

0802172 [2008] RRTA 503 (19 December 2008)

DECISION RECORD

RRT CASE NUMBER: 0802172

DIAC REFERENCE(S): CLF2007/70891

COUNTRY OF REFERENCE: Niger

TRIBUNAL MEMBER: Angela Cranston

DATE: 19 December 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Niger, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights.

RELEVANT LAW

3. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
4. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
5. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

16. The Tribunal has before it the Department's file relating to the applicant.

17. In his application to the Department, the applicant stated as follows:

It is by divine grace which I had the opportunity to leave my country to take part in [activities].

Sadly I am victim of a shamed practice of old which is slavery, which causes insecurity on my daily basis these days.

Indeed, I belong to a social group very discriminated, the Bellah ethnical making object of slave system in these modern times

People of more than 7000 individuals accounting to the international labour office (ILO) and the association Timidria of Niger, we continue to exist as a tangible property (inheritance) of the Touareg ethnic group (powerful and armed) under the indifferent of the national authorities.

For me, the return to the country is synonymous which voluntary suicide to the night of the heaviness of the climate which reign between my masters and me on the one hand and which the authorities on the other.

Indeed moreover inhuman work forces and treatments which constitute my daily life, I was victim of pressures and sanctions as many as varies in particular:

In [year] to have denounced practices of slavery which I am victim with the NGO's in place (which fights for the respect of the human rights and freedoms fundamental); I was tied and beaten by my masters during about [number] days.

As for meals as my masters offered to my family were reduced by half meaning every body was to get one meagre meal a day.

[Month, year] I find my self amongst more than one slave, (illegible) leaders of the civil company, traditional chief and [number] masters favourable to release of the slaves [detained] in [Place] instead of the promise of the organisation of an official ceremony of stamping and socio economic insertion of 7000 slaves in the locality [Place 2, area of Place 3].

After [number] weeks of being locked up, I was release and since then my life was full of harassments, my work was increased, physical tortures and regular death threats from my masters.

In [year] following my request to profit from part of harvest resulting from my work or from a statue from owner realising the payment from an annual fixed price, I was beaten and seriously wounded, with [number] other slave of whom some lost their life.

Also my [relative] was forced to join an armed group and they transferred several slaves, to so far unknown destinations, my [relatives] were among those transferred

In [year] I escaped several attempts to be conscripted in the armed groups that my masters have started in the [region] of the country.

And information, which I regularly receive from my close relations is very sad for me.

I can not return to my country due to the inhuman treatment I have undergone, and in addition because of the (illegible) that my masters would want to punish or even kill me on my return.

That (illegible) to me because I am of a social group lower than the others and I owe respect traditionally and unconditional obedience to my masters.

I do not right of ownership but I must be used as a well as very other members of my community quite like their material if inheritance. Whereas I seek a normal life, that of being a free man, and being entitled to safety, justice equity and have rights. This is why I am their enemy since I try to speak up my life has been insecure.

I do not hope any protection from authorities of my country, because they tend to deny this sad phenomenon of which I am victims of, they try to cover this to protect those practicing it. These are men in power and collaborate with authorities, in addition some of the people practicing these work hand in hand with the army, the governor of [area] himself is among the masters.

I was arrested with about [number] other slaves, leaders of organisation in defence of human rights, traditional chief and masters favourable to our community by orders of the authorities in [year].

I do not hope anything of their share because no action has taken since.

18. The Department rejected the application and the applicant applied to the Tribunal for review.
19. The Tribunal recorded the evidence taken at hearing as follows:

The applicant said that he had [siblings]. He confirmed that he had been born in [Place 1] but he said that he had grown up in [Place 2]. He said that he had completed his [schooling] in [year] at a high school in [Place 3] and that while he had been attending school he had boarded in [Place 3] with a family who were [relatives] of his master. He said that from [year] to [year] he had lived in [Place 2]. He said that between [year] and [year] he had studied [number] years of [occupation 1] at [educational institute] in [Place 4]. He said that he had actually attended classes in [Place 4] for [number] months in [year] and for [number] months in [year] He said that while he had been studying in [Place 4] he had also worked in a [business] which belonged to his master. He said that during the rest of the time he had been working on the land belonging to his master, [Name], in [Place 2].

The applicant said that he had interrupted his studies because he had been so perturbed by what was happening in his country. He said that he had not had the peace of mind to continue his studies. He said that in [year] he had gone away for a month but the rest of the time he had spent in [Place 2] although sometimes he had gone to [Place 3] I referred to the fact that in his original application he had said that he had lived in a place called [Place 5] from [month and year] until [month and year]. The applicant said that [Place 5] was the suburb of [Place 4] where he had lived when he had been studying in [Place 4] for [number] months in [year] and [number] months in [year] but otherwise he had lived in [Place 2].

I referred to the applicant's evidence that in [year] he had trained to be a [occupation 2]. The applicant said that he had undertaken a [number] week course in [Place 2] with people from all over Niger. The applicant confirmed that he had come to Australia to take part in [an event] He said that these had taken place from [date] to [date] but he had only arrived in Australia on [date], in time for the last day of [the event]. He had come too late to take part in [the event] He said that this had been because he had had difficulty getting his passport from the police. He said, however, that it had only been after he had got his passport back from the police on [date] (the date on which the validity of his passport was extended) that he had been able to send it to the Australian High Commission in Nairobi to have the visa evidenced. He said that it had taken six days for his passport to be delivered to Nairobi by the courier firm DHL and a further five days for it to come back with the result that he had not been able to leave Niger until [date].

I referred to the applicant's evidence that he had become active in the anti-slavery organisation 'Timidria' in [year] and that he had joined in [the following year] I asked him what sort of activities he had been involved in as a member of this organisation. He said that his job had been to talk to his family and to other members of his social group, the Bellah, about what concerned them, their rights. He said that they had had very underground meetings in [Place 2]. The applicant said that he had also participated in demonstrations organised by 'Timidria'. He said that these demonstrations had been in [Place 3], in [Place 1], but very rarely, and on one occasion in [Place 4] when they had held a big demonstration in front of the [government building] on the occasion of the launch of a book about the problem of slavery in Niger. I noted that this suggested that the applicant had been free to travel all over his area of Niger The applicant denied this. He said that he had had to have a real reason by which he said he meant that he had had to have a pretext. He said that he had been harassed by the police and also by his masters in [Place 2].

I referred to the applicant's evidence that in [year] he had been [detained] in [Place 1] and I asked him how this had come about. The applicant said that they had been promised by the Government that they would all be freed but when they had gone to [Place 3] they had been accused of causing a lot of social trouble. He said that they had been detained in [Place 3] for [number] weeks with lots of leaders of 'Timidria' He then said that he had not been detained with the leaders. I noted that in paragraph 19 of his statutory declaration he had said that: 'In [year] I was locked up in [Place 3] together with Timidria leaders.' The applicant agreed but he said that they had not all been accused of the same things. He said that they had been [detained] but it had not been big enough to accommodate all the people who had been detained. I asked him if he was saying he had been detained with the leaders of Timidria or not. He said that they had all been arrested together but [number] leaders had been arrested in [Place 4].

I noted that these events were well-reported. There were no reports suggesting that anyone had been arrested in [Place 3] as he claimed but the leaders of the organisation Timidria had been arrested in [Place 4] [Information deleted in accordance with s 431 of the Migration Act as this information could identify the applicant]. The applicant said that these were the big leaders in [Place 4] who had been accused of fraud but he and the people who had been arrested in [Place 3] had been accused of provoking social trouble.

I referred to the applicant's evidence that in [year] he had been involved in a protest demanding payment for work he had done. The applicant said that this protest had been in [Place 2] and they had been asking for their share in the profits from the harvest. He confirmed that he claimed that his [relative] had been sent to the

[direction]of Niger in [year] and he said that this had been what had happened to a lot of the people who had been involved in the protest. The applicant said that the people for whom they had been working had been Tuaregs and that in [year] he had been harassed and threatened by the Tuaregs. He said that in [year] he had just managed to avoid being deported to [area]. He said that nobody went voluntarily and nobody was warned that they were to be deported. He said, however, that he had been informed that he was going to be deported and that he had run away at night. He said that this had been at the beginning of [year]. He said that he had nevertheless continued living in [Place 2] for the [number] months before he had left Niger although he had had to make trips to [Place 3] in connection with his travel overseas.

I asked the applicant why he had not applied for refugee status when he had travelled to [other countries] in [year] The applicant said that things had not been as bad in [year] and he had not thought that he was a refugee. He said that things had changed because he was [better known]. I noted that he had said that he had been born a slave, that he had had to do what his masters told him and that he had had no freedom at all. I put to him that this had not changed between [year] and [year]. The applicant said that the situation had not been the same in [earlier year] because he had not been being threatened with being deported. He said that it had been in [year] that he had started being engaged in the organisation Timidria and in claiming his freedom. He said that because he had been engaged in claiming his rights both the authorities and the Tuaregs in his village had been threatening him.

