek protection there. So far COSUDOW have been able to accommodate the needs for assistance and protection to all the victims who have requested this.

COSUDOW’s shelter can accommodate 18 women. There is also a room for any physically challenged person who might come back. Rev. Sister Florence (COSUDOW) noted that the shelter was single-handedly built by the Catholic Bishop’s Conference of Italy and furnished by Missio, Aachen, Germany and the Religious Foundation against Trafficking in Women in Den Bosch, the Netherlands. Caritas Italiana donated the fund for the purchase of the land upon which the shelter is built. It was added that there is a convent within the shelter.

In contrast to Rev. Sister Florence (COSUDOW) Olateru-Olagbegi (WOCON) did not consider that COSUDOW’s shelter in Benin City is capable to protect victims of trafficking in need of protection. Olateru-Olagbegi (WOCON) explained that the shelter was not yet functioning, as it had not been completed as of July 2007 when she last visited COSUDOW in Benin City. However,



Olateru-Olagbegi (WOCON) considered that COSUDOW is in a better position to run a shelter than NAPTIP would. COSUDOWs Reverend Sisters' religious orientation give the victims a sentiment that they will be assisted and eventually be freed from their secret oath, and the victims will almost automatically have more confidence in the Reverend Sisters than in government employees at a NAPTIP shelter or even some NGOs.

Rev. Ejeh and Agbogun (Catholic Secretariat of Nigeria/Caritas Nigeria) informed that the Catholic Secretariat of Nigeria does not have its own shelter in Lagos but they can refer victims to the shelter of NAPTIP and the majority of victims are referred to NAPTIP's shelter. However, the Catholic Secretariat of Nigeria/Caritas Nigeria offers the victims vocational training in order for them to be able to seek employment.

Roland Chigozie (Idia Renaissance) explained that Idia Renaissance refers victims of trafficking who approach the organisation to NAPTIP's shelter in Benin City, but Idia Renaissance offer counselling and vocational training in its own centre. So far, Idia Renaissance has rehabilitated over 240 victims of human trafficking. This year (2007) Idia Renaissance has rehabilitated 30 girls and women referred by NAPTIP and five victims are currently been rehabilitated; the centre currently houses two of them because their families have rejected them. Idia Renaissance and IOM formerly ran this shelter jointly", (pp. 44-5).

#### *"5.2.3 Reintegration and rehabilitation*

Oguejiofor (NAPTIP Abuja Headquarters) explained that aside from psychological fear and fear of physical violence from agents, a third form of fear can be found with some victims. This fear has to do with the uncertain socio-economic situation and the concern about how to create a livelihood.

Roland Chigozie (Idia Renaissance) recommended that destination countries can assist the Nigerian government agencies like NAPTIP and NGOs involved in the rehabilitation of victims to be better equipped to handle victim's rehabilitation and that the European countries can also be involved in rehabilitation and empowerment before the victim is returned to Nigeria. Most victims expect economic empowerment as a precondition for returning to Nigeria.

Rev. Ejeh and Agbogun (Catholic Secretariat of Nigeria/Caritas Nigeria) recommended receiving countries in Europe to offer the victims vocational training in order to motivate them to stay in Nigeria once returned. If this is not done, the former victims might try to be re-trafficked and return to Europe.

Rev. Ejeh and Agbogun (Catholic Secretariat of Nigeria/Caritas Nigeria) considered that victims of trafficking would be much better off if they returned to Nigeria rather than staying abroad. However, he warned that if planeloads of victims were returned to Nigeria it would have a completely devastating effect on the possibility to absorb, i.e. receive, rehabilitate and reintegrate the victims into Nigerian society. Furthermore, he explained that it is of no use if European countries provide returned victims with a sum of money unless the victims have received some vocational training abroad or have the ability to administer that money. Usually the Catholic Secretariat of Nigeria/Caritas Nigeria assists victims in vocational training for a period of three to six months.

Ndaguba (NAPTIP Abuja Headquarters) welcomed that many receiving countries supply victims who are deported with some kind of package or assistance to enable them to cater for themselves after they have returned to Nigeria. Such measures can reduce the risk of victims being re-trafficked. NAPTIP has entered agreements with Norway and other European countries via

IOM. These agreements are all regarding rehabilitation and reintegration of victims of trafficking who are returning to Nigeria voluntarily”, (pp. 45-6).”

155. Ms Chandran referred us to a substantial volume of background material. The report from Freedom House, *Freedom in the World 2008 - Nigeria*, 2 July 2008 included the following about corruption:

“Corruption remains a serious problem, having bled Nigeria of many billions of dollars in oil revenue. The government has taken steps to improve transparency and reduce corruption, including the reform of procedures for contract procurements and bidding. In September 2006, a top official announced that authorities had convicted more than 1,000 people of economic crimes and recovered around \$5 billion over the past two years. Seven former governors were charged with corruption in 2007 on orders from the Economic and Financial Crimes Commission. Nigeria was ranked 147 out of 180 countries surveyed in Transparency International's 2007 Corruption Perceptions Index.”

169. Our attention was drawn to the report found in Rural poverty portal: *Rural poverty in Nigeria* (7 March 2007) and the passage which reads:

“Who are Nigeria’s rural poor people?

Women and households headed by women are frequently the most chronically poor within rural communities. Women have lower social status than men and consequently less access to schooling and training, particularly in childcare and health practices. Yet women play significant roles in rural economic activities. While the number of men migrating from rural areas in search of employment has increased over the last decades, the number of households headed by women has risen substantially. Women struggle to cope as the burden of work, at home and in the fields, falls on their shoulders. Malnutrition is a frequent problem in these households. ”

156. Ms Chandran relied heavily on the contents of the CEDAW report: *Concluding observations of the Committee on the Elimination of Discrimination against Women: Nigeria* (18 July 2008):

“4. The Committee commends the State party for its large delegation headed by the Minister for Women Affairs and Social Development, which included representatives of various Government ministries, departments and agencies, members of the National Assembly, as well as representatives from civil society. The Committee appreciates the open and constructive dialogue that took place between the delegation and members of the Committee.

5. The Committee notes with appreciation that the State party ratified the Optional Protocol to the Convention in November 2004.

11. Noting the rejection by the National Assembly of a 2005 draft bill on full domestication of the Convention, the Committee expresses its concern that the Convention has yet to be fully domesticated as part of national law despite its ratification in 1985 without any reservations. As expressed in its previous

concluding observations of 2004 (A/59/38, paras.282-316), the Committee is concerned that without such domestication, the Convention is not a part of the national legal framework and its provisions are not justiciable and enforceable in Nigerian courts.

13. The Committee welcomes efforts undertaken by the State party in the area of legal reform, such as the publication of a study compiling all national, state and local laws, policies and practices relating to the status of women and children and the establishment of a Committee on Reform of Discriminatory Laws against Women. The Committee expresses serious concern, however, at discriminatory provisions in the Constitution, including Section 26(2), which does not allow a Nigerian woman to transmit her nationality to her foreign spouse on the same basis as a Nigerian man. The Committee also expresses serious concern at other discriminatory laws at both the federal and state levels, including those that allow wife battery as chastisement as long as grievous harm is not inflicted (Section 55 of the Penal Code of Northern Nigeria), prohibit women from working at night in certain sectors of employment (Section 55 of Chapter 198 of the 1990 Labour Act of Nigeria), and classify sexual assault against female victims as a misdemeanour (Section 360 of the Criminal Code). Further, the Committee notes that a draft bill on “Abolition of All Forms of Discrimination against Women in Nigeria and Other Related Matters” was not approved by the National Assembly.

15. While welcoming the adoption by 18 states of the Child Rights Act, which sets the minimum age of marriage at 18 years, the Committee notes with concern Section 29(4) of the Constitution, which states that a woman is deemed to be of full age upon marriage thereby lending support to early marriages.

17. The Committee expresses concern at contradictions and inconsistencies created by the application of statutory, customary and sharia laws in the State party’s tripartite legal system, particularly in the areas of marriage and family law. It also notes with concern the existence of discriminatory provisions within these sources of law with regard to marriage, divorce, custody of children and inheritance. Recalling its previous concluding observations of 2004, the Committee reiterates that the tripartite legal system results in a lack of compliance by the State party with its obligations under the Convention and leads to continuing discrimination against women.

19. The Committee is concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women’s roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society. It notes that such discriminatory attitudes and stereotypes constitute serious obstacles to women’s enjoyment of their human rights and the fulfilment of the rights enshrined in the Convention. The Committee is thus concerned by the lack of information in the State party’s report on the measures taken and programmes or strategies in place to combat and address such discriminatory attitudes and stereotypes. The Committee also expresses serious concern about the persistence of entrenched harmful traditional and cultural norms and practices, including widowhood rites and practices.

#### Violence against women

23. The Committee is concerned about the continuing prevalence of violence against women, including domestic violence. The Committee is also concerned by the absence of a comprehensive national law on violence against women and

notes that a number of draft bills, such as the 2006 bill on “Elimination of Violence in Society” and the 2003 bill on “Violence against women”, remain pending before the National Assembly. While acknowledging the efforts made by the State party to address the issue, including awareness-raising measures, training programmes and the provision of support services to victims, the Committee remains concerned about the absence of a comprehensive national strategy and programme to combat all forms of violence against women. The Committee also notes with concern that the majority of services for victims, including shelters, are provided by non-governmental organizations with limited support, including financial support, from the State party.

24. The Committee urges the State party to accord priority attention to the adoption of comprehensive measures to address violence against women and girls in accordance with its general recommendation 19 on violence against women. The Committee calls on the State party to enact comprehensive legislation on all forms of violence against women, including domestic violence, as soon as possible. Such legislation should ensure that all forms of violence against women constitute a criminal offence, that women and girls who are victims of violence have access to immediate means of redress and protection, and that perpetrators are prosecuted and punished. The Committee recommends the expansion of training activities and programmes for parliamentarians, the judiciary and public officials, particularly law enforcement personnel and for health-service providers, so as to ensure that they are sensitized to all forms of violence against women and can provide adequate support to victims. It further recommends the expansion of public awareness-raising campaigns on all forms of violence against women. The Committee also recommends the establishment of additional counselling and other support services for victims of violence, including shelters, and requests the State party to enhance its cooperation with, and support for non-governmental organizations working in the area of violence against women. The Committee requests the State party to provide information in its next report on the laws and programmes in place to deal with violence against women and on the impact of such measures, as well as data and trends on the prevalence of various forms of violence.

#### Trafficking

25. While acknowledging the measures taken by the State party to combat trafficking in women and children, including the adoption of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2003, as amended in 2005, the establishment of the National Agency for the Prohibition of Trafficking in Persons, and the various cooperation agreements reached with other countries, the Committee is concerned by the continuing prevalence and extent of this problem.

26. The Committee urges the State party to ensure the full implementation of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, including the prosecution and punishment of offenders. The Committee also urges the State party to give priority attention to the protection, including witness protection, counselling and rehabilitation of victims, especially girl children. The Committee calls on the State party to enhance measures aimed at the prevention of trafficking, including economic measures to reduce the vulnerability of women and girls, as well as awareness-raising and information campaigns, particularly in communities most at risk. The Committee also calls on the State party to intensify international, regional and bilateral cooperation

with other countries of origin, transit and destination of trafficked women and girls.