I referred to the applicant's evidence that after the incident in [year] he had been very frightened and he had not been able to complain or to seek any help. The applicant agreed. I noted, however, that he claimed that he had been a member of 'Timidria', an organisation which helped to free slaves and brought legal actions against their masters (US State Department *Country Reports on Human Rights Practices* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor; Robyn Dixon, 'Niger: Secret lives of servitude in Niger', *Los Angeles Times*, 3 September 2005, CX134042). I asked the applicant why he had not sought the help of 'Timidria' The applicant said that he had been a member of Timidria since [year] and that they had helped him: for example they had helped him to get his passport and they had helped him financially after he had come here.

I noted again that Timidria freed slaves and took legal action against the masters in Niger The applicant said that Timidria had not been able to do anything since 2005: the Government stopped them and they had difficulties themselves. He said that every time they tried to do something they were stopped. I put to the applicant that this was not true according to the information which I had. Timidria operated openly in Niger and apart from the one case where its leaders had been accused of fraud it had not experienced any problems. It took legal action against masters and in one case which Timidria had brought, for example, the tribunal had convicted the master and had sentenced him to five years in prison (US State Department *Country Reports on Human Rights Practices for 2006* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor). The applicant said that he had benefited a lot from their help. He said that they distributed help and food but they had not achieved more far-reaching changes.

I put to the applicant that while slavery undoubtedly continued to exist in Niger it was against the law. The problem was not that the law was not enforced: there was evidence that it was. I noted that, as I had mentioned, Timidria had brought actions under the law (US State Department *Country Reports on Human Rights Practices for 2006* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor). The applicant said that this was the law but unfortunately the reality was different. I

put to the applicant that the US State Department had reported that the problem was that most victims of slavery did not act on their rights for a variety of reasons including fear, physical or social coercion and a lack of viable economic alternatives for freed slaves. I noted that Timidria had freed slaves in Niger (US State Department *Country Reports on Human Rights Practices for 2006* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor; 'Niger: The government says slavery no longer exists, the slaves disagree', *IRIN*, 24 June 2005, CX126943; Robyn Dixon, 'Niger: Secret lives of servitude in Niger', *Los Angeles Times*, 3 September 2005, CX134042). I put to the applicant that if he had been a slave, as he claimed, he would have been able to claim his freedom if this had been what he had wanted to do.

The applicant referred to what had happened in 2005, when one of the chiefs had said that he would free his slaves and Timidria had been going to help the freed slaves to find work. He said that the Government had stopped this because it had been afraid that if this had happened they would have been discredited internationally. He said that Timidria worked all over Niger but this had happened in his own area and he had seen it. He said that there was a group of white-skinned freed people known as the Imaham but although they were called free the Tuaregs still had the right to make them do what they wanted. He said that the situation of the group to which he belonged, the Bellah, was worse, because they were not free: they had no rights at all.

I put to the applicant that the fact that he had not applied for refugee status in [other countries] in [year] caused me to doubt that he had had the status of a slave in Niger. The applicant said that it was true that he had been without rights in [year], that he had not been free, but he had not had real fear. He said that this had started in [year] and that he was in real danger. I put to the applicant, with regard to his fear that he would be forced to take part in fighting in the [area] of Niger, that there was nothing in the information available to me to suggest that people from other parts of Niger were being forced to take part in this fighting. The applicant said that the fighting was in the North and North-West of Niger and that the Tuaregs did not have regard for national boundaries and ranged freely over an area including parts of Libya, Algeria and Mali. He said that this was their domain or fiefdom and they were the masters there: they could do anything they wanted.

20. The applicant alleged:

The interpreting at the Tribunal hearing was not of a standard sufficient to adequately inform the Tribunal of the details of the applicant's case and in particular, the interpreter failed to accurately translate the Tribunal's questions and comments to the applicant in material respects and the interpreter failed to accurately translate the applicant's answers to the Tribunal in material respects.

21. The Tribunal wrote to the applicant requesting he detail what parts, if any, of the oral evidence as summarised he considered to be wrong, and, if it was wrong, what did he say instead or in addition to what was reported.
22. The applicant was told to respond by a due date. The applicant requested an extension. The Tribunal again wrote to the applicant requesting that the applicant respond by a new due date
23. The Tribunal received a long submission together with an affidavit from a professional interpreter and a further statutory declaration from the applicant.
24. The submission is partially reproduced below:

...Persecution of anti-slavery leaders

Due to the government's sensitivity about the existence of slavery in Niger (see 3.3 of this submission), anti slavery activists often suffer discrimination. The Independent writes:

Slavery is a taboo subject here (Niger) and the anti-slavery activists face violence and intimidation from the slave owners, who have political power and are embedded in the traditional chieftain system. They maintain that slavery is a cultural hangover that provides a way of live to people who, they say, now no other way to survive.

An example of the antagonistic relationship is the arrest of anti-slavery leaders in [year]. On [date], the anti-slavery organisation, Timidria, assisted a local chief organise a ceremony for the release of [number] slaves in [Place 2] in the [Place 3] region. The ceremony was cancelled after government forces allegedly warned slave owners that they would be liable for up to 30 years imprisonment under the new anti-slavery laws if the slaves were released.

Shortly after this incident, the president of Timidria, [name], and other leaders were arrested and put in a civilian prison. They were accused of propagating false information and attempting to raise funds illegally by seeking information from the London based organisation Anti-Slavery international. Both Timidria and Anti-Slavery international vigorously denied the claims.

The sensitivity of the issue of slavery in Niger leaves anti-slavery activists vulnerable to persecution by the government and slave-owners. The arrest of Timidria leaders in [year] is evidence of this. [The Applicant] claims that he too was arrested in [Place 2] in [month and year]. While this was not been reported in the media at the time, it is not inconsistent with the country information on the treatment of anti-slavery activists. Furthermore, [the Applicant] claims he was also punished by his master for taking part in this event. Such punishment, including an increased workload and death threats, also demonstrates the risk of persecution that [the Applicant] would face from his masters for his anti-slavery activities if he returned to Niger.

Evidence of conscription of slaves to fight in the north of Niger

[The Applicant]'s claims that his [relative] was sent to fight in the north of the country are consistent with country information on Niger. The absence of independent verification of this practice can be explained by the substantial government censorship of reporting on the fighting. The government has tried to control reporting of the conflict. In [month and year] two French journalists were arrested and charged by Niger authorities for attempting to report on the conflict in the North. Amnesty International has also reported that the military has threatened elected representatives for allegedly communicating information about the atrocities committed by the army. A report released by the World Organisation Against Torture on 19 June 2008 elaborates on the efforts of the Niger government to prevent the release of information of abuses occurring in the conflict in the north of the country:

The year 2007 was also marked by an upsurge in attacks on freedom of expression. The conflict zone in the Agadez region has been forbidden for journalists since August 2007, and several foreign and local journalists who have attempted to obtain and disseminate information on the rebellion have been arrested this year. For example, Ms Moussa Kaka, a correspondent for Radio France International and Director of the privately owned Radio

Saraouniy, has been detained since September 20, 2007. He is accused of complicity in plotting against the authority of the State for having had regular contacts with the MNJ. Another journalist, Mr Ibrahim Manzo Diallo, Editor of the bimonthly private publication Air Info, published in Agadez, was also indicted on October 29 for criminal association because of his alleged links with the rebellion. In late 2007, he was still detained in the Agadez civil prison.

Impossibility to denounces violations taking place in the northern conflict.

In Niger, non-governmental organisations that denounce the serious human rights violations caused by the conflict and call for peace through negotiations instead of a military solution suffered threats and intimidation... Thus, throughout August 2007 (several organisations) ...received threatening emails from unidentified authors.

The significance of this action by the government in relation to [the Applicant] is that it is likely that the forced conscription of slaves would not have come to the attention of the media. While [the Applicant]'s claims regarding the likelihood of being sent to fight in the north of Niger are consistent with the country information that is available, especially given the information on the widespread practice of human trafficking in Niger, see below.

Evidence of trafficking of persons in Niger

There is credible evidence that people trafficking is common in Niger The law does not specifically prohibit trafficking in persons, and persons were trafficked to, from and within the country. There is also evidence that trafficking is widespread. A 2005 NGO survey found that 5.8 percent of households interviewed claimed that at least one member of their home had been a trafficking victim. The United States Department of State Trafficking in Persons Report 2008 notes that while some efforts were made to prevent trafficking of children, little effort was made to prevent slavery and trafficking of adults.

The Government of Niger does not fully comply with the minimum standards for the elimination of trafficking, however, it is making significant efforts to do so, despite limited recourses. Niger has nonetheless been placed on Tier 2 Watch List for its failure to provide evidence of increasing efforts to eliminate trafficking in the last year. In particular, measures to combat and eliminate traditional slavery practices were weak. The government's overall law enforcement efforts have stalled from the previously year. While efforts to protect child trafficking victims were steady, the government failed to provide services to or rescue adult victims subjected to traditional slavery practices. Similarly, the government made solid efforts to raise awareness about child trafficking, but poor efforts to educate the public about traditional slavery practices in general.

...

Prevention

The Government of Niger made solid efforts to educate the public about child trafficking during the reporting period. Government efforts to raise awareness about traditional slavery practices were poor, however. In June 2007, the Minister of Women's Promotion and Child Protection made a public speech

acknowledging that urgent measures were needed to address the problem of child trafficking. She also chaired a panel discussion about trafficking that was aired on national radio. In June 2007, the government collaborated with UNICEF and NGOs to educate hotel and cyber café managers about child sexual exploitation. In November 2007, the National Commission on Human Rights and Fundamental Liberties established a labour, child labour and slavery practices. Niger's 2006 draft national action plan to combat trafficking and draft plan to combat forced labour linked to slavery have yet to be adopted. While the National Commission for the Control of trafficking in Persons established in 2006 continued to exist, it had no budget. Niger did not take measures to reduce demand for commercial sex acts during the year.

Deficiencies in the interpretation of [the Applicant]'s statements at his Refugee Review Tribunal hearing

We attach a copy of the affidavit of [Interpreter] sworn on [date] which includes a table contrasting the interpretation of [the Applicant]'s statements as recorded in the transcript of [the Applicant]'s Refugee Review Tribunal hearing with translations by [Interpreter] prepared on the basis of listening to the recording of the hearing.

This affidavit demonstrates that the translation at [the Applicant]'s RRT hearing in [month] was problematic. Some of the statements added by the interpreter are clearly prejudicial to [the Applicant]'s claims. The poor translation also appears to have prevented fully pursuing some of the central issues regarding [the Applicant]'s claims.

25. In an annexure to the interpreter's statement, she stated that the following exchange took place at the first Tribunal hearing:

Transcript page 16

Transcript (relevant sections)

Line 30 So you say the leaders were [detained] in [Place 3]

Actual utterance (in French on the tape)

And you say that the leaders were also in the same [Place 3]?

Transcript (relevant sections)

Line 36-37 I just want to try and clarify if I can whether you're saying that the leaders of Timidria were locked up with you or not'

Actual utterance (in French on the tape)

Interpreter: The member would like to know whether you all together in the same group, arrested together in the same [place].

[The Applicant]: We were put together

26. In a statement also provided, the applicant stated:

(My [relative]) lives in fear. [My relative] has been harassed by my former masters because I have left. My masters know where I am. [A friend] informed me during one

his telephone calls to me that Timidria had learned this on a field visit to the region where my [relative] lives.

What would happen if I returned to Niger

If I returned to Niger I am sure that it would be found out that I was there by my masters. They have a network through the country. My masters have a lot of power and know people in every city. I am sure that someone that they know would report my whereabouts to them and that I would be captured by them again. I would only be able to escape detection if I was hidden and totally supported by another person. There is nobody that I can think of that can do this for me and I don't want to live like this.

If my masters found out that I was back in Niger, I am sure that I would be beaten or even killed by them. I think the price for returning to Niger would be my life. I also fear that I would be sent to my masters land in the north of Niger to fight in the conflict in the north like my [relative].

Even if I weren't discovered, I don't think I could have a normal life. I left the country on [a particular occasion]. If they knew I wanted to ask for asylum they wouldn't have agreed for me to go. They wanted to refuse me permission to leave in the first place. I will have no guarantee about whether the authorities will let me go when I return. I believe I would also face widespread discrimination from society in general.

I feel strongly about the need to release slaves and would continue to assist Timidria if I returned to Niger I feel like I owe them a lot because of the help they have given me. I fear that the government could detained and torture me again for my involvement with Timidria.

Timidria cant protect all my freedoms. They are under tremendous pressure from the government at the moment. I think they might be able to give me some material assistance but they cant help me much beyond this.

The Nigerian police are under resourced and ineffective. They have little sympathy for former slaves. I have already been arbitrarily detained by them for my involvement in anti-slavery activities. I do not believe that they would protect me if I returned to Niger.

27. The applicant appeared before the Tribunal a second time to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the French and English languages.
28. The applicant was represented in relation to the review by his registered migration agent.
29. The Tribunal put to him that it had listened to the previous Tribunal hearing and as a result, had written to him asking what parts, if any of the oral evidence as summarised by the Tribunal did he consider to be wrong. The Tribunal stated his adviser had written back, saying that an affidavit of an interpreter was attached saying she had listened to the hearing tape. The Tribunal put to him that what the interpreter said in effect was that he had been locked up with the leaders in Place 3. It was put to him that at the last hearing the Tribunal said there was no evidence that the leaders had been locked up at Place 3 in a specified month, and this Tribunal had searched but had found nothing that

said people were locked up at Place 3 in the stated month and year. The applicant stated the leaders were locked up in Place 4. It was put to him that was what the reports stated, however from the transcript that his adviser had given the Tribunal it said that he said he was locked up with them at Place 3. The applicant stated in his case, he was locked up in Place 3 with a group of people and the national leaders were locked up and arrested in Place 4. The Tribunal put to him it had looked for reports that anyone had been locked up in Place 3 in a specified month and year and could not find anything. The applicant stated it could put the Tribunal in contact with witnesses who were there. It was put to him that the Tribunal may find that if a group of people was arrested or detained at this town, that event would have been reported which may mean that the Tribunal may not accept that he had been arrested. The applicant stated the National President of Timidria could give evidence and there were other witnesses who still lived there. He stated he was not aware of why the event had not been reported.

30. The Tribunal put to him that he had stated earlier at the hearing that he feared being sent to the North. The Tribunal put to him that it had not found any information to suggest that people from other parts of Niger were being forced to take part in fighting in North. The applicant stated the media in Niger was not as free as in other places and journalists might not take the risk and this may be the reason it had not been reported. When asked what about Timidria, he stated he was certain Timidria knew and he knew the fear they were living in.
31. The Tribunal put to him that at the first hearing, he had stated he could not leave his master's property without his knowledge or permission and that he punished him and threatened him with death and that he had not been able to complain or seek any help. The Tribunal put to him that he had completed his schooling and studied, he was a member of Timidria, had participated in its activities including demonstrations against slavery and on one occasion in Place 4 and he had have travelled overseas visiting other countries. The Tribunal put to him that and the fact that he did not apply for refugee status in the other countries may lead the Tribunal to conclude that he had been able to travel and the alleged restrictions on his freedom including his freedom of movement had not occurred. The applicant stated in relation to his national travel movements, he stated it was always a risk. He stated in relation to his international travel, he had permission to travel for two reasons, he was a representative, it was a good thing for him and the applicant had also given his master money. The applicant stated he had not asked for protection in other countries because at that time there were projects in Niger to professionalise activities which could have helped him. He stated at that point he felt quite secure and he wanted to be in Niger. He also stated that it was a factor which could help him in Niger.
32. When asked what harm he had suffered in the past, he stated physically he suffered a lot and physiologically he had suffered. He stated in a way, his life had been surrounded by put down, insults, oppression every day and it was hard to have his mind at peace. When asked if that was what had happened to him, he had got his schooling, had studied, had been a representative and had come to Australia, he stated in relation to his studies it was difficult, he was not studying regularly, and had been in a class that combined different ages at primary and it was flexible because of work. He stated he was not always there for his secondary schooling. He stated after secondary school, he had not been able to become a professional. He stated it was not his choice to become a

professional of that type, he wanted to be in a different occupation, he had succeeded on the exam to study at a particular place but that had been refused by his master.

33. The Tribunal put to him that it had to work out whether it thought that if he went back he would be persecuted. The Tribunal put to him Niger passed legislation in 2003 banning slavery and Timidria had taken legal action against Masters and Timidria operated openly in Niger. The Tribunal put to him that it may be satisfied that he was able to exercise his rights under the law in Niger to live freely rather than be forced to act in accordance with his master's wishes and that his life experiences including his education, travel and involvement in Timidria would mean he was able to access his legal rights. He stated the law and reality were completely different. He stated in 2004 and 2005 there were official declarations made that denied slavery existed and there was no will to apply those laws. It was put to him that Timidria had taken legal action against Masters. He stated he knew Timidria had tried but there was no individual case where there had been movement at that level. He stated there were many actions that Timidria had started, but he was doubtful as to the outcome. He said even if Timidria succeeded, would they be living their true freedom, or freedom at a superficial level.
34. The Tribunal then spoke to the adviser. The Tribunal stated it did not seem as if the applicant was indicating that there was no dispute with the way in which the Tribunal had summarised the evidence at the previous hearing, that is that he had been detained with the leaders of Timidria. The Tribunal stated as a result, it may find that that is what he said. The Tribunal stated it could not find any information that people were detained at that place at that time. The adviser submitted a letter from Timidrai confirming the events as stated.
35. The Tribunal also put to him that the Tribunal had tried to find information about the North and that NGO groups would report this. The adviser submitted it was difficult to know why, however it was not inconsistent with what was happening. He stated Timidria was clearly aware of it.
36. The Tribunal put to him it needed to think about whether the applicant would suffer persecution. It stated it may accept he was Bellah, however he was saying it necessarily followed he had slave status and he would suffer because his masters would want him to return. The Tribunal stated it accepted there were people in that position, however in his case, he was educated, he had travelled overseas and within Niger, has been a member of Timidria and had participated in protests against slavery. The Tribunal put to him that it needed to think about whether it thought that a person with that background could access the legal system which has banned slavery since 2003. The adviser stated that his masters still exerted control over him. He stated there were changes to the legislation but there was evidence that it was not enforced and cases taken to court ended in no action. He stated this was confirmed by the letter from anti slavery. The Tribunal put to him that that letter talked about women. He stated maybe other victims had not received attention. He stated it was not unusual that slaves were able to travel or study but their masters still exercised control over them and he continued to have the risk of bad treatment. The Tribunal put to him that the submission was that the government had not taken these actions to court, however there was evidence that Timidria had. The adviser stated that was not affective because the decisions were not enforced or the fines were minimal and did not provide a deterrent. He said he was at risk of persecution from his master because of his social status, that is he belonged to the slave caste. When asked what would happen to him, he stated he

would not be able to access employment and services available to others. He also stated he would be at increased risk from the Masters on return from Australia and be targeted for punishment as an example to other slaves.