28. In line with its previous recommendation, the Committee calls on the State party to take measures, with benchmarks and concrete timetables, to increase the number of women in political and public life, at all levels and in all areas, in light of its general recommendation 23 on women in political and public life. It also recommends that the State party introduce temporary special measures, in accordance with article 4, paragraph 1, of the Convention and general recommendation 25, to strengthen its efforts to promote women to positions of leadership. To that end, the Committee urges the State party to increase the availability of training and capacity-building programmes for women wishing to enter or already in public office and to enhance its awareness-raising campaigns on the importance of women's participation in political and public life.

#### Employment

29. Recalling its previous concluding observations of 2004, the Committee notes with concern the persisting wage gap between men and women, women's higher unemployment rate, and women's concentration in certain sectors, namely agriculture, animal husbandry, and service. The Committee also notes that women are predominantly employed in the informal sector resulting in their exclusion from formal social security programmes. The Committee expresses concern about the persistence of discriminatory legislation, administrative regulations and practices in the labour market. Specific reference is made in this regard to provisions of the Labour Act, which prohibit the employment of women in night work and in work underground, the Factories Act, which does not recognize the specific health and reproductive needs of women, the Nigerian Police Regulations, which prohibit the enlistment of married women and require women officers to request permission to marry in writing. The Committee also notes with concern discriminatory practices in the private sector, particularly in the banking sector, with respect to maternity and marital status. The Committee further notes the prevalence of sexual harassment in the workplace and the absence of legislation and measures to address this.

31. While commending the State party for the measures taken to strengthen the national health system, including the recent approval by the National Assembly of the National Health Bill, as well as the adoption of policies and programmes to address various health challenges, the Committee reiterates its serious concern at the precarious situation of women's health, as well as the insufficient number and inadequate health-care facilities, particularly in rural areas. The Committee notes that responsibility for the provision of health services is currently divided across the three tiers of government, with local governments responsible for the primary health-care system. It notes with concern that primary health-care services and facilities are often inadequate in quality, number and funding. The Committee also expresses concern about the high rates of malaria and HIV/AIDS affecting women and girls in the country.

33. The Committee is especially concerned at the very high maternal mortality rate, the second highest in the world, and regrets that there has been no progress in reducing the maternal mortality rate since the consideration of the State party's combined fourth and fifth periodic report in 2004. The Committee also notes the various contributing factors, such as unsafe abortions and inadequate post-abortion care, early and child marriages, early pregnancies, high fertility rates and inadequate family planning services, the low rates of contraceptive

usage leading to unwanted and unplanned pregnancies and the lack of sex education, especially in rural areas. The Committee expresses concern about the lack of access by women and girls to adequate health-care services, including pre-natal and post-natal care, obstetric services and family planning information, particularly in rural areas.

#### Economic empowerment

35. While taking note of the State party's comprehensive development and poverty reduction strategies implemented at the national, state and local levels, as well as initiatives to address women's economic empowerment, such as the Women's Fund for Economic Empowerment and the Business Development Fund for Women, the Committee is concerned that widespread poverty among women, particularly rural women and women head of households, as well as poor socio-economic conditions are among the causes of the violation of women's human rights and discrimination against women. It notes with concern that discriminatory practices with regard to land ownership, administration of property and inheritance, limit women's access to economic resources, as well as credit and loan facilities. The Committee is especially concerned about the situation of rural women, particularly in view of their precarious living conditions and lack of access to justice, health care, education, credit facilities, economic opportunities and community services.

38. The Committee requests the State party to pay particular attention to the needs of internally-displaced women, including women with disabilities, through the adoption of a national policy on displacement in line with Security Council resolutions 1325 and 1820, and the formulation and implementation of gender-sensitive plans and programmes for social re-integration, capacity-building and training of internally-displaced persons. It also recommends that the Inter-Ministerial Task Force on Gender and Peacekeeping pay particular attention to the situation of internally-displaced women. The Committee also requests the State party to ensure the protection of internally-displaced women from violence and their access to immediate means of redress."

157. Ms Chandran relied upon the UNESCO Policy Paper: *Human Trafficking in Nigeria: Root Causes and Recommendations* (Paris 2006) found at Tab B, p. 89. The Research Team included the appellant's expert, Ms Bisi Olateru Olagbegi. The policy paper was based on a UNESCO research study on "Human Trafficking, especially of Women and Children in West Africa (Benin, Togo, Nigeria)" coordinated by Ms Olateru Olagbegi, Executive Director of WOCON. We were invited to consider the following:

"About 92% of Nigerians trafficked to Europe for prostitution come from Edo State of Nigeria. Initially, most came from Benin City, the capital of Edo State, and from cities in Delta State, (p.23)."

158. In addition, Ms Chandran relied upon pages 40-41 of the report and a passage headed *Weak Legal Framework*:

"Human trafficking has flourished due to the lacklustre attitude of law enforcement and a weak legal framework which mainly focuses on trafficking for sexual exploitation. Generally, law enforcement agents are ill equipped and

lack the technical know-how and gender sensitivity to handle cases. Trafficked persons often allege that some Nigerian officials collude with traffickers by assisting them with forged documents and then facilitate their movement across borders and through ports.<sup>60</sup> Law enforcement agents are usually reluctant to investigate violent crimes, especially those against women and children who are unable to pay the costs of investigations or bribe the investigating officers. Thus, perpetrators of rape, sexual assault, domestic violence and human trafficking largely go unpunished in Nigeria. As for foreign trafficked persons, they are often treated as illegal immigrants and deported without thorough investigation. As a result, a combination of corrupt officials, complicit authorities, and weak laws combine to guarantee impunity for traffickers while increasing the plight of trafficked persons.<sup>61</sup> Many non-governmental organizations and women's right organizations continue to protest against the government's inability to prosecute well-known traffickers: the conviction of traffickers is quite rare, and even if convicted they are typically released within a short period of time."

159. She referred to the Amnesty International report: *Human Rights in Federal Republic of Nigeria* (28 May 2008) and the passage entitled *Violence against Women* (Tab B, p. 155 at 175):

"In January, the Federal Minister of Women's Affairs expressed the government's intention to promote gender equality as well as the welfare and rights of Nigerian women and children. However, violence against women remained pervasive, including domestic violence, rape and other sexual violence by state officials and private individuals. The underlying factors included the entrenched culture of impunity for human rights violations committed by the police and security forces, and the authorities' consistent failure to exercise due diligence in preventing and addressing sexual violence by both state and non-state actors. In May a bill to implement the UN Convention on the Elimination of All Forms of Discrimination against Women failed to pass in the National Assembly. Nigeria ratified the Convention in 1985. The Domestic Violence and Other Related Matters Bill was passed by the Lagos House of Assembly. At federal level, a bill addressing domestic violence failed to become law. The Nigeria Law Reforms Commission proposed in August that rape should carry a 15-year jail term."

160. Counsel directed us to the Human Rights Watch: *World Report 2008: Nigeria* (31 January 2008) and, in particular, these passages:

"Widespread government corruption, political and intercommunal violence, police torture and other abuses continue to deny ordinary Nigerians their basic human rights. During 2007 Nigerian government actors including the police, military, and elected officials committed serious and persistent abuses against Nigerian citizens with near-complete impunity. Hopes for improvement in the human rights situation were dashed when the April 2007 presidential and parliamentary elections were marred by fraud, violence, and intimidation so pervasive as to destroy all confidence in the results. The violence and fraud surrounding elections reflected entrenched patterns of corruption and human rights abuse that have long pervaded Nigeria's political system. The country has earned well over US\$223 billion in oil revenues since the end of military rule in 1999, but millions of Nigerians still lack access to

basic health and education services because so much of the money has been lost to corruption and mismanagement.

### **Rule of Law and Impunity**

Politically powerful individuals and members of Nigeria's security forces who stand accused of serious human rights abuses and other crimes are seldom held to account.

Law enforcement agencies have also subverted the rule of law. Police openly and routinely torture criminal suspects and others, and have killed more than 8,000 Nigerians in the past eight years; the police carried out 785 largely unexplained killings of alleged "armed robbers" during the current inspector general's first 90 days in office in 2007."

161. Ms Chandran relied upon the US State Department of State report *Trafficking in Persons Report 2008: Nigeria* ('the TIP report') (4 June 2008) to which she referred in full, (Tab B, pp. 163-5):

#### **"NIGERIA (Tier 2)**

Nigeria is a source, transit, and destination country for women and children trafficked for the purposes of forced labor and commercial sexual exploitation. Within Nigeria, women and girls are primarily trafficked for domestic servitude and sexual exploitation, and boys are trafficked for forced begging by religious teachers, as well as forced labor in street vending, agriculture, mining, stone quarries, and domestic servitude. Transnationally, women, girls, and boys are trafficked between Nigeria and other West and Central African countries, primarily Gabon, Cameroon, Benin, Niger, The Gambia and Ghana, for the same purposes listed above. Benin is a primary source country for boys and girls trafficked for forced labor in Nigeria's granite quarries. Nigerian women and girls are also trafficked to North Africa, Saudi Arabia, and Europe, most notably to Italy, Spain, the Netherlands, Belgium, Austria, Norway, and Greece. Nigeria's Edo state is a primary source area for woman and girls trafficked to Italy for sexual exploitation. In 2004, Nigeria's National Agency for the Prohibition of Trafficking in Persons (NAPTIP) reported that 46 percent of Nigerian victims of transnational trafficking are children, with the majority of them being girls trafficked for commercial sexual exploitation. An increasing trend, reported on widely in the last year by the United Kingdom (U.K.) and the international press, is the trafficking of African boys and girls from Lagos to the U.K.'s urban centers, including London, Birmingham and Manchester, for domestic servitude and forced labor in restaurants and shops. Some of the victims are Nigerian, while others are trafficked from other African countries through Lagos.

The Government of Nigeria does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Nigeria continued to demonstrate a solid commitment to eradicating trafficking. Although NAPTIP made solid efforts to investigate and prosecute trafficking cases, the relative number of convicted traffickers remained low. While Nigeria assisted an increased number of victims, the quality of care provided was compromised by inadequate funding to shelters.



Recommendations for Nigeria: Increase efforts to prosecute and convict trafficking offenders; allocate increased funds to collecting evidence for trafficking prosecutions and to victim care at NAPTIP's shelters; increase trafficking training for judges; offer expanded legal alternatives to the removal of foreign victims to countries where they face danger or retribution; and improve trafficking and crime data collection mechanisms.