37. The Tribunal put to him it had a report that said Timidria had bought an action against a master who was convicted and imprisoned for 5 years.
38. The Tribunal put to the adviser that the applicant may not believe he was detained as stated. It also noted the letter from Timidria did not confirm that there was any detention in Town 3.
39. The Tribunal said if it accepted that the applicant was Bellah, the Tribunal had to think about whether he had a real chance of future persecution and the Tribunal may find his past history was such that it may not believe that if he returned, if his master tried to exercise control, that he would be in a position to take action against his master.
40. The applicant stated the law only existed on paper. He stated 'who would you complain to? And for them to tell you what?' He stated he could not tolerate living under domination and his life would be at risk. When it was put to him that if he would not tolerate living under domination why would he not do every thing he could not to. The applicant stated he had done a lot and paid a high price and he had taken a lot of risks.
41. The Tribunal also put to the adviser that there seemed to be an assumption that if a person was Bellah, they were a slave, however the Tribunal might not accept it followed. The adviser put to the Tribunal that there was evidence he was a slave from another country. The Tribunal stated it may not accept his past testimony or that he suffered from a lack of freedom of movement given that he had participated in demonstrated in Niger and had travelled overseas and had been educated.
42. The adviser stated 'demonstrations' may be understood differently in Niger.
43. The Tribunal asked the applicant what he meant by demonstrations. The applicant stated he participated in rallies or meetings and a launch of documents and he assisted in meetings of the office as a member and also visits on the ground and sometimes did improvised meeting in the field. The Tribunal asked what he meant by demonstrations. The applicant stated they were meetings. When asked what happened at the meetings, he stated it depended which one, the ones at his town were organised and managed by the association there, they talked about their activities, their projects and also they talked about the directives of the organisation. At the local level they brought awareness to the people about the issues. When asked how they created awareness, he stated he did not do that himself, what he did was talk a lot about it with his friends, family and people around him. He also stated he explained about the liberation projects.
44. Following the hearing, the Tribunal sent the following letter to the applicant pursuant to section 424A:

You are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

Past harm

At hearing on [date], it is reported you stated you were locked up in [Place 3] together with Timidria leaders in [month, year].

This was not disputed by you at hearing on [date]

The Tribunal has been unable to find any information about this event. The Tribunal has found information that confirms that the leaders of Timidria were locked up in [Place 4] in a particular year

The lack of country information about anyone being locked up in [Place 3] and the country information that indicates that Timidria leaders were detained in [Place 4] in a specified month and year may lead the Tribunal to find it does not find that you are a witness of truth and does not accept you were detained in [Place 3] in [month, year].

2. The Tribunal also put to you that it could not find any information that persons were been sent to the North against their will and that it may not accept that NGO groups would not report this.

This may lead the Tribunal to find it does not accept that you are a witness of truth and that your [relative] was sent to the North. This may also lead the Tribunal to find it does not accept that if you went back, you would be sent to the North.

Future Harm

4. Please find enclosed reports that state that Timidria has brought actions under the law **and** has freed slaves in Niger. This may lead the Tribunal to find that it does not accept that you are unable to live freely or would be forced to act in accordance with your master's wishes and be punished if you disobey:

US State Department *Country Reports on Human Rights Practices for 2006* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor) (US State Department *Country Reports on Human Rights Practices for 2006* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor; This states that some former slaves have been liberated and given certificates to show that they are no free and that individuals had the legal right to change their situations and it was illegal for their masters to retain them, however in practice most did not act on their rights.

US State Department *Country Reports on Human Rights Practices for 2007* in relation to Niger, section 6.c Prohibition of Forced or Compulsory Labor) stating that during 2007 slaves continued to be liberated and given certificates to show that they were free. Individuals had the legal right to change their situations, and it was illegal for their masters to retain them; however, in practice, most victims of slavery did not act on their rights. Fear and physical or social coercion likely played roles, although a lack of viable economic alternatives for freed slaves was also a factor. The report also states that the appeal regarding the July 2006 enslavement case Timidria and Haoulata Ibrahim vs. Seidimou Hiyar was still pending at year's end and that there were no further developments in three other 2006 pending slavery cases.

Testimony: Former Niger Slave dated 3 November 2004

Independent Appeal: Niger and the victims of an old and cruel trade, dated 29 December 2006.

Drama as Niger slaves are freed dated 19 December 2003

45. The adviser wrote as follows:

The 424A letter noted that at [the Applicant]'s hearing on [date], he claimed to be locked up in [Place 3] with the Timidria leaders in [month and year] and that this was not disputed at the hearing on [date].

We seek to clarify the statements made by [the Applicant] at each hearing, which indicate that he made a distinction between the arrest of the leaders of Timidria in [Place 4] and the arrest of Timidria supporters and some regional leaders in [Place 3] in [month and year]. With regards to the Tribunal hearing on [date], we refer the Tribunal to page 16 of the transcript of the Tribunal hearing on [date] and to page 49 of the affidavit of [Interpreter] (the affidavit) provided to the Tribunal [information deleted under s431].

The affidavit notes two occasions, at line 16 and line 41 where [the Applicant] distinguished between his arrest and detention in [Place 3] with that of the [number] leaders arrested in [Place 4]. Similar, at the Tribunal hearing on [date], the Tribunal, the following exchange occurred:

Member: essentially what you said was that you were locked up in [Place 3] in [year].

Member: I have not found anything to say people were locked up in [Place 3].

Applicant: The leaders were locked up in [Place 4]

It is clear from [the Applicant]'s comments that he has consistently distinguished between his arrest in [Place 3] and the arrest of leaders in Timidria in [Place 4] in [year].

Supporting information regarding [the Applicant]'s claims of being detained.

We note that at the hearing on [date], the Tribunal was referred to a letter from the Timidria National Office, which had been produced at the hearing on [date] The translation of this letter stated:

I, the below signed President of the Timidria ([Place 3]) Section certify that comrade [Name], member of our association, [Place 1] subsection ([Place 2]) after a first arrest over the [Place 2] affair in [date] is now experiencing continuous harassment from the political authorities.

For his own safety has therefore taken the opportunity that was offered to him to leave the country.

The Tribunal acknowledged that this letter was produced before it at the hearing on [date].

During the hearing on [date], the Tribunal remarked that the letter did not indicate that the arrest had taken place in [Place 3], however it does mention that the arrest was related to the [Place 2] affair referring to Timidria's unsuccessful attempt to release slaves from the [Place 2] area in the [Place 3] department.

Since the hearing we have obtained a further letter from [name], the President of Timidria. This letter notes that in [month and year] Niger authorities arrested and

detained a number of victims of slavery and that [the Applicant] may have been among those arrested. This letter and its translation are attached to these submissions.

This letter confirms [the Applicant]'s claims that Timidria members were arrested in [Place 3] in [year], which is consistent with [the Applicant]'s claims.

We submit that the torture and arrest of opponents of the Niger government in Niger has been reported by a number of reputable organisations. The US State Department Country Report on Human Rights for Niger in 2006, included on pages four and five of the 424A letter, acknowledges that torture occurred in custody in Niger, and that police at times violated laws preventing detention without charge for more than 48 hours. Similarly, the US State Department Report on human rights in Niger for 2006, contained on page six of the 424A letter, reports arrest and detention of journalists reporting on politically sensitive issues in Niger including the food shortage.

There is also country information that suggests opponents of the government are often imprisoned for opposing the government particularly in relation to issues that the Niger government considers sensitive, including the food shortage and slavery.

We refer the Tribunal to the [report], which outlines a number of incidents of arrest of civil society activists in opposition to the government. In relation to Timidria, this report stated:

Harassment of Timidria and arbitrary arrest of two of its leaders

On [date] president of the national Executive Committee of Timidria, an association fighting against slavery in Niger, and [others] were arrested by the search squad of the national police force (gendarmarie). [Information deleted under s431]. They were released on [date].

[Information deleted under s431]. On [date], [two people] were taken to the [Place 4] civil prison. Initially accused of forgery and fraud attempt, they were officially indicted with fraud attempt to the prejudice of foreign donors by the [Place 4] Regional Court on [date]

The arrests of these five defenders were related to two letters that Timidria had received from [Name] in [date], requesting the association's support to the socio-economic rehabilitation of [number] slaves in [Place 2]. Upon reception of this request, Timidria developed two rehabilitation programmes that were later submitted for funding to NGO Anti Slavery International, and decided to organise a slave liberation ceremony on [date].