### Prosecution

The Government of Nigeria continued to combat trafficking through modest law enforcement efforts during the last year. Nigeria prohibits all forms of trafficking through its 2003 Trafficking in Persons Law Enforcement and Administration Act, which was amended in 2005 to increase penalties for traffickers, and its 2003 Child Rights Act. Prescribed penalties of five years' imprisonment for labor trafficking, 10 years' imprisonment for trafficking of children for forced begging or hawking, and a maximum of life imprisonment for sex trafficking are sufficiently stringent and commensurate with penalties prescribed for other grave crimes, such as rape. During the last year, NAPTIP reported investigating 114 trafficking cases, 62 of which were prosecuted. Of the 62 cases, seven resulted in convictions and 51 are still pending in the court. Sentences imposed on convicted trafficking offenders ranged from one to 10 years' imprisonment. This law enforcement data, however, primarily reflects cases handled by NAPTIP's headquarters in Abuja. Trafficking data collected at the Agency's five other zonal offices are not systematically collected by NAPTIP's headquarters. Judicial effectiveness in punishing trafficking crimes is hampered by a lack of funding for thorough investigations and a lack of awareness of trafficking among judges, many of whom conflate trafficking with smuggling. Over the year, NAPTIP cooperated with law enforcement counterparts in Spain, Ireland, the Netherlands, the United Kingdom, Italy, France, Norway, and Belgium to break up an international ring comprised of over 20 traffickers. During the year, the government extradited a man wanted to stand trial for trafficking a 14-year-old Nigerian girl to the United States. NAPTIP also collaborated with other African governments during the year on trafficking cases, most notably those of Benin, Togo, and Cameroon.

The government trained 750 police, immigration, customs, and border security officials about trafficking during the reporting period. NAPTIP also provided anti-trafficking training to Nigerian embassy and consulate authorities posted in source countries. In addition, Nigeria contributed training materials and instructors to a donor-funded law enforcement anti trafficking training program.

### Protection

The Nigerian government continued steady efforts to protect trafficking victims during the last year. NAPTIP continued to operate seven shelters throughout the country – in Lagos, Abuja, Kano, Sokoto, Enugu, Uyo, and Benin City. However, due to inadequate funding, some shelters were not well-maintained, and they offered limited rehabilitation care and no reintegration services. Despite a documented significant trafficking problem in Nigeria, NAPTIP shelters were not well used. In January 2008, for example, the Lagos shelter, with a capacity for 120 victims, housed only 15 victims. The government refers victims to NGOs on an ad hoc basis, but employs no formal, systematic procedures for referring victims to service providers. NAPTIP has agreements with hospitals and clinics, however, to provide care to victims with HIV/AIDS. NAPTIP reported rescuing 800 victims, and providing assistance to 695. During the year Nigerian and

Beninese authorities implemented the terms of their joint ant trafficking plan of action by repatriating 47 Beninese children found trafficked to some of Nigeria's stone quarries during the year. NAPTIP also collaborated with Togolese officials to repatriate two victims back to Togo. NAPTIP provided trainers and other personnel to assist a foreign donor to train 34 government counselors on strategies for caring for trafficking victims. NAPTIP encourages victims to participate in investigations and prosecutions of trafficking crimes, as victim testimony is usually required to prosecute traffickers. Because cases take so long to go to trial, however, victims have often returned to their home communities by the time their testimony is needed in court. Frequently, they are unwilling or unable to return to the court to testify. Victims also often refuse to testify due to fear of retribution. Nigeria provides a limited legal alternative to the removal of foreign victims to countries where they face hardship or retribution – short-term residency that cannot be extended. The government places foreign victims in shelters under guard until they are repatriated.

Although there were no reports of victims inappropriately incarcerated, fined, or penalized for unlawful acts committed as a result of being trafficked, police do not always follow procedures to identify trafficking victims among females arrested for prostitution.

The government is hesitant to conduct raids on brothels and typical raid tactics are not sensitive to trafficking victims.

#### Prevention

The Government of Nigeria took some steps to raise awareness about trafficking during the reporting period. NAPTIP's public enlightenment division erected billboards and posters carrying anti-trafficking public awareness messages and hosted antitrafficking forums in villages. The government also aired anti-trafficking public service announcements.

Recent reforms tightening immigration laws related to the issuance of passports are expected to yield a decrease in trafficking. Nigerian troops receive anti-trafficking awareness training through a donor funded program before being deployed abroad as part of peacekeeping missions for ACOTA. A national anti-trafficking forum, established by NAPTIP in 2003, met regularly in each state as well as in the six regional zones. The government did not, however, take steps to reduce the demand for commercial sex acts within Nigeria."

#### 162. Our attention was also drawn to the Integrated Regional Information Network News (IRIN): *Nigeria: Trafficking for girls, abuse worsening* (7 July 2008):

"KANO, 7 July 2008 (IRIN) - The trafficking of girls from villages to cities in Nigeria is increasing and the state is powerless to stop the trade, officials told IRIN.

*"The business of recruiting teenage girls as domestic help in rich and middle-class homes is booming despite our efforts to put a stop to it", Bello Ahmed, head of the Kano office of the National Agency for the Prohibition of Traffic in Persons (NAPTIP), told IRIN.*

Girls aged 12-17 are regularly trafficked from villages and brought to the city to

work as maids for an average monthly wage of 1,500 naira (US\$13) which they usually send back to their parents who are caring for several of their siblings, according to Ahmed.

*“Apart from being denied access to education, these girls are in many cases raped and beaten by their employers and this is why we keep a dormitory to rehabilitate them”, Ahmed said.*

### **Powerless**

Although NAPTIP has managed to stop the practice of teenage girls being ferried in trucks from villages to the cities “like chickens”, Ahmed admitted his agency had failed to stop the trade.

*“The more the law enforcement agencies perfect their strategies at stopping the business, the more the perpetrators become more sophisticated in running their trade”, he said.*

Lack of legislation to prosecute the traffickers makes NAPTIP unable to take legal action against traffickers even when they are arrested, according to Ahmed.”

163. In the report of the Global Alliance against Traffic in Women (GAATW): *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (2007), we find a section on Nigeria written by Victoria Nwogu which includes the following, cited by reference to its internal pagination:

“Nigerian women are trafficked to Europe predominantly to earn money for others from commercial sex, especially in Belgium, France, Italy, the Netherlands and Spain. The UNICEF has reported that 80 per cent of young women engaged in sex work in Italy are Nigerians (UNICEF, 2002). South Africa and the United States are also destination countries, while the United Kingdom and Ireland are countries of transit as well as destination for Nigerian women. [142]

In Nigeria, human trafficking is often conflated with sex work. This misconception became obvious in a particular incident in the 1990s involving the massive deportation from Italy of trafficked women and girls who mostly came from Nigeria’s Edo State in the south. Most of the women and girls had been trafficked for sexual purposes. The reaction of the public to these deportations and the subsequent sensational media coverage of the incidents were to assume erroneously that all cases of trafficking were for purposes of sex work, and, worse still, to stereotype victims of trafficking as women from Edo State only. Trafficking for labour exploitation, internal trafficking and trafficking of persons into Nigeria have not so far received commensurate attention.

The equation of human trafficking with sex work has further worsened the abuse suffered by trafficked persons, who, irrespective of the form of labour they are trafficked for, on arrival back in Nigeria, are considered sex workers. This is best appreciated in the case of the deportation of Nigerian girls from Europe. An Anti-Slavery International report (Pearson, 2002, 169) referred to the Nigerian situation thus: “The procedures facing deported nationals in Nigeria violate basic human rights by discriminating against and stigmatising women as sex workers,

forcing them to undergo STD tests and preventing them from leaving the country legally again. [144]

The deficiencies in the NAPTIP Act regarding the protection of victims and witnesses have made it difficult to secure the testimonies of victims and witnesses for use in prosecutions, as they fear reprisals from traffickers. In its first two years of existence, only two cases were successfully prosecuted to conviction under the law, despite the thousands of trafficking transactions taking place in Nigeria. To the extent that the NAPTIP Act lacks effective victim or witness protection, it has not complied with the UN High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Guidelines 6 and 9). [149]

Since the NAPTIP Act was adopted, there have been eleven successful prosecutions of traffickers and thirty-two cases pending in court. The kinds of trafficking involved ranged from outright sale, child domestic work, forced prostitution and other forms. [150.]

### **Impact of Anti-Trafficking Initiatives on Trafficked Persons**

Most assistance programmes in Nigeria are based on the 'rescue and rehabilitation' model. Though these programmes are designed to benefit trafficked persons, the individuals managing them seem to have little understanding of the issues. Recovery work most often focuses on repatriated victims and children who have been rescued through raids on labour camps or who have been deported as illegal immigrants engaged in sex work abroad. Many NGOs which help trafficked persons in the recovery process round up returnee victims and run vocational courses without assessing their interest or aptitude for that specific skill. Victims have no involvement in making decisions about the courses or their contents, nor are there systematic efforts to find out if they benefited from the courses afterwards or if these should be modified to be more useful. An example of a rehabilitation project that has proved to be less successful (though not significantly less successful than a lot of others) was the ALNIMA Project in Edo State, instituted in 2003 by the European Network for HIV/STI Prevention and Health Promotion Among Migrant Sex Workers (TAMPEP – a European network of NGOs, based in Italy). The project, which lasted for one year, was evaluated as recording only 40 per cent success because of poor planning, lack of consultation and improper assessment of the needs of the beneficiaries. Eighty per cent of the beneficiaries reportedly walked out on the rehabilitation programme and found their way back to Italy. Many of them had been working voluntarily in the sex industry and were resentful at being 'rescued' and deported against their wishes, as it resulted in the deprivation of their livelihood.<sup>44</sup> The 'rehabilitation' mentality is also reflected in the NAPTIP Act, which, for instance, uses the term broadly and permits detention<sup>45</sup> of trafficked persons "where the circumstances so justify". Some of the actions construed by the Act as rehabilitation include: counselling, skills acquisition, and family tracing and reunion. The real issue here and throughout this study is whether NGOs and government agencies often assume Nigerians to have been trafficked when they have not been or whether these people were in fact trafficked, but were so keen to go on earning a living that they felt propelled back to Europe and other destinations where they were previously exploited.

The process of return/repatriation of trafficked persons is fraught with abuses of their human rights. Most of the deported persons are not treated as victims of

trafficking, but are regarded as criminals and illegal aliens by law enforcement agents both in the countries from which they are deported and in Nigeria. There have been reports of Nigerian women being subjected to various forms of physical abuse and humiliation while in the custody of law enforcement agents (UNODC/UNICRI, 2004, 35). International standards require that return and repatriation procedures should ensure the security of victims and their subsequent reintegration (UN High Commissioner for Human Rights' Recommended Principles and Guidelines, Guideline 6.8). Usually Nigerians who have been making money from commercial sex in Europe are repatriated on chartered aircraft, escorted by security agents and sometimes still wearing the same clothes they had on when trying to earn money on the streets. There are also reports that, contrary to human rights principles, the repatriated trafficked persons are not permitted to return with their money or properties, thus violating Article 17 of the Universal Declaration of Human Rights, which states that *No one shall be arbitrarily deprived of his property*, and Article 15 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. They are also not allowed to remain in the country long enough to obtain money they are owed (for example, as unpaid earnings), let alone to seek compensation or damages. In fact, trafficked persons should be allowed to stay in the host country for the period necessary to undertake penal proceedings against the traffickers and make a civil law case for recovery of unpaid wages and other compensation. [216-217]

164. The report of the Danish Immigration Service report: *The Protection of victims of trafficking in Nigeria: a fact finding mission to Lagos Benin City and Abuja, 9-26 September 2007* (April 2008) to which we have earlier referred was also referred to by Ms Chandran in these additional passages from the report:

About corruption:

“Rev. Ejeh and Agbogun (Catholic Secretariat of Nigeria/Caritas Nigeria) considered that the NPF has the capacity to protect victims from traffickers. However, as the NPF is known to suffer from prevalent corruption, there is no guarantee that the victims will be protected.[p.18]

Olateru-Olagbegi (WOCON) confirmed that the Anti-Human Trafficking Units of NIS and NPF are not flawed by corruption as the NPF is, and the two Anti-Human Trafficking Units are better trained and informed about the trafficking issue which means that they show empathy in their approach to the victims of trafficking. However, many ordinary police officers in the NPF are often unaware about the problem of trafficking and they do not understand questions related to this issue.”[p.18]

About risk of reprisals against victims of trafficking:

“Rev. Sister Florence (COSUDOW) had no information as to whether a victim of trafficking had been severely persecuted or killed by traffickers in Nigeria. It was added that the trafficker’s objective is to get his money back, and that is why the involved family and the trafficker very often will see to it that the returned victim will be re-trafficked. Re-trafficking is a very common phenomenon.