Timidria informed the National Commission for Human Rights and Fundamental Freedoms (Commission nationale des droits de l'Homme et des libertes fondamentales – CNDHLF) of this campaign and asked for its sponsorship. The Commission then decided to send an investigation mission of its own in order to check the information relating to the decision of the leader of the [Name] nomadic community (Place 2) on the planned liberation of [number] slaves in 19 of the community's tribes.

Following this investigation mission organised from [date] to [date], CNDHLF suggested to Timidria and Anti-Slavery to rename the ceremony as the campaign for public awareness and popularisation of the law criminalising slave practices, but did not circulate its report. After Timidria and Anti-Slavery agreement, the event was held on [dates]. However, the local populations seem to have been submitted to

pressure to dissuade them from participating in the ceremony, during which CNDHDLF president, Mr Lompo, further declared that any attempt to free slaves in the country (remained) illegal and unacceptable and that any person celebrating a slave liberation (would) be punished under the law.

The CNDHDLF mission report was publicly released on [date] only, the day [Person A] and [Person B] were arrested. According to this report, CNDHDLF concluded that there was no such slave practices in the region and that these rumours were an all made up conspiracy (...), aiming in secret at cheating the donors by tarnishing the image of the country. CNDHDLF also recommended to arrest all protagonists, disband Timidria and to freeze the bank accounts of the association, which received a colossal amount of money – over a billion CFA francs – through financial arrangements for the Programme for the rehabilitation of 7 000 fake slaves. In the report published after the public awareness campaign day, CNDHDLF president, Mr Lompo, further recommended the Ministry of the Interior to ensure a more regular monitoring of NGOs and associations activities in the country, called for the revision of the provisions of Order no 84-06 and the Law on NGOs, in particular those providing for the violations of their statutes, and called on the authorities to punish the protagonists behaviour in this slave liberation matter.

After two requests for their release on remand were dismissed, [Person A] and [Person B] were set free on [date], the day before an Observatory's delegation arrived in the country.

By the end of [year], the charges pressed against them had not been dropped.

We also note that in the 2005 US State Department Report on human rights in Niger reports incidents similar to that described by [the Applicant]:

Freedom of Assembly

The law provides for freedom of assembly, and while the government generally respected this right, police forcibly dispersed demonstrations during the year. The government retained the authority to prohibit gatherings either under tense social conditions or if advance notice (48 hours) was not provided.

The January 4 imposition of VAT increases on electricity, water and foodstuffs resulted in general strike days and nationwide demonstrations, many of which became violent and were forcibly dispersed by police. For example, on March 15, the Coalition Against the Rising Cost of Living organised a large march that resulted in considerable property damage. Police arrested and briefly detained 47 demonstrators. By the end of April police had arrested 93 demonstrators, most of whom were charged with property destruction. All had been released by June.

On February 14, police reportedly beat student demonstrators with batons and whips in the town of Konni, several students were briefly detained.

On May 28, in the village of Tamaske, police fired shots to disperse a demonstration, which resulted in serious injury to two demonstrators. Several person also were injured during a stampede that followed the police firing. Police arrested three demonstrators, one of whom remained in detention at year's end. The demonstrators were protesting alleged corruption and political favouritism in the distribution of food. An investigation was being conducted at year's end.

No action was taken against police who forcibly dispersed demonstrators in 2004 and 2003.

The US State Department Country Report on Human Rights Practices 2006 also contains evidence that while the international media was generally able to operate freely, there was clearly government censorship on sensitive issues such as the food crisis in Niger (page 6 of the 424A letter). The US State Department Country Report on Human Rights Practices 2007, similarly contains evidence of arrest of journalists found to be reporting on the conflict in the north (page 15 of the 424A letter). Similarly, we refer the Tribunal to pages 13 and 14 of the submissions provided to the Tribunal on [date] for further evidence of the government's restrictions on the reporting of the conflict in the north of Niger. We submit that the issue of slavery and persecution of anti-slavery activist is a similarly sensitive issue. We refer again to the comments of Mr Lompo, the President of the CNDHLF (the equivalent of Niger's national human rights commission) cited in the *Observatory for the Protection of Human Rights Defenders Annual Report 2005 – Niger*, above in support of this submission. We submit that the restrictions on the press in part explain the absence of available country information on this issue.

While these reports outline extensive suppression of political opponents through arrest and detention. We submit they are far from comprehensive. For example, the report by the International Federation for Human Rights only mentions that two of Timidria's leaders were arrested. Similarly, we note that neither the arrest of the leaders of Timidria in [Place 4], nor those of Timidria leaders and supporters in [Place 1] were reported in the US State Department Country Reports on Human Rights Practices for 2005, 2006, or 2007 despite that the arrest of the national leaders in Timidria was reported elsewhere by reputable sources, such as those produced by the Tribunal at the Tribunal hearing of [the Applicant] on [date].

Given the clear gaps in reporting on the suppression of political opponents of the Niger government and the reported intimidation of NGOs and journalists by the government in relation to sensitive issues such as the ongoing practice of slavery, it is highly plausible that the arrest which [the Applicant] described being subject to was not reported in English by the international press. Another factor explaining why this incident was not reported is that the arrest of the national leaders of Timidria in [Place 4] at the time is likely to have overshadowed any investigation, interest and coverage of the event described by [the Applicant]. This is particularly likely given the restrictions on the press in Niger, the limited resources on the local press, minimal presence of the international press and minimal coverage of Niger in the English speaking press.

The threat of sending [the Applicant] to fight in the north of Niger

The 424A letter also notes that the Tribunal could not find any information that people were sent to the north of Niger against their will and that the Tribunal may not accept that NGO groups would not report this. The 424A letter suggests that this may lead the Tribunal to find it does not accept that [the Applicant] was a witness of truth and that his [relative] was sent to the north or that is, [the Applicant] was sent back to Niger, he would be sent to the North of Niger.

We submit that it is unreasonable to expect NGOs in Niger to have reported and published such information. Niger is an extremely poor country, and it is likely that NGOs in the country are themselves extremely limited in the resources that they have at their disposal. In 2007, Niger ranked 174th out of 177 countries on the United Nations Development Program, Human Development Index. Given the dire poverty

of most of the country, the primary concerns of most NGOs in Niger is humanitarian relief.

Even where NGOs in Niger participate in advocacy, we note that the nature of advocacy in Niger is different to that in more developed countries, as ideas and advocacy are generally disseminated through the community through oral communication rather than in-depth research. For example, Timidria, the leading anti-slavery NGO in Niger does not even have a website and its more extensive research projects appear to have been achieved only through funding from international organisations such as Antislavery International.

Furthermore, the conscription of slaves into the conflict in the north is not necessarily seen as a distinct phenomenon from pre-existing master-slave relationship. This is evidence in [name] comment in his letter dated [date] that:

Anyone who is familiar with the master-slave relationship in Tuareg communities knows that young masters can force their young slaves and that on the front as well as school, the relationship of submission of the latter to the former is unequivocal.

Approaching the issue from this perspective, it is clear that while such a phenomenon is acknowledged by Timidria. It is accepted as an unremarkable consequence of the pre-existing master-slave relationship and not likely to be a priority for reporting particularly where NGOs have limited resources.

In his letter dated [date], [name] also notes that slaves were forced to fight for their masters during the Tuareg rebellion between 1990 and 1995, and that their involvement became evidence only at the time of peace agreements in 1995 where many black former rebels emerged alongside whites. We note that, while the Tribunal has not been able to find reports of slaves fighting in the north of Niger, this mirrors the situation during the Tuareg rebellion between 1990 and 1995 when the involvement of slaves only became evidence at its cessation.

In support of this, we note that the absence of present reporting on the conflict in the north of Niger was addressed in the pre-hearing submissions provided to the Tribunal on [date]. In those submissions we noted that reporting of the conflict in the north of Niger has been strictly controlled by the government. The geographical and political/practical inaccessibility of the area explain why this issue may not have been reported by NGOs with limited resources.

We also note that regardless of the absence of directly supporting country information, this claim is not inconsistent with available independent general country information on Niger. There is strong evidence regarding the degree of trafficking of persons through the country and it is not unreasonable to extrapolate that such trafficking may be used to assist the efforts of rebels in the north who are associated with slaveholders. We refer again to the extracts of the United States Department of State Trafficking in Persons Report 2008 included on pages 9,14 and 15 of our submissions provided to the Tribunal on [date]

The conflict in the north of Niger is being fought between government forces and Tuaregs. Given that [the Applicant] has been made to work in different parts of Niger for different relatives of his Tuareg masters, it is unsurprising that [the Applicant]'s [relative] was taken to the north of Niger and made to fight or support the Tuareg's in their armed conflict with the Niger government. Similarly, it would be unsurprising if [the Applicant] were forced to do the same on return to Niger.

We submit that given the limited resources of NGOs in Niger, the government's restrictions on reporting on the conflict in the north of the country, the acceptance that conscription of slaves is part of the general master-slave relationship and therefore not particularly surprising or remarkable, it is unsurprising that NGOs in Niger have invested their limited resources to confirm the existence of a phenomenon that is already suspected by many people in Niger and published it in English for the international community.

The enforceability of anti slavery laws in Niger

The 424A letter refers to a number of articles on the progress of the implementation of anti-slavery laws in Niger. The 424A letter refers to the US Department of State Human Rights report on Niger for 2007, which relevantly states:

The government publicly banned slavery in 2003, and during 2007 slaves continued to be liberated and given certificates to show that they were free. Individuals had the legal right to change their situations, and it was illegal for their masters to retain them, however in practice most victims of slavery did not act on their rights. Fear and physical or social coercion likely played roles, although a lack of viable economic alternatives for freed slaves was also a factor.

We submit that the statement that all of these factors would play a role in preventing [the Applicant] from acting on his rights and is wholly consistent with [the Applicant]'s claims of fear of future harm on the basis of his status as a slave or former slave if he were returned to Niger. We note that physical coercion is the main reason why [the Applicant] has claimed that he fears persecution on returning to Niger. Physical coercion clearly amounts to serious harm and therefore persecution regardless of [the Applicant]'s awareness of the activities of Timidria and the laws banning slavery in Niger.

There is reliable country information that demonstrates that ex-slaves are actively persecuted for attempting to act on their rights and that this is condoned by the Niger government. As an example, we refer the Tribunal to the case of Timidria and Houalata Ibrahim v Seidmou Hiyar also discussed in the 424A letter, which was referred to in the US Department of State Human Rights report on Niger for 2007 and in an article from anti-slavery international titled, Niger slave wins court battle against her master dated 25 July 2006.

We submit that this case, and the attention it has received, supports the submission that little has in fact been done to ensure the rights of slaves in Niger. We refer the Tribunal to the following comments made in an Anti-Slavery International Briefing Paper from July 2008:

On 25 July 2006, Seidimou Hiya was found guilty of the offence of slavery and was ordered to serve one year in jail of a five year sentence and fined the equivalent of £500. He was also ordered to pay his former slave, Houalata Ibrahim, £1 000 in compensation. Houalata Ibrahim said her master treated me as his slave, as he did my mother before me...Every time he thought I was late or that the work was done badly, he beat me...He told me I was just a stupid slave and had no rights.

However on appeal the sentence was dramatically reduced to a suspended prison sentence of 18 months and a fine of the equivalent of £100. Hiya was ordered to pay Houalata £100 in compensation for her years of servitude. The

fact that the strong initial sentence was not upheld on appeal is disappointing and a suspended prison sentence for the crime of slavery is not likely to be a deterrent.

This was the first case to be successfully prosecuted since the law against slavery was passed in 2003 and was brought by an NGO, Timidria, who were awarded a symbolic franc towards their legal costs by the judge. It should be stressed that no legal proceedings have been initiated by the authorities to date against anyone for their involvement in slavery. Even when allegations of slavery are brought to the attention of the authorities, they often fail to promptly investigate and resolve the case. This is clearly demonstrated by the examples cited above and by the case of a 15 year old girl, Zeinbou Souley. She sought Timidria's assistance after running away from her new master after being sold for the equivalent of £240. The Prosecutor at the local Court in Konni dismissed the case stating that Zeinabour was a disobedient girl for refusing to follow her mother's wishes. Timidria continues to seek redress on her behalf.

Those seeking to use the judicial system to access their rights under the law continue to encounter serious obstacles and take substantial risks in bringing cases before the authorities. This is clearly demonstrated by the case of Hadijatou Mani. In 1982, Hadijatou was sold into slavery at the age of 12 years old. She was purchased for £250 and carried out domestic and agricultural work. She also lived as a sexual slave or sadaka to her master, who already had four wives and seven other sadaka. Hadijatou served her master and his family for 10 years. She was never paid for her work and was subjected to regular beatings and sexual violence.

On 18 August 2005, her master released her – providing a liberation certificate with the intention of legalising his relationship with her. When Hadijatou sought to exercise her newfound freedom and leave, he refused to let her go, arguing that she was in fact his wife. She appealed to the local tribunal which found that there had been no marriage between them, and that therefore she was free. Hadijatou then married a man of her own choice, but her former master brought a complaint against her for bigamy and also laid claim to her new baby which was fathered by her real husband. The judge ruled in the master's favour and on 9 May 2007, Hadijatou was sentenced to six months imprisonment.

Hadijatou brought a case against the State of Niger before the Economic Community of West African States (ECOWAS) Community Court of Justice in Niamey on 7 April 2008, on the grounds that Niger has failed to implement laws against slavery. The Government of Niger is accused of not only failing to protect Hadijatou Mani from the practice of slavery, but also continuing to legitimise this practice through its customary law, which is discriminatory against women and in direct conflict with its own criminal code and constitution as well as its obligations under the African Charter of Human and Peoples Rights and various other international standards.

In 2007, the Government of Niger told the UN Committee on the Elimination of Discrimination Against Women that everything was being done to eliminate discrimination against women. The National Policy is based on respect for women's rights as citizens, non-discrimination, gender equality, equal opportunity and protection of women and children within the family unit. The Government also stated that customary law was gradually being

abandoned. Both the family laws of 1962 and 2004 provided safeguards and as such, custom did not apply automatically or generally, the parties to a case could ask that civil law be applied. When custom clashed with a ratified international convention or with the rules of public order or individual liberties, then custom did not apply. Also when custom was vague, it could not be applied.

Hadijatou's case illustrates that the Government's assurances about protections for women and the primacy of civil law over customary law are not being applied in practice and that those seeking to use the judicial system to secure their release from slavery can end up being criminalised and incarcerated.

We submit that the initial sentence given to Ms Ibrahim master was light given the nature of the abuse she suffered. As noted by the article, that the sentence was reduced dramatically on appeal is not likely to be a deterrent.

This was exemplified in the case of Mrs Mani, described in her briefing paper, who was imprisoned after attempting to use the legal system to support her. We note that the reason why these cases were prosecuted at all was the Nigerien government's failure to enforce its anti-slavery laws. These cases also demonstrate the ability of slave masters to continue to practice slavery despite the existence of anti-slavery laws, even where former slaves have been granted liberation certificates. This is wholly consistent with [the Applicant]'s claims of his fears of being punished by his slave masters on return to Niger, due to his status as a slave, despite that anti-slavery laws were introduced in 2003. We note that the decision in this case is set to be handed down on [date]. We submit that even if ECOWAS rules against Niger, the Nigerian government's history of inaction and opposition to Timidria and the former slave in this case suggests that it is unlikely that there will be immediate action to assist slaves to access their legal rights to emancipation, as little has been done to implement existing laws in the recent past.

We also note that at the hearing, the Tribunal commented that the cases referred to the treatment of women. As submitted at the hearing one cause of this is the relatively greater assistance that women have received in Niger, while victims of traditional forms of case based slavery have been neglected. We refer to the extracts of the United States Department of State Trafficking in Persons Report 2008 released on 19 June 2008 contained at pages 9 and 15 of the submissions provided to the Tribunal on [date] in support of this submission.

The 424A letter also refers to an article of the Independent newspaper, dated 29 December 2006 which reports among other things:

Slavery is illegal in this African country, but the authorities turn a blind eye. Tens of thousands are born into servitude each year, and freed slaves face a second-class existence.

Now that slavery has been criminalised, it is a less blatant feature of life in Niger. But rather than disappear overnight, it has simply gone underground.

In the past slaves were bought and sold openly after being kidnapped by nomadic raiders or captures as the spoils of war. Their children were born into slavery and the cycle continued. Today the practice is banned under the 1999 constitution and penal code, with stiff jail sentences of up to 30 years for those convicted. But slavery is winked at by the establishment.

Slavery is a taboo subject here and the anti slavery activist face violence and intimidation from the slave owners, who have political power and are embedded in the traditional chieftain system. They maintain that slavery is a cultural handover that provided a way of life to people who, they say, now no other way to survive.

Slavery is tolerated here. The police react only when a formal complaint is made by a slave against a master – a rare occurrence in this land of poverty, ignorance and deprivation. Many elected members of Niger’s multi-party democracy are themselves slaveholders in their home regions, and through their extended families.

We submit that this country information supports [the Applicant]’s claims that anti-slavery laws in Niger are not enforced in practice. This article notes the situation of Hadizou Karou for whom it took eight attempts to get the court to intervene in her case. In the meantime – it is likely that she continued to be persecuted by her master and now lives as a second class citizen. Similarly, Almou Wandara, the woman whom helped Ms Karou to be freed notes that she had been held and her family attacked as a slave, ex-slave and/or anti-slavery activist. These claims also support [the Applicant]’s claims of being punished by his masters for his involvement with Timidira and his fears that this is likely to happen again on return to Niger.

We also note that the 424A letter includes an article from the BBC News website entitled Drama as Niger slaves are freed dated 19 December 2003. We submit that while the content of this article demonstrates the optimism evident in Niger at the time, which [the Applicant] claims was one reason he returned to Niger in [year] However, subsequent country information clearly demonstrates that the hopes evidence in this article that the change of laws would allow freed slaves to move freely throughout the country have not come into effect.