In contrast to Rev. Sister Florence (COSUDOW), Jane Osagie (IRRRAG) considered that returned victims of trafficking are vulnerable as they face serious dangers in Nigeria. Traffickers will persecute the returnees if they are still indebted to these traffickers and the victims are frightened, as they strongly believe that they are obliged by the oath that they took before leaving Nigeria. The victims fear for the consequences if they do not or cannot pay their debt, and at the same time, many victims are seriously traumatized from their experiences abroad.

Jane Osagie (IRRRAG) explained that she did not have any precise information on the level of maltreatment of returning victims by traffickers. On the other hand, there are reports confirming that traffickers expose their victims to various forms of intimidation.

When asked about the scope of persecution and reprisals on victims of trafficking that have not paid their debt upon their return to Nigeria, Jane Osagie (IRRRAG) explained that NAPTIP would be the source of such information. IRRRAG does not have adequate information of the scale of persecution by traffickers.

Morka (NAPTIP Lagos Zonal Office) stated that since 2003, threats of reprisal from traffickers have never resulted in the loss of the life of victims.”[p.26]

De Cataldo (IOM) stated that retribution against the victim or the family cannot be excluded, and Section 50 (j) of the Government Notices Nos. 156 and 209 of 2003 and 2005 (Harmonized Trafficking in Persons (Prohibition) Law Enforcement and Administrative Acts, 2003 and 2005 addresses the problem:

*“a trafficked person and his family are protected from intimidation, threats, and reprisals from traffickers and their associates including reprisals from persons of authority”*”[p.27]

#### “5 Protection and support mechanisms

The delegation asked IOM if it is possible to cooperate with NAPTIP on victim assistance. De Cataldo (IOM) responded positively, and noted that cooperation with NAPTIP at an early stage is essential to ensure the welfare of the victim and aid in the investigation of Nigerian trafficking rings in Europe, due to the complexity of such investigations when it comes to identify the structure of trafficking rings and their modus operandi. De Cataldo (IOM) noted that attention should be given to ethnic/tribal aspects, which might play a role in the functioning of trafficking rings. The cooperation with NAPTIP can be useful, as law enforcement agencies in Europe might not have sufficient background information on Nigerian specific trafficking rings. The exchange of liaison officers between Nigeria and EU countries can be considered a best practice to implement.

The delegation noted that some European countries have a small number of Nigerian asylum requests associated with trafficking in persons and queried the security risks that might be associated in cooperation with law enforcement agencies or the potential for other risks for a trafficked persons upon return to Nigeria. De Cataldo (IOM) noted that the repatriation process must include a security risk assessment, and that such assessments should be conducted in cooperation with NAPTIP. IOM has positive experience on this in the context of repatriation operations from third countries.

De Cataldo (IOM), generally noted that each case should be assessed in an effort to confirm all the facts, especially when the asylum seeker appears to be confused as to the specific nature of the threats/persecution that she/he fears.

Regarding a security risk assessment conducted in cooperation with NAPTIP, Oguejiofor (NAPTIP Abuja Headquarters) confirmed that NAPTIP has the capacity to conduct security risk assessment on the basis of threat to the life of victims and to the families or relatives of the victims.

Ndaguba (NAPTIP Abuja Headquarters) added that NAPTIP conducts risk assessments of victims in order to assist in the best way and any victim can stay in the shelter of NAPTIP for as long as is needed and the victim can even be transferred to another shelter in the country.” [p.34]

“Fapohunda (LRC) explained that NAPTIP does its utmost to perform its duties and the agency is trying to be efficient and it is definitely more efficient than most other state institutions in Nigeria. NAPTIP lacks resources and even though some donors have supplied assistance to NAPTIP, this has not been followed up by sufficient government funds. The lack of resources means that it can be difficult for NAPTIP to provide protection for all victims of trafficking. However, Fapohunda (LRC) considered that NAPTIP is genuine in its fight against trafficking.

When asked why it can be difficult for NAPTIP to provide protection for all victims of trafficking even if such victims are returning on a case-by-case basis and not in planeloads, Fapohunda (LRC) explained that his comment was not based on any consideration of returns either on an individual scale or large scale, but on an appreciation of what is the reality on the ground. The reality of the Nigerian criminal justice system is that it offers little or no protection for victims of crime. There is presently a bill before the parliament on this matter but this is not priority. Also it was Fapohunda’s (LRC) view that quite apart from legislative limitations, the resources allocated to the NPF and NAPTIP is neither sufficient or adequate to offer the kind of protection (even on an individual basis) that will, at the very least, meet minimum international standards. Nigeria has not invested in its justice system; the casualty of this lack of investment is essentially poor justice institutions. Fapohunda (LRC) added that NAPTIP is a government body within the Federal Ministry of Justice.

Olateru-Olagbegi (WOCON) considered that NAPTIP is committed to assisting victims of trafficking but it lacks personnel, and its staff lack training.

Olateru-Olagbegi (WOCON) expressed doubt as to whether NAPTIP is capable of protecting victims against traffickers, as NAPTIP might lack the resources and the technical know-how to protect victims. On the other hand, Olateru-Olagbegi (WOCON) had no doubt that NAPTIP has the will to try to do its utmost to protect victims in need of protection.” [p.35]

“Morka (NAPTIP Lagos Zonal Office) stated that none of the victims who have been through the NAPTIP shelter in Lagos have been subjects of persecution by their traffickers and this is why it is so important that NAPTIP is notified about returns of victims from abroad. It was explained that the normal time spent in the shelter is about two weeks. However, if the victim is in need of an extended period of time in the shelter this will be granted.

Morka (NAPTIP Lagos Zonal Office) stressed that NAPTIP can offer protection to victims who give evidence against traffickers for as long as the criminal case is pending in the court system or for as long as is needed. In one case a witness stayed in NAPTIP’s shelter for nine months. NAPTIP informs the local police

about the case in order to monitor the victim who testifies against the trafficker.” [p.37]

*“5.1.1 NAPTIP’s protection capacity*

Ndaguba (NAPTIP Abuja Headquarters) stated that NAPTIP is able to offer victims full protection against physical violence from the agents of trafficking and this includes victims who have testified against traffickers abroad or in Nigeria or are indebted to their agents or Madams.

Babandede (NAPTIP Abuja Headquarters) also emphasized that NAPTIP has the capacity to support and protect returning victims of trafficking who have expressed fear of retaliation, acts of revenge or persecution by agents.

De Cataldo (IOM) stated that it is important to note that protection requires the victim to cooperate with the authorities and seek protection as the case may be. Upon receiving threats the victims should inform the appropriate authorities.

Concluding, De Cataldo (IOM) noted that NAPTIP and the Nigeria Immigration Service are an expression of the efforts that Nigeria is making to “turning around the table”. [pp.38-39]

“Olateru-Olagbegi (WOCON) warned that there is too much generalisation regarding the ability of for instance NAPTIP and its capacity to protect victims of trafficking and its ability to offer re-integration support for those victims. Therefore, it is very important that all cases of trafficking are handled on a case-to-case basis and that the victims are offered a temporary residence permit in their host country.

Finally, Olateru-Olagbegi (WOCON) stated that WOCON can offer victims some help such as legal and general human rights counselling as well as provide some immediate basic needs, but WOCON does not have the capacity to offer protection against traffickers if this is needed. In such cases WOCON refers the victim to NAPTIP.

It was added by Olateru-Olagbegi (WOCON) that this referral from WOCON to NAPTIP take place in the hope that NAPTIP will do its utmost to protect and investigate these cases. However, it is a problem that NAPTIP’s own investigators are not always able to ensure that traffickers are prosecuted and she pointed to the fact that there are too many unresolved cases of trafficking in Nigeria, which means that one can never be certain that a trafficker will be prosecuted. It was added that NAPTIP must improve its results if this will work as a deterrent for other traffickers.” [p.40]

“Roland Chigozie (Idia Renaissance) explained that Idia Renaissance refers victims of trafficking who approach the organisation to NAPTIP’s shelter in Benin City, but Idia Renaissance offer counselling and vocational training in its own centre. So far, Idia Renaissance has rehabilitated over 240 victims of human trafficking. This year (2007) Idia Renaissance has rehabilitated 30 girls and women referred by NAPTIP and five victims are currently being rehabilitated; the centre currently houses two of them because their families have rejected them. Idia Renaissance and IOM formerly ran this shelter jointly.”[p45]

165. Ms Chandran also relied heavily on the contents of the Home Office UK Border Agency-Danish Immigration Service: *Report of the Joint British-Danish Fact-Finding Mission to Lagos and*



*Abuja, Nigeria; 9-27 September 2007 and 5-12 January 2008, (29 October 2008):*

“1.17 According to UNIFEM, there are basically four scenarios for women who relocate within Nigeria in order to avoid FGM, forced marriage or domestic violence:

- She can approach the local church/mosque or religious establishment and seek assistance from the leadership.
- She can approach friends or relatives who are willing to hide her.
- She can approach NGOs working on women’s human rights. (However, these NGOs may only be known to women in those urban settlements, towns or cities where the organisations are active).
- She can take to the street. This is a frequent scenario for young women or women who do not have the capacity or the means to do otherwise. Some of these may end up in brothels or are vulnerable to being trafficked.

1.18 UNIFEM added that attractive young, single women, in particular, are very vulnerable to abuse, harassment and trafficking when relocating to another area without economic means or family networks. Regarding internal relocation, UNIFEM explained that the vast majority of women seeking protection against domestic violence, forced marriage or FGM, including women who wish to protect their daughters against FGM, have the tendency to first relocate to a safe place not far from their home area. They may even relocate several times within their familiar locality if necessary.

1.19 BAOBAB stated that from a legal point of view, internal relocation is an option for any woman in Nigeria because there is full freedom of movement in the country. However, this first step - even to take a bus - can be difficult as women are dependent on their relatives, family or husbands, and may not have the money to allow them to relocate. As a consequence of this, a woman will need relatives in her new location who are ready to accommodate her. It was emphasized that it is technically possible for victims of domestic violence, FGM or forced marriage to relocate in Nigeria, but economically it is not easy. Even language might pose a problem for women who relocate to areas where members of their own ethnic group do not live.

1.20 It was emphasized by BAOBAB that a woman can obtain physical protection by relocating to another area in Nigeria. Women who are economically independent, in particular, would stand a much better chance of sustaining themselves than women who are not. BAOBAB added that it is difficult to separate the question of physical protection from the social, cultural and/or humanitarian constraints involved in relocating. However, even women who have access to economic means could face difficulties in finding accommodation or a job as they are often stigmatised. BAOBAB further added that young women and/or single women, in particular, who have relocated within Nigeria, are vulnerable to unscrupulous men that may target these women. Some of them might even end up as commercial sex workers.

1.23 According to representatives of a UN organisation, many women relocate to escape domestic violence, forced marriage or FGM, even within their local or state area. However, women prefer to go to friends or relatives, rather than to a shelter. The general perception amongst Nigerians is that shelters hide battered women and women with many problems who have no relatives to turn to. Many

women, even victims of violence themselves, do not want to be associated with such women. Moreover, women relocating from their homes are seen as violators of their own culture and may feel ashamed as a result. However, when there are no other alternatives women will seek protection in a shelter.

1.25 WACOL explained that it only knew of one shelter in Nigeria run by the government. This shelter is located in Abuja and the Federal Ministry of Women's Affairs and Social Development administer it. However, WACOL had no further knowledge of this shelter, as it had never referred any woman to it. In addition to the governmental shelter in Abuja, there is also a NGO shelter that is run by the NGO Daughters of Abraham. This shelter is mainly reserved for victims of trafficking and prostitutes.

1.36 The Federal Ministry of Women's Affairs and Social Development stated that the shelter of the Ministry was commissioned on 17 May 2007. The shelter opened and was fully operational in November 2007. The shelter is situated in an undisclosed location in Abuja in order to protect the women in the shelter against any kind of hostility from their perpetrators. The shelter can accommodate approximately 7 women at the same time. However this capacity can be extended if the need arises. Security staff is employed at the shelter.

1.37 The Ministry stated that since the opening of the shelter in November 2007, it has accommodated one woman and four children. However, this should be seen in the light of the fact that the shelter is fairly new. Furthermore, to most women a stay in a shelter is often seen as the last resort irrespective of whether the shelter is run by a NGO or by the government.

1.40 It was emphasized that women NGOs throughout Nigeria can refer any woman who needs shelter to the shelter in Abuja. Women can stay in the shelter for up to four or five months. During this time the women receive counselling from a department in the Ministry and attempts will be made to mediate between the women and the perpetrators. If reconciliation is not possible, the Ministry can offer the women legal assistance in taking their cases to the courts. There is not yet a budget in place to offer vocational training or education to the women who are staying in the shelter.

1.71 UNIFEM considered the existence of the so-called Gender Desks in some police stations as mentioned by some NGOs consulted by the delegation as a very positive step in assisting victims of domestic violence, FGM and forced marriage. However, the Gender Desks only exist in three police stations in Enugu State (being just one out of 36 states in Nigeria) and concentrated in the state capital, contradicting the statement by WRAPA that desks had been established in Abuja and Lagos (*see para 1.67*).

1.72 BAOBAB added that enforcement agencies are not sensitised to take women's issues seriously. However, some police stations have established Gender Desks and they cooperate with women NGOs. In some cases, the police will even refer women to BAOBAB. It was added that even though the police and other government bodies and social services do not lack the resources to assist female victims of domestic violence, forced marriage and FGM, they often do not have the will to assist. In addition, there is a lack of political will to address women's issues. This is due to a general negative perception of women; gender stereotyping and the view that violence against women is often considered to be a private matter.

1.74 Finally, BAOBAB stressed that a violent husband should not be considered as a 'husband' but as a 'perpetrator'. However, law enforcement agencies only rarely assist, and only Ebonyi State has passed a law against domestic violence. Accordingly, the police often do nothing to assist the woman as they regard it more as a 'private affair'. WACOL was aware that churches provides counselling to women, because some have come to WACOL either recommended by the church or after the church could not handle the case. However, WACOL was not aware that churches provide protection but women do actually go to churches for assistance. WRAPA confirmed that mosques and churches provide a temporary safe haven for women in need and many women do seek sanctuary in churches and mosques. Often these institutions will try to reconcile the parties, but in those cases where the leaders consider that this is no longer an option, they will refer the women to NGOs like WRAPA for further assistance.

1.76 Most women have strong confidence in their religious leaders who have an enormous influence in local communities, but in Nigeria, as in most parts of Africa, religious beliefs run deep and the fear of the supernatural is absolute. As a result, religious leaders wield absolute power and command unquestioning devotion from their adherents. There are reported examples of such leaders having abused women who sought refuge in their care.

### **Social and humanitarian constraints**

1.79 Representatives of a UN organisation explained that there are a number of social and humanitarian constraints on women who consider relocating in Nigeria. These constraints include:

- Lack of information on the part of the women themselves.
- Level of empowerment.
- Fear of leaving their own environment and to be seen as defiant of their own cultural norms and practices.
- Lack of accommodation and job opportunities. Fear of losing their own social network.
- Poverty.

1.80 WACOL believed that, in general, it would be difficult for a girl or a woman to relocate in Nigeria without relations who can assist her. WACOL considered that if an underage girl does not want to enter into a marriage, and she is ready to relocate elsewhere in Nigeria in order to escape the marriage, it is a precondition that she has a family member or relative in the new location that is ready to support her. Furthermore, regarding forced marriage it was emphasized that internal relocation might be much more difficult for a daughter/woman of an influential family than for a daughter/woman of an ordinary family. A daughter/woman from an influential family might find it more difficult to find a location in the country where she would not be recognised and maybe returned to her family or husband.

1.83 UNIFEM considered that, in practical terms, if a woman chooses to relocate she could face a number of economic and social constraints depending on her situation. The woman would be in a more favourable situation if she has an economic foundation of her own in the form of savings, which can sustain her until she can get a job. There is no social security system in Nigeria that can support a woman without any means of existence.

1.84 It would also be easier for a woman to relocate if she has a relative or a friend in the new location who would be willing to support her in the initial phase. Married women may have two families to choose from when it comes to whom they turn to for protection and safety. If the woman has no one to receive or accommodate her she might end up living in the street. According to Sections 405-409 of the Penal Code (Northern States) Federal Provisions Act 1960, she might then even be arrested in the northern part of the country as a ‘vagabond’. The question of the economic and social constraints facing a woman who has decided to relocate very much depends on the specific situation of the woman.

1.85 UNIFEM explained that in general there is a strong desire to maintain the unity of the family and this means that families, NGOs and religious leaders will try hard to reconcile the wife and the violent husband. For a wife to leave her family, even if her husband is violent, is almost considered a taboo.

1.86 BAOBAB explained that if the woman has family or relatives in the new location, they may listen to her and try to support her, but they may not be in a position to help her to secure a sustainable living. Culturally, the woman will often be expected to return and stay with her husband. It was added that traditional Nigerian culture expects women to be subservient to their husbands even when the women are living with a violent husband.

1.88 BAOBAB explained that social welfare structures in Nigeria are not well equipped to perform their statutory and social functions. Accordingly women who have relocated will find that there are no shelters to protect them, no jobs, no access to justice, and they may find it difficult to be accommodated. In addition, gender stereotyping labels single women as “unattached” and they easily become vulnerable. Finally, laws are very often not implemented or enforced.”

166. We noted from The Danish Immigration Service report: *Protection of victims of trafficking in Nigeria a fact finding mission to Lagos Benin City and Abuja, 9-26 September 2007* (April 2008):

“UNODC reported in 2006 that, “In all countries [Benin, Nigeria and Togo] there are numerous<sup>5</sup> NGOs involved in the area of human trafficking. A small number of NGOs seem to have established themselves as well-known, reliable and serious NGOs in each of the three countries involved in the study. They tend to work well with each other. There remains some competition with respect to funding, but it appears that many NGOs seem to have carved out their niche within which they work well with other organizations. It is not clear from this analysis whether the cooperation exists on a structural rather than on an incidental level.”

“It is these same NGOs, which tend to coordinate their activities with government ministries and agencies. The working relationship between NGOs and government ministries varies depending upon the ministries and their functions. As can be seen from the data provided by the NGOs in Nigeria and Togo, the working relationship tends to be closest with the ministries providing social services. These include the Ministries of Education, Social Affairs, Women’s and Children’s Affairs. **NGOs in Nigeria also appear to have a good**

**working relationship with the police and NAPTIP.” [p 17] [Our emphasis]**

“In UNDOC’s 2006 report *Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo*, UNODC commented that Nigeria enacted the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*, in August 2003 commonly referred to as the Act. Prior to the passage of the Act, Nigeria depended on laws in the penal or the criminal code to deal with offences related to trafficking in humans. Trafficking cases were dealt with under provisions of the law applicable to the offences of slave trading, forced prostitution, abduction, sexual exploitation, deprivation of liberty, and forced labour. The most important elements of the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*, 2003 are briefly outlined below.

The law defines the act of trafficking as:

“All acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harbouring of a person, involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery-like conditions”.

Twenty-six different sections of the Act define offences related to human trafficking. Sections 11–28 define the specific offences of exporting and importing minors for prostitution purposes; the procurement of minors (with or without their consent) for forced seduction/prostitution; procuring minors or causing or encouraging the seduction or prostitution of minors within or outside Nigeria; procuring any person for prostitution/pornography, drug trafficking or armed conflict; organizing foreign travel for prostitution; unlawful detention of any person with intent to defile; procuring/defiling of minors by means of threats, fraud or administering of hard drugs; kidnapping of minors from guardianship; kidnapping/abduction of persons for culpable homicide; buying and selling of persons for any purpose; unlawful forced labour; trafficking in slaves and slave-dealing.

Even when the offences are committed abroad by Nigerians, the offenders are liable to punishment and forfeiture of assets in Nigeria upon their repatriation or return for “bringing the image of Nigeria to disrepute” in spite of having served an earlier punishment for the original offence abroad (Section 25). Alien offenders resident in Nigeria are punishable under the Act by imprisonment and subsequent deportation (Section 26). Attempts to commit any of the substantive offences are punishable under the Act (Section 27), and corporate bodies and their management staff are also punishable under the Act for attempts or commission of any of the offences created by the Act (Section 28).

In terms of punishment, the Act makes provisions for sanctions ranging from heavy monetary fines, imprisonment with or without option of fines, forfeiture of assets, forfeiture of passport by convicted offenders (Section 34), deportation or repatriation and liability for compensation to victims in civil proceedings. Jail terms range from 12 months (for attempts) to two years to life imprisonment depending on the degree of seriousness of the offence, while fines range from N50,000.00 (US\$ 379) and N200,000.00 (US\$ 1,517) for individual traffickers or managerial staff of corporate bodies.