Similarly, the 424A letter contains an article from the BBC News website entitled Testimony From Niger Slave dated 3 November 2004. This article refers to the freedom of escaped – not liberated slaves who lived approximately [distance] from where [the Applicant] lived in a remote part of Niger. We submit that [the Applicant] would not be able to escape without consequence in this manner as he lived in different circumstances and belonged to different masters. The article reflects the optimism held by anti-slavery organisations at the time that many slaves could achieve freedom and was attached to news that Timidria was winning an award from Anti-Slavery International and likely intended to highlight the positive work that Timidria was achieving in the area at the time. This optimism has clearly diminished since, as more recent country information shows.

We submit that the country information on the situation in Niger strongly supports [the Applicant]’s claims that he will be persecuted if he is returned to Niger due to his status as a slave, former slave and/or anti-slavery activist.

The relationship between Bellah ethnicity and slave status

We note that at the hearing, the Tribunal stated that it sought further evidence on the subject of the relationship between people of Bella or Bellah ethnicity and slavery. In most writing, explanation of the relationship between bellah ethnicity and status as a slave is minimal. For example, Robyn Dixon in the LA times writes:

Niger’s slave caste, known as the belah, is made up of descendants of villagers seized as slaves by victorious chiefs in tribal wars centuries ago.

However, the relationship between the two appears to be accepted and appears to be well understood by local communities. We note that Bella people are indigenous to parts of Mali and Niger. The term refers to many of those enslaved by Tuaregs and even former slaves. The following article on slavery in Mali, provides the most extensive explanation of the relationship between Bella ethnicity/social status that we could find:

Most of the slavery takes place between the Berber-descended Touaregs and the indigenous Bella people who live in this region, although the Peul and Songhai communities have also been known to use slaves in the past, according to Temedt...

Today the Bella have become largely assimilated into Touareg culture, keeping similar culture traditions and speaking the same language (Tamasheq) and many of the Bella are known as Black Tamasheq. The Touareg masters and the Bella people have lived in a complex caste system for many decades and some say little has changed in this power relationship – much of the northern region's property and livestock remains in the Touareg hands.

While this article refers to the situation in Mali, we submit that [the Applicant], who was born [place] has been and would continue to be subject to a similar power relationship with his masters.

We submit that [the Applicant] is a credible, honest person whose claims are genuine. He has not fabricated any claims nor has he attempted to advance any issue solely to enhance his application for protection.

We submit that the available, credible, independent information on the situation in Niger is far from comprehensive, nonetheless, that which is available supports [the Applicant]'s claims as to why he fears being seriously harmed due to his status as slave, former slave and/or his antislavery political opinion if returned to Niger. We also submit that, in the absence of more comprehensive information, [the Applicant] should be given the benefit of the doubt.

46. Also provided was the following letter from a witness:

In accordance with what we are used to tell you in regard to the practice of slavery in our country, slavery is a phenomenon which is known and experienced in most countries of the West African region. It is rooted in the minds so much so that its practice or slavery acts no longer either surprise or shock anyone to a certain extent, as they are considered the normal order of things because of the fatalistic mentality.

Regarding specifically the slavery events experienced in the [Place 1] region and its rural municipality of [Place 2], the leader of the [Place 2] nomadic group contacted the Timidria National Executive Office by letter dated [date] to request help with organising the liberation of the 7000 slaves in the group of which he was in charge. Naturally, in view of our mission statement, we were duty bound to accept.

After carefully preparing the liberation ceremony which was to have taken place on [date], in the presence of several guests from all over the world, including 4 international television channels, the Government of Niger and the National Commission for Human Rights and Fundamental Freedoms, further to the invitations we had sent them to take part in this ceremony, decided to prevent this ceremony from being held, on the pretext that such a ceremony would tarnish the image of Niger abroad.

False accusations were levelled at us and our structure, the Timidria Association, so that they could throw us in jail and if need be, dissolve the structure. Thus on [date], I was arrested with [number] other people. After [number] days spent at the [Place 4] Gendarmerei including [number] outside the legal period of detention, I was transferred to the [Place 4] Civilian Prison together with another person, the Timidria SGA in [Place 3], with the other [number] people including the nomadic group leader of [Place 2] and the [elected official] of the municipality of the same name were released.

During that turbulent period on the theme of slavery, the administrative authorities of the [Place 3] region and the cohorts committed many abuses of power, including the arrest and imprisonment to many people who were victims of slavery, just to intimidate them. Our friend [the Applicant] might be among them.

The enrolment of young slaves by their masters into rebellion which our country experience from 1990 to 1995 is corroborated by the fact that, at the time of the 1995 agreements, there were many black former rebels alongside the whites, and anyone who is familiar with the master-slave relationship in the Tuareg communities knows that young masters can force their young slaves and that on the front as well as at school, the relationship of submission of the latter to the former is unequivocal.

If in spite of all that, some aspects of slavery and of the ways slave drivers operate at the beginning of the 21st century remain unclear in your minds, invite us to your country and we will come and give lectures to give you a better understanding of our situation and of the phenomenon we are trying to put an end to in Niger.

That, [migration agent], is what I think is essential for you to understand the practice of slavery in our African traditional societies in general and in Niger in particular.

FINDINGS AND REASONS

47. In the absence of evidence to the contrary, the Tribunal accepts that the applicant is a national of Niger.
48. The Tribunal accepts that the applicant is 'of servile descent' or 'of slave status' in Niger, that the applicant has been a member of Timidria, the anti-slavery organisation in Niger, that the applicant completed his schooling and that he studied at Place 4.
49. The Tribunal accepts that in his capacity as a member of Timidria the applicant travelled to demonstrations in [Place 1] and on one occasion in [Place 4]. The applicant said at the first Tribunal hearing that he had continued living in [Place 2] although he said that he had also made trips to [Place 4] in connection with his travel overseas.
50. The applicant alleged that the interpreting at the Tribunal hearing was not of a standard sufficient to adequately inform the Tribunal of the details of the applicant's case and in particular, the interpreter failed to accurately translate the Tribunal questions and comments to the applicant in material respects and the interpreter failed to accurately translate the applicant's answers to the Tribunal in material respects.
51. The Tribunal considered this and wrote to the applicant asking him to identify what parts if any of the oral evidence as summarized by the Tribunal were wrong. In his response, the applicant's adviser asserted a number of things but did not identify what

parts of the oral evidence as summarized by the Tribunal were wrong but relied upon the interpreter's entire statement as to what transpired at hearing.

52. The interpreter's statement stated that the following exchange took place at the first Tribunal hearing:

Transcript (relevant sections)

Lines 3-9 Yes. We had promises from the government that we'd be freed and in a big way, I mean openly, yes, and we went to [Place 3] thinking that it was in the frame of all this – we thought it was to be there who organised all this salary money and all this manifestation instead of – but instead of that we were accused that we were causing a lot of trouble, social trouble. Instead of that we were arrested in [Place 3] for [number] weeks, all [number] weeks and also a lot of our leaders were arrested from (indistinct)

Actual utterance (in French on the tape)

We had hopes, we had received promises that there would be a formal ceremony for the liberation of slaves by the government. Instead of that, we were asked to go to [Place 3] which we thought was about the organisation of this ceremony..because we were part of it..we placed a very big role...It was Timidria that was organising the celebrations. It was the year where the celebrations were to take place but unfortunately it turned into something else. It was said that we wanted to trouble the peace. And we were arrested in [Place 3] for about [number] weeks with many of the leaders of Timidria, of the association.

Transcript (relevant sections)

Line 11 So are you saying you were locked up with the leaders?

Actual utterance (in French on the tape)

Interpreter: you were not at the same level as the leaders?

[The Applicant]: No, we were not at the same level.

Reviewer's note: the interpreter repeatedly mistranslates the English phrase 'locked up' as 'at the same level and later as arrested.'

Transcript (relevant sections)

Line 16 So who were you locked up with?

Actual utterance (in French on the tape)

Interpreter: You were arrested together with who? The leaders?

[The Applicant]: We were arrested together. Some were in [Place 4] and some leader were in [Place 3], for the same reason we were there.

Transcript (relevant sections)

Line 20 In your statutory declaration, it says that in [year] I was [detained] with the (indistinct) leaders

Actual utterance (in French on the tape)

Interpreter: In your official declaration, you said you were arrested together with the leaders. Is that it?

[The Applicant]: Yes it is

Transcript (relevant sections)

Line 30 So you say the leaders were locked up in [Place 3].

Actual utterance (in French on the tape)

And you say that the leaders were also in the same [Place 3]?

Transcript (relevant sections)

Line 36-37 I just want to try and clarify if I can whether you're saying that the leaders of Timidria were locked up with you or not'

Actual utterance (in French on the tape)

Interpreter: The Tribunal member would like to know whether you all together in the same group, arrested together in the same [place].