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The Act makes provision for the humane treatment, protection, and non-discriminatory practices towards victims of trafficking. These include access to rehabilitation facilities, temporary stay without valid documents and medical attention. (Sections 36–37). Trafficked victims even have rights to institute civil actions against their traffickers irrespective of their immigration status (Section 38).

Additionally, the law creates an agency charged with the responsibility of enforcing, administering and managing the law prohibiting human trafficking and other related matters.”[pp11 & 12]

“At the national level, the National Assembly in May 2003 passed a national Act on trafficking that provides for the setting up of a special agency, recognises that trafficked girls are victims and seeks to attach same level of seriousness to the prosecution of traffickers of persons, as is presently the case with drug traffickers. Its implementation modalities have commenced with the opening up of offices of the agency in states of the federation. **The Edo State office of the agency led the prosecution and first ever conviction of a trafficker in the State recently.** [our emphasis]

**The impact of the efforts made by government and non-governmental agencies and organisations so far are enormous** [our emphasis] and include:

- 1 • Heightened awareness of the problem. Prior to the research by IRRRAG and WOCON documenting the incidence of trafficking in girls in 1999, though the indicators were visible, not many recognised that children and women were being trafficked both internally and externally. Since then however especially with the emergence of more NGOs addressing the issues including those of the wives of the Vice President and Governor of Edo State, interventions of international governmental and non-governmental agencies like UNODC, UNICEF and IOM, many urban dwellers are now aware of the difference between migration and trafficking and the resistance to the wiles of the traffickers has led them to move to rural areas for recruitment of new victims.
- 1 • Legal reform arising from the efforts of anti-trafficking organisations include a national Act on trafficking, state laws on it and establishment of a federal agency to implement the provisions of the act.
- 2 • Increased prosecution of traffickers although mostly unsuccessful due to the non-cooperation of victims and corruption can still be cited as an impact of anti-trafficking efforts. Daily, the traffickers change tactics and routes just to beat the law.
- 3 • School curriculum adaptation to make for the teaching of information and skills to address the susceptibility of girls and children. The IOM in collaboration with Edo State government has tested this curriculum.
- 4 • Reintegration and rehabilitation of victims. Many returned girls and others considered to be vulnerable to trafficking have received counselling, skills training and micro finance support to become self-employed and fully reintegrated into the society.
- 5 • Research and publications on the issue are more available now than in the past as a result of the involvement of many groups.
- 6 • Creation of networks and coalitions at local, state and national levels are a direct effect of the work done so far.” [pp13 & 14]

## **Our Assessment of the Evidence**

166. We accept that Miss Olateru-Olagbegi is expert in issues of human trafficking in Nigeria.

167. Estimates for the number of women and children trafficked annually across international borders vary, but the United Nations suggests that it is a figure close to 4,000,000. It is very clearly a highly lucrative business undertaken by organised criminal gangs with networks crossing trans-national borders. Despite international efforts to combat it, the background evidence suggests that trafficking is on the increase.

168. For the purposes of her report, Miss Olateru-Olagbegi was provided with copies of the appellant's

- screening interview record;
- Statement of Evidence Form and record of interview with appellant;
- the Home Office, Immigration and Nationality Directorate Asylum Case Work Directorate 69
- the Reasons for Refusal Letter dated 13<sup>th</sup> April, 2005 written by the respondent;
- the appellant's own statement of 4<sup>th</sup> April, 2005;
- a copy of a letter dated 20<sup>th</sup> May, 2005 from Eve's Housing for Women;
- a copy for the letter of 6<sup>th</sup> June, 2005, from Dr Capuzzo; and
- a copy for the appellant's medical record from Oakington Detention Centre.

169. In her report, Miss Olateru-Olagbegi explains that she was asked to give her opinion on the following questions:

- "1. Whether the appellant [P] is a trafficked victim.
2. What is the influence of juju/black magic to human trafficking transactions in Nigeria?
3. Whether [P] should have sought the protection of the Nigerian authorities before seeking international protection?
4. Whether [P] is likely to face reprisals from her trafficker and gang in Nigeria and UK?
5. Whether [P] will face further abuse and persecution or risk of being re-trafficked were she to be returned to her home country, Nigeria?"

170. It is not necessary for us to refer to the expert's response in respect of the first question in deciding this appellant's appeal, because it has now been accepted that the appellant is a victim of human trafficking. However, Miss Olateru-Olagbegi does helpfully "set the scene" by referring to background evidence. She makes it clear that trafficking of women and girls for sexual purposes is rife in Nigeria, with the sourcing of victims for

trafficking to Europe, especially Italy, predominantly coming from Edo State of Nigeria, where the appellant originated from. In 1999, the Italian Ambassador (we have assumed, because it is not clear from the witness's evidence, that he was the Italian Ambassador to Nigeria) acknowledged that there were over 10,000 Nigerian girls working in prostitution in Italy. Whilst Miss Olateru-Olagbegi does not suggest that all these 10,000 prostitutes were, necessarily, the victims of trafficking, she goes on to add that Nigerian prostitutes or sex workers constitute approximately 60% of the entire population of prostitutes in Italy.

171. Whilst Miss Olateru-Olagbegi's response to the second question is of little assistance to us in assessing the risk to this appellant, given that the appellant does not claim to have been subjected to voodoo ceremonies and that voodoo appears not to have played any part in her trafficking, she does shed light on its influence on human trafficking transactions in Nigeria. She explains that whilst culturally, most Nigerians claim to belong to the authorised religions, such as the Islamic or Christian religions, most of them still have strong beliefs in the traditional religions and patronise traditional "religionists" who use "juju" regularly. She explained that human trafficking transactions involving trafficking to European countries, especially for sex workers, are "solidified" by the use of secret oaths and visits to traditional shrines to "instil fears of serious reprisals on victims" in the event that they divulge the identities of their traffickers. As such, juju plays an important part in much trafficking because of the psychological fear of some terrible mishap, sometimes involving death of the victim, which is installed in the victims by its use. It seemed to us that where an appellant alleges that some voodoo practice or oath was employed by their traffickers, it would be necessary for the Tribunal to carefully examine such allegations and to consider the psychological effect that voodoo may have on the appellant.

172. Again, we found Miss Olateru-Olagbegi's response to the third question very helpful inasmuch as she explained that where the victim of trafficking is from a suburban environment with a poor level of education it is likely that the victim will have little knowledge of their rights and to be less able to enforce their rights within Nigeria as perhaps their counterpart within the United Kingdom might be able to do. She suggested that "the average Nigeria citizen" shies away from involving the police or authorities in their personal affairs. By "the average Nigerian citizen", we take her to mean that she is excluding those who come from well educated and wealthy backgrounds. That is not to say necessarily that those who are wealthy or well educated



will show more willingness to involve the police or authorities in their affairs, simply that individuals in those categories are likely to be less reluctant to involve the police or authorities. The witness made it clear that this “timidity” of seeking to help the police is likely to be compounded by the fear of reprisals from the trafficker or those involved within the trafficking gang. Miss Olateru-Olagbegi suggested that there are so many unresolved criminal acts in Nigeria, that the public does not ordinarily have confidence in the police or the Nigerian authorities. We accept that in a country such as Nigeria, which is vast by comparison with the United Kingdom and where so many demands are made on its police force which is constrained by funding limitations, that lack of confidence by the general population with the police force would be considerably higher than it is, for example, within the United Kingdom. The witness also explained that this fear may not be unconnected with the effects on the Nigerian psyche of the many years of military dictatorship in the past, where authority is more associated with guns and force. It is essential, in our view, when considering trafficking cases, that it should be borne in mind that a victim who has lived all their life in a rural or suburban environment with a limited education is less likely to seek the help of the Nigerian authorities. It must be borne in mind also that the police force within Nigeria has in the past been notorious for corrupt practices.

173. In her reply to the fourth question, Miss Olateru-Olagbegi explains that because human trafficking transactions are highly lucrative, the money to be earned by traffickers motivates them to go to any lengths to ensure that they maximise their profits and recover whatever funds they feel are owed to them by their victims. Consequently, traffickers and members of their criminal gangs will seek to go after both their victims and their family members if the victims renege on their debt bondage or manage to escape their traffickers. The witness suggested that in the past victims have attested to incidents of reprisals both against the trafficked individuals and also members of their families.

174. So far as the risk of further abuse and persecution or the risk of being re-trafficked is concerned, the witness believed that because of media sensational reporting from Europe countries, especially Italy, among the Nigerian population, human trafficking is equated with prostitution. To the uninformed Nigerian public, deportee victims are often regarded as sex workers who are likely to be infected with HIV or AIDS, regardless of the type of labour which led to them being trafficked initially. Miss Olateru-Olagbegi explained that Nigerian society has a low regard for prostitution and

stigmatises HIV and AIDS victims, subjecting them to psychological abuse. It must be recognised too that in the absence of social services to “cushion” the effects of the trauma suffered by trafficked victims and to provide for their upkeep and assist with their reintegration into society, exposure to such an environment on return to Nigeria is likely only to aggravate the victims’ situations.

175. Following the first adjourned hearing before us on 6<sup>th</sup> November, 2008, Mr Tufan wrote by e-mail to Mrs L N Oguejiofor of NAPTIP asking that she provide information, in the following terms.

“Would a returning victim with a young baby be admitted to a NAPTIP centre? I should add that it has been suggested that NAPTIP would not admit such a victim as NAPTIP centres do not have adequate relevant facilities. Please comment.

Would a returning victim of trafficking with a baby be met at the airport?

Do NAPTIP centres have counselling and or medical facilities for victims who suffer from post traumatic stress disorder?”

176. Mrs L N Oguejiofor’s reply is as follows:

- “(i) Yes, a victim with a young baby will be admitted to a NAPTIP shelter without delay. It is erroneous to suggest that the Agency would not admit such a victim in her [sic] shelters presently, Abuja shelter has a 50 bed capacity, but it is also worthy of note to point out that the Agency also works in collaboration with the Federal Ministry of Women’s Affairs if the need for temporary fostering arises.
- (ii) Yes, a returning victim with a baby will be met at the airport. The agency has been receiving victims from airports if it is necessary.
- (iii) Yes, NAPTIP shelters have resident Nurses and Clinics and works in collaboration with both private and public Hospitals. We also have a Medical Doctor on call at the shelters.
- (iv) Yes, NAPTIP shelters have social workers and Nurses who have undergone series of training in areas of psychology and psychotherapy and are ready to counsel and treat any victim who is suffering with post traumatic stress disorder.”

177. Miss Olateru-Olagbegi is a lady dedicated to improving the facilities for trafficked women in Nigeria. Her criticisms of the Nigerian government and the authorities have, undoubtedly, had the effect of accelerating improvements generally for trafficked victims, but as a campaigner, we believe that her evidence was not as objectively based as it might otherwise have been. In her reports and in her oral evidence, Miss Olateru-Olagbegi maintained that the Nigerian police simply

have a systematic inability to arrest people traffickers. She told us that the ordinary policeman on the street would not be aware of trafficking laws in Nigeria and was generally ill-equipped. She said that when it comes to crime, the police are generally inefficient and, in giving her evidence to us, suggested that the police simply “do not know how to tackle crime”.

178. She suggested that there has been no effective implementation of the laws and strategies against trafficking, partly because of inability to arrest those involved; partly because the victims are offered no effective protection to prevent re-trafficking; and because there are no effective measures to prevent those from being trafficked in the first place.
179. However, we have found that this evidence is at odds with the weight of background evidence before us. We have earlier quoted from page 7 of the Danish Immigration Service Fact Finding Mission Report: *Protection of Victims of Trafficking in Nigeria*, which indicates that NGOs appear to have a good working relationship with the police and with NAPTIP; and, according to the GIP’s website, the legal framework to combat and assist victims of trafficking was said to be a great improvement on the situation that prevailed before 2003, when the *Trafficking of Persons (Prohibition) Law Enforcement and Administration Act* was enacted in Nigeria.
180. In Edo State itself, a law amending sections of the Criminal Code on Trafficking in Persons was passed in 2000. The impact of the efforts made by the Nigerian government and non-governmental agencies and organisations was described so far as “enormous” and, according to the Reverend Ejeh Agbogun, of the Catholic Secretariat of Nigeria, the Anti- Human Trafficking Unit of the Nigeria police force is much less marred by corruption than the rest of the force. The Anti- Human Trafficking Unit was said to be responsible for most cases that are prosecuted at the Court of First Instance.
181. Corruption is certainly a problem within Nigeria, but we do not believe it correct to say, as Miss Olateru-Olagbegi did, that the Nigerian police simply have an inability to arrest traffickers. That is not, in our view, supported by the background evidence. Similarly, we believe that the background evidence suggests NAPTIP itself is not plagued by corruption. Miss Olateru-Olagbegi was quoted as having confirmed that:

*“The Anti-Human Trafficking Units of NIS and NPF are not flawed by corruption as the NPF is and the two Anti-Human Trafficking Units are better trained and informed about the trafficking issue which means that they show empathy in their approach to the victims of trafficking.”*

182. The justice system in Nigeria, as it affects trafficking, is clearly functioning; the background evidence shows that there have been prosecutions of people traffickers. Between 2004 and 2007, NAPTIP processed approximately 1,000 trafficked victims and, since 2004, some 320 traffickers have been arrested nationally by NAPTIP. This does not include arrests by the Nigerian police force and by the Nigerian immigration service. During the same period, 62 cases were filed in the courts and twelve traffickers have been convicted. Punishment ranges from between one and seven years. We are satisfied that there is clear evidence of a functioning justice system within Nigeria.
183. As to the availability of shelters for victims of trafficking, Miss Olateru-Olagbegi agreed that there were seven shelters, but suggests that not all of them were operational ones. She suggested that the only shelters were in Lagos, Benin and Abuja. According to the evidence of Mrs L N Oguejiofor, however, a returning trafficking victim with a young baby *will* be admitted to a NAPTIP shelter and without delay. She confirmed also that a returning trafficking victim with a baby would be met at the airport on return and that NAPTIP shelters have resident nurses and clinics. They also have the facility of a medical doctor on call. The NAPTIP shelters have social workers and nurses who have undergone psychological triaging and training in psychotherapy and who are ready to counsel and treat any victims suffering with post traumatic stress disorder. Since Mrs L N Oguejiofor is Director of Counselling and Rehabilitation at NAPTIP, we believe that we should accord her evidence as to the facilities offered by NAPTIP, more weight than we do to the evidence of Miss Olateru-Olagbegi.
184. Miss Olateru-Olagbegi suggested that shelter inmates are restricted in their movements and cannot leave the shelters. She suggested that the shelters were like boarding schools. She also suggested that victims were only permitted to stay for a maximum of between two weeks and one month and that NAPTIP shelters offered more in the way of “protected custody” for inmates. We do not believe that this evidence is supported by the background evidence before us; indeed it is actually contradicted by the background evidence.
185. According to the Reverend Sister Florence of COSUDOW, the Anti-Human Trafficking police unit of Benin City is *not* affected by corruption.
186. According to the Danish Immigration Service Report, NAPTIP *is* able to offer victims full protection against physical violence from agents of trafficking, which includes victims who have

testified against traffickers abroad or in Nigeria, who are indebted to their agents or “madams”. The Director of Investigation and Monitoring at NAPTIP Abuja headquarters said that NAPTIP is monitoring victims and provides shelter and counselling to those who are in need of it. However, as the report made clear, NAPTIP can only offer protection to those who are ready to accept it. The same Director of Investigation and Monitoring suggested that NAPTIP has the capacity to support and protect returning victims of trafficking who have expressed fear of retaliation, acts of revenge or persecution.

187. A spokesman for IMO suggested that Nigeria has established a system capable of responding to the crime of trafficking and its implication for the welfare and security of victims and emphasised that protection requires the victim to cooperate with the authorities and to seek protection.
188. Miss Olateru-Olagbegi suggested that the NAPTIP shelters will not offer this applicant protection now that she has a baby. She suggested that the shelters do not have the facilities to care for babies, but as we have pointed out above, this evidence is directly contradicted by that of Mrs L N Oguejiofor, whose evidence we prefer for the reasons we have given.
189. Miss Olateru-Olagbegi is herself quoted as suggesting that the problem is not that victims are not offered protection by NAPTIP if in need, but rather that the victims leave their shelters before they can be certain to be out of danger.
190. The WOTCLEF shelter for the victims of trafficking offers support in terms of skilled training, such as leatherworking, sewing and other handicrafts. It also advises victims on the opportunity for micro credits and small scale loans that exist, either via NGOs or from local banks. WOTCLEF also provides for the education of minors and even up to university level in some cases. As for the suggestion that shelters are run like an institution and that inmates are restricted in their movement and cannot leave, the background evidence before us suggests that when the Danish Immigration Delegation visited the WOTCLEF shelter in Abuja, they found it *“to be very much like a home, well equipped and with a very positive and peaceful atmosphere”*. It was said that on average the victims stay for up to six months, but some may stay for even longer. COSUDOW runs a shelter in Benin City and, according to Danish Immigration Service report, has been able to accommodate the need for assistance and protection of all victims who have requested it.

**Ability and Willingness of the Nigerian Authorities to offer Protection to Victims of Trafficking**

191. Our consideration of the background materials clearly demonstrates to us that in general the government of Nigeria is both able and willing to discharge its own duty to protect its own nationals from people traffickers. In particular:

- (a) The Danish Information Service Report: *The Protection of Victims of Trafficking in Nigeria: a Fact Finding Mission to Lagos, Benin City and Abuja, 9/26 September 2007* (April 2008) points out that the government of Nigeria have recognised the problem of traffickers and, since 2003, the legal and institutional foundation for combating trafficking and, equally important, support for victims of trafficking, have been in place in Nigeria.
- (b) The National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP) is the principal organisation created by the Nigerian government to combat trafficking. The *Trafficking in Persons (Prohibition) Law Enforcement Administration Act, 2003* established NAPTIP and was enacted as a direct result of Nigeria wishing to fulfil its international obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.
- (c) NAPTIP's own Legal and Prosecution Department were said in the April 2008 report, to have concluded six cases and another five were said to be pending. 58 victims of trafficking have been rehabilitated, while another 24 were waiting rehabilitation. We accept that with more funds, NAPTIP could do more to help victims, but the same could be said of any government agency with a finite budget.
- (d) The US State Department Report suggests that whilst Nigeria is not complying with minimum standards, it is "making significant efforts" to do so and has "demonstrated a solid commitment to eradicating trafficking". It also spoke of NAPTIP making solid efforts to investigate and prosecute trafficking cases, although the numbers of convicted traffickers remained low. There are clearly several reasons for that, but not, on the evidence before us, any lack of governmental effort or desire.

Risk to Victims of Trafficking in being Re-trafficked on Return to Nigeria

192. It must be born in mind, however, that a claimant may still have a well-founded fear of persecution if she can show that

the Nigerian authorities know or ought to know of circumstances particular to her case giving rise to his fear, but are unlikely to provide the additional protection her particular circumstances reasonably require. To that end:

- (a) A very careful examination of the circumstances in which the victim was first trafficked must be undertaken and careful findings made. If a victim has been told that she is required to earn a particular sum of money (“target earnings”) for the trafficker or gang, before being free of any obligation to the trafficker or gang, then, if the victim should escape before earning the target sums, there may well be a risk to the victim that on return to Nigeria she may be re-trafficked if found. The extent of the risk of the trafficking will very much depend on the circumstances in which the victim was originally trafficked.
- (b) It must always be remembered that within Nigeria there are gangs of people traffickers operating who generate enormous sums of money from their activities. The evidence seems to us to be clear that where a victim escapes the clutches of her traffickers before earning the target earnings, then the traffickers are very likely to go to extreme lengths in order to locate the victim or members of the victim’s family, to seek reprisals.
- (c) In the absence of evidence that a trafficked victim has been trafficked by an individual, it should be borne in mind that it is likely that the trafficking will have been carried out by a collection of individuals, many of whom may not have had personal contact with the victim. Within trafficking gangs, individual members perform different roles. One might, for example, be a photographer who takes the photograph which is used within the victim’s passport, whether or not the passport is a genuine one. One gang member may, for example, be a forger who is involved in the preparation of false passports or other documents for use by the victim; one might be a corrupt police official, or a border guard, whose role is to assist in facilitating the victim’s passage in some way. Gang members may perform any number of different roles but it is essential to bear in mind that if a victim has been trafficked by a gang of traffickers, as opposed to a single trafficker, then the risk of re-trafficking may be greater for someone who escapes before earning the target earnings set by the trafficker, because the individual gang members will have expected to receive a share of the target sum and will, therefore, be anxious to ensure that

they do receive that share or seek retribution if they do not.

### **Our Conclusions in relation to the Appellant**

193. We do not underestimate the effect of being trafficked for sexual exploitation on this appellant; she has suffered the most appalling experience at the hands of Mr Osagie. We have a considerable volume of medical and health care evidence concerning the appellant before us in this appeal, all of which we have very carefully considered. We have also carefully noted Miss Olateru-Olagbegi's evidence set out carefully by her in the answers in her report.
194. Miss Olateru-Olagbegi's response to the second question in relation to the influence of juju and black magic is of limited assistance to us in assessing the risk to this appellant, given that she does not claim to have been subjected to voodoo ceremonies. There is certainly evidence in the medical reports which suggests that the appellant may have "voodoo marks" on her (the "pigmented lesions" which Dr Lacey found to be consistent with tattooing). However, she has not claimed herself to have taken part in any voodoo or black magic ritual.
195. So far as whether or not the appellant should have sought the protection of the Nigerian authorities before seeking international protection is concerned, it seemed to us that the appellant was duped by Mr Osagie at the time of her departure; it was not until she arrived in the United Kingdom that she became aware that she had been duped. It did not appear to us, therefore, that it was necessarily appropriate for the expert to be asked whether the appellant should have sought the protection of the Nigerian authorities before seeking international protection, although we do of course find Miss Olateru-Olagbegi's response helpful, inasmuch as she explains that the public does not ordinarily have confidence in the police or authorities in Nigeria and that this attitude may not be unconnected with the effects on the Nigerian psyche of many years of military dictatorship.
196. As we have indicated earlier, it is important to distinguish between human smuggling, where the trafficked individual is a willing participant and human trafficking, where those who are trafficked are trafficked for the purpose of exploitation, often against their will.
197. In considering whether or not this appellant is likely to face reprisals from her trafficker, it is important to bear in mind that the appellant was not trafficked by members of a gang. There



is no evidence that Mr Osagie was himself a member of a gang in Nigeria, or that he employed gang members when the appellant was duped into travelling to the United Kingdom. Indeed, there is no evidence that Mr Osagie was involved with any third party in Nigeria; his only associates, who were known by the appellant as “Mark” and “Philip”, appear to have been employed only in the United Kingdom. The appellant travelled willingly to the United Kingdom in total ignorance of the true purpose of her journey arranged by Mr Osagie. This is not, therefore, a situation where the appellant is at risk from unidentified members of a trafficking gang of the type identified by Miss Olateru-Olagbegi in her further addendum to her expert report, as opposed to identified gang members.