[The Applicant]: We were put together

Whether the Applicant was detained

53. It was put to the applicant at the second hearing that what the interpreter said in effect was that he had said he had been locked up with the leaders in Place 3. The applicant stated the leaders were locked up in Place 4. It was put to him that was what the reports stated, however from the transcript that his adviser had given to the Tribunal it said that he said he was locked up with the leaders at Place 3. The applicant stated in his case, he was locked up in Place 3 with a group of several people and the national leaders were locked up and arrested in Place 4
54. The adviser subsequently sought to 'clarify' the statement stating that the applicant had made a distinction between the arrest of the leaders of Timidria in [Place 4] and the arrest of Timidria supporters and *some regional leaders in [Place 3] in [date]*. He referred the Tribunal to page 16 of the transcript of the Tribunal hearing and to page 49 of the affidavit of [interpreter] and stated that the affidavit noted two occasions, at line 16 and line 41 where the applicant distinguished between his arrest and detention in [Place 3] with that of the [number] leaders arrested in [Place 4]. The Tribunal has been unable to find any information about this event, although it has found information that confirms that the leaders of Timidria were locked up in [Place 4] in [year]. The applicant has had many opportunities to provide country information about his alleged detention. The evidence presented in support of the applicant's claim is a letter from a local President of Timidria which is some months after the applicant arrived in Australia certifying that 'after a first arrest over the [Place 2] affair in [month and year]' (the applicant) is now experiencing continuous harassment from the political authorities. That letter does not indicate that arrests and detentions occurred in Place 3.

When this was put to the applicant he provided another letter from a witness stating that:

During that turbulent period on the theme of slavery, the administrative authorities of the [Place 3] region and their cohorts committed many abuses of power, including the arrest and imprisonment of many people who were victims of slavery, just to intimidate them. Our friend [the Applicant] might be among them.

55. The adviser has submitted that the letter from the witness confirms the applicant's claims that Timidria members were arrested with him. With respect, the witness' letter which suggests that 'during that turbulent period on the theme of slavery' there were many arrests does not, in the Tribunal's view provide corroborative evidence in relation to the applicant's claim that there was a mass arrest at Place 3 on a particular date or the local President's claim that the applicant was arrested over the Place 2 affair around the same time. Neither does the adviser's reference in his submission to general country information in the US State Department Reports about the arrest and detention of various persons. Apart from the witness' generalized comment and the letter from the local President of Timidria, there are no reports whatsoever to suggest that anyone was arrested in Place 3 as the applicant claims. The agent has submitted that gaps in reporting means that it is highly plausible that the arrest occurred. However given the presence of the international media who had journeyed to Place 2 to witness the freeing of the slaves (the so called Place 2 affair), the Tribunal does not accept that mass arrests of the sort claimed by the applicant would have gone unreported. The Tribunal has considered the letters from Timidria, however given that it considers the witness' letter too broad to assist and given that there are no contemporaneous reports that corroborate that any arrests at Place 3 occurred at that time, then it does not give any weight to the letter written by the local President and does not accept that the applicant was arrested.

The alleged threat of sending the applicant to the North of Niger

56. The applicant also claimed at hearing that after they were involved in a protest, his relative was sent to the North of Niger to take part in the fighting there and that he himself just managed to avoid being deported to the north. Whilst the Tribunal accepts there is fighting going on the North, there is nothing in the information available to the Tribunal to suggest that people from other parts of Niger are being forced to take part in this fighting. The applicant has been given many opportunities, to provide such information.
57. In his letter, the applicant's adviser has submitted that it is unreasonable to expect NGOs in Niger to have reported and published such information because Niger is poor, NGOs in that country are poor and even where NGOs participate in advocacy, this is done orally rather than in-depth research. He has also submitted that the conscription of slaves into the conflict in the north is not necessarily seen as a distinct phenomenon from pre-existing master-slave relationship, that the witness stated that slaves were previously forced to fight for their masters between 1990 and 1995 and that their involvement became evident only at the time of peace agreements in 1995. The adviser has also submitted that reporting of the conflict in the north of Niger has been strictly controlled by the government and that there is strong evidence regarding the degree of trafficking of persons through the country and it is not unreasonable to extrapolate that such trafficking may be used to assist the rebels in the north. In his last paragraph on

page 7 the applicant's adviser has submitted the following list of reasons as to why such evidence cannot be found:

We submit that given the limited resources of NGOs in Niger, the government's restrictions on reporting on the conflict in the north of the country, the acceptance that conscription of slaves is part of the general master-slave relationship and therefore not particularly surprising or remarkable, it is unsurprising that NGOs in Niger have invested their limited resources to confirm the existence of a phenomenon that is already suspected by many period in Niger and published it in English for the international community.

58. The Tribunal does not accept that if people from the applicant's area in Niger were being forcibly taken to fight in the north and north-west, this would not be reported in independent sources including NGOs especially given that Timidria participates in advocacy in relation to the practice of slavery.

59. The adviser has stated that the witness has stated that slaves were previously forced to fight for their masters between 1990 and 1995 and that their involvement became evidence only at the time of peace agreements in 1995, however upon reading the witness' actual words, the Tribunal does not accept that the witness said their involvement became evident only at the time of peace agreements in 1995 but rather that:

the enrolment of young slaves by their masters into the rebellion which our country experienced from 1990 to 1995 is corroborated by the fact that, at the time of the 1995 agreements, there were many black former rebels alongside the whites, and anyone who is familiar with the master-slave relationship in the Tuareg communities knows that young masters can force their young slaves and that on the front as well as at school, the relationship of submission of the latter to the former is unequivocal.

60. Much of the rest of the adviser's submission is based on the adviser's hypothesizing about the lack of evidence in relation to the alleged forced fighting. The adviser has also said in his submission that reporting of the conflict in the north of Niger has been strictly controlled by the government and that there is strong evidence regarding the degree of trafficking of persons through the country and it is not unreasonable to extrapolate that such trafficking may be used to assist the rebels in the north. In support of this, the adviser has stated that two overseas journalists were arrested and charged by Niger for attempting to report on the conflict in the North, and that Amnesty international has also reported that the military had threatened elected representatives for allegedly communicating information about atrocities committed by the army. He also refers to a report released by the World Organization Against Torture on 19 June 2008 which states that the conflict zone had been forbidden for journalists since August 2007 and that non-governmental organizations that denounce the serious human rights violations suffered threats and intimidation (that is throughout August 2007 a number of organizations received threatening emails from unidentified authors). The Tribunal finds the evidence the adviser has submitted that actually supports the adviser's alleged government censorship of the conflict in the North does not assist the Tribunal to understand why if people from the applicant's area in Niger were being forcibly taken to fight in the north and north-west, this would not be reported by Timidria, especially given that the applicant stated at hearing that he was certain Timidria knew. Again, the adviser's submission that evidence that people trafficking exists in Niger is consistent

with the applicant's claims does not assist the Tribunal to understand why if people from the applicant's area of Niger were being forcibly taken to fight in the north and north-west, this would not be reported by Timidria, especially given that the applicant stated at hearing that he was certain Timidria knew.

61. The Tribunal therefore does not accept that the applicant's relative has been forced to take part in the fighting in the north of Niger, nor that the applicant himself escaped being forced to take part in this fighting, nor that there is a real chance that, if the applicant returns to Niger now or in the reasonably foreseeable future, he will be forced to take part in such fighting.

Alleged Past Harm

62. The applicant claims that because of his status as a slave he had no freedom and he was forced to work for his masters. In his statutory declaration and at the hearing he claimed that he could not leave his master's property without his master's knowledge or permission and that his masters punished him, harassed him and threatened him with death and that he had not been able to complain or to seek any help. The Tribunal does not accept that his activities are consistent with the alleged restrictions on his freedom including his freedom of movement and his alleged inability to seek help because he has completed his schooling in Place 3 and studied in Place 4, he was a member of Timidria had participated in its activities including demonstrations against slavery in Place 3, Place 1 and on one occasion in Place 4, and travelled overseas to other countries where he did not apply for refugee status and to Australia. The Tribunal therefore finds that despite his assertions to the contrary, it does not accept that the alleged restrictions on his freedom including his freedom of movement by his masters and by the authorities and the alleged harassment, threats and punishment by his masters to him and his mother because he has left have occurred.
63. In reaching this conclusion, the Tribunal has considered the witness' opinion as to the applicant's psychological state. This report was provided after the applicant repeated his claims about what happened to him in Niger to this witness. While the report is evidence of the applicant's psychological condition, because the witness has no personal knowledge of what happened to the applicant in Niger and his conclusions are based solely on what the applicant told him, it is not proof that the claimed events were the cause of his psychological problem. Therefore, in this regard, the Tribunal does not give this report any weight.

Alleged future harm

64. In essence the applicant claims he fears persecution for reasons of his membership to the following social groups: anti-slavery activists or members of Timidria, Bellah and slaves in Niger.
65. At hearing, the applicant claimed that if he returned to Niger, he would not be able to access employment and services available to others and he would be at increased risk from the masters who would target him for punishment as an example to other slaves. He also stated that he would have no guarantee about whether the authorities would let him go when he returned and that he would face widespread discrimination from society in general.

66. The adviser submitted at hearing that the applicant's masters still exerted control over him, it was not unusual that slaves were able to travel or study but their masters still exercised control over them and he continued to run the risk of bad treatment, especially if he returned from Australia and would be targeted for punishment as an example to others. He also stated the ban against slavery was not effective, because court decisions