198. The appellant spent what must have been a most appalling three months as a prisoner in a house owned or rented by Mr Osagie, where she was repeatedly raped by him and by the two men she knew as “Mark” and “Philip”. She was told that she would initially be required to earn £20,000 in the United Kingdom before she would be free of her obligations to Mr Osagie. This sum was subsequently increased to £50,000.
199. Whilst there is no evidence before us that either “Mark” or “Philip” were involved with Mr Osagie in Nigeria, for the purposes of assessing the risk to this appellant on her return to Nigeria, we have assumed that they are either Nigerian citizens, or that they have the ability to travel freely to and from Nigeria. We have, therefore, assessed the risk to this appellant not only from Mr Osagie, but also from his two associates in the United Kingdom, Mark and Philip. There is no evidence before us that Mr Osagie has any other associates.
200. It has been suggested on behalf of the appellant that were she to be returned to Benin she would be at risk from Mr Osagie and his “network”. We do not accept that. The overwhelming evidence before us suggests that if the appellant requires it, she will be offered protection and if she is willing to cooperate, attempts will be made to track down and prosecute her trafficker. There are medical and counselling facilities available in the shelters from trained social workers and nurses who are clearly very familiar with dealing with the victims of trafficking suffering from post-traumatic stress disorder. We believe that in the event that the appellant or her baby should require any medical facilities, these will be provided, either by the medical doctor on call at the shelter or by her being transferred to the nearest hospital.
201. On her return to Nigeria, the appellant could, if she wished, be met at the airport and be taken to a NAPTIP shelter where she

will be provided with the care and protection she needs, together with medical faculties and counselling suitable for her and her baby. If she chooses to cooperate, we believe that the Nigerian authorities will also attempt to track down and prosecute her trafficker. The evidence clearly shows that she will be permitted to remain in the shelter for as long as is necessary to secure her protection and that facilities are in place to offer her training to enable her to earn a living. The appellant existed previously, living with her aunt and selling water. There would appear to be no reason at all why, if the appellant so chooses, she could not return to selling water.

202. In case we are wrong in our finding that the appellant would not be at real risk of serious harm or, if need be, be able to place reliance on State protection, we have gone on to consider the question of internal relocation.

203. In considering the issue of internal protection, we have considered paragraph 3390 of the Immigration Rules and the guidance offered in Januzi [2006] UKHL 5, AH (Sudan) [2008] UKHL 49 and, more recently, in AB (Jamaica) [2008] EWCA Civ. 784. A person is not entitled to protection of the Convention if there is a part of her country of origin where she would not have a well-founded fear of being persecuted and if she can reasonably be expected to stay in that part of the country. In reaching a decision, regard must be had to the general circumstances prevailing in that part of the country and to the individual's personal circumstances, including medical and psychological needs and, in the case of this appellant, the fact that she would be returning with a young child. We bear in mind that Nigeria is a huge country by comparison with the United Kingdom and that there are a total of seven NAPTIP shelters.

204. We do not accept that the appellant will not be able to find suitable accommodation for herself and her small child. Nor do we accept that she would, effectively, be destitute. The evidence before us suggests that if the appellant chooses to access the help and assistance which would be available to her on her return, she will be offered counselling and rehabilitation advice and training and, if necessary, take advantage of the NAPTIP witness protection programme, which exists throughout the country. We can see no reason, if she chooses to do so, why the appellant could not, with the help and assistance of NAPTIP if necessary, relocate elsewhere in Nigeria where facilities similar to those offered in Benin would be available to her and she would, in time, be given help in rehabilitation. We do not believe that it would be unduly harsh or unreasonable to expect her to do so.

205. We turn now to the appellant's Article 8 appeal.

206. Article 8 provides:-

- “(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of his right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, or the protection of health or morals, or for the protection of the rights and freedoms of others.”

207. In deciding whether or not the appellant's removal is likely to breach her Article 8 rights, the questions to be asked were set out in paragraph 17 of Razgar v Secretary of State for the Home Department [2004] UKHL 27 by Lord Bingham:

- “(a) Will the proposed removal be interference by a public authority with the appellant's right to respect for her private or family life?
- (b) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- (c) If so, is such interference in accordance with the law?
- (d) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- (e) If so, is such interference proportionate to the legitimate public end sought to be achieved?”

208. Each of those questions needs to be answered. The House of Lords confirmed in Secretary of State for the Home Department v Huang and Others [2007] UKHL 11 that the Tribunal has authority to reach its own independent decision on proportionality. Once Article 8 is found to be engaged the question is whether the interference complained of is proportionate to the legitimate aim to be achieved. If family life cannot reasonably be expected to be enjoyed elsewhere the question is whether, taking into account all the considerations weighing in favour of refusal, the refusal of leave prejudices the family life of the appellant sufficiently seriously to amount to a breach. In considering this, account must be taken of the severity and consequent interference caused.

209. We are satisfied that the appellant has established a private and family life in the United Kingdom. Her family life is enjoyed

with her daughter. We were given no evidence at all that the appellant enjoys any relationship with her daughter's father. Since it is proposed that the appellant's daughter will be removed with her, it is clear that the appellant's proposed removal would not be an interference with her family life. However, as the European Court of Human Rights said in Bensaid v UK [2001] 33 EHRR:

"Private life is a broad term not susceptible to exhaustive definition ... Article 8 protects a right to identity and personal development, and the right to establish relationships with other human beings and the outside world."

210. We accept that the appellant has a private life in the United Kingdom and were the appellant to be removed, there would be an interference.

211. We next have to consider whether the interference would have consequences of such gravity as potentially to engage the operation of Article 8. The appellant has been in the United Kingdom now for over four years. During that time she has undergone various training courses and has become dependent on support and help from the POPPY Project and their carers.

212. As Sedley LJ said in AG (Eritrea) v Secretary of State for the Home Department [2007] EWCA Civ 801,

"While an interference with private or family life must be real if it is to engage Article 8(1), the threshold of engagement (the 'minimum level') is not a specially high one."

We are satisfied that such interference would have consequences of such gravity as to engage the operation of Article 8.

213. We next ask whether such interference is in accordance with the law. We are satisfied that the interference is in accordance with the law. The appellant is an illegal entrant. It has not been argued on the appellant's behalf that the interference is anything other than lawful.

214. We then come to question (d). We find that the decision of the respondent is necessary in order to maintain immigration control. The issue before us, therefore, is whether such interference is proportionate to the legitimate public end sought to be achieved. The onus lies on the respondent to show that the interference or lack of respect is "necessary in a democratic society" for one of the stated interests.

215. We have found, having analysed the background evidence before us with great care, that this appellant would not be at risk in her home area of Benin City were she to be returned to

Nigeria. We have found that she would be afforded effective protection against the risk of suffering harm at the hands of her trafficker or at being re-trafficked.

216. As we have indicated earlier, we accept that the appellant is suffering from a complex and severe form of Post Traumatic Stress Disorder and also suffers Major Depressive Disorder. We are satisfied, however that the appellant will be able to access all necessary medical care, counselling and treatment for her Post Traumatic Stress Disorder and, should she choose to accept it, reintegration and rehabilitation facilities. We have concluded, on the evidence before us, that the appellant's removal would be proportionate.
217. For all the reasons above we find that IJ Grant did not materially err in law. The appellant's asylum appeal is dismissed, the appellant humanitarian protection appeal is dismissed and the appellant's human rights appeal is also dismissed.
218. In paragraph 8 of our determination, we set out the judgment of Sedley LJ when granting permission to appeal to the Court of Appeal. He pointed out that a Senior Immigration Judge had directed that the reconsideration hearing should be before two Immigration Judges, one of whom was a Senior or Designated Immigration Judge. The reconsideration was in fact conducted by a single Immigration Judge. Sedley LJ considered that the constitution of the Tribunal called for investigation and that it was arguable in light of the direction for a two-judge panel that the second stage reconsideration before a single judge was a nullity. Permission was given to expand the grounds of appeal.
219. This point (or its repercussions) was not raised or argued before us. The proceedings of the Tribunal find a statutory basis in Schedule 4 of the Nationality, Immigration and Asylum Act 2002 although the day-to-day conduct of business is provided for in practice directions and judicial management. It is for the Tribunal in its broader sense to determine the constitution of the Tribunal that is to hear any particular appeal. Neither party has a right to call for a panel consisting of a particular Immigration Judge or a particular number of judges. Neither side, for example, may call for a panel consisting of three legally qualified Immigration Judges to determine an appeal thereby determining any onward appeal route.
220. There may be logistical difficulties facing a hearing centre on a given day which render it impractical to have a panel hearing. If a listing direction has been made of which the parties become aware, we do not consider that it cannot be altered where circumstances dictate. Even if, as may have occurred here, the direction was overlooked when the sitting was arranged, we do

not consider that the parties may require the hearing be adjourned in order to accommodate the direction. Nor would we expect an Immigration Judge to adjourn the hearing automatically and without good reason if he becomes aware of a prior direction, given the costs this will entail to the parties and the expense to the taxpayer.

221. The model of a single Immigration Judge deciding an appeal at first instance but having his appeal determined by a panel normally consisting of two or three disappeared with the Single Tier. There are anomalies in the Single Tier, most notably where, for example, a deportation appeal decided by a panel is often determined on reconsideration by a single Senior Immigration Judge. Nevertheless, we are not satisfied that the hearing before Immigration Judge Grant was a nullity in the sense that the Tribunal's determination, being that of a single Immigration Judge, had no legal effect whatever.

### **Decision**

**The appellant's asylum appeal is dismissed.**

**The appellant humanitarian protection appeal is dismissed.**

**The appellant's human rights appeal is dismissed.**

Senior Immigration Judge Chalkley

## **SCHEDULE**

UNESCO Policy Paper: *Human Trafficking in Nigeria: Root Causes and Recommendations* (Paris 2006)

Rural poverty portal: *Rural poverty in Nigeria* (7 March 2007)

Global Alliance against Traffic in Women (GAATW): *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (2007)

Human Rights Watch: *World Report 2008: Nigeria* (31 January 2008)

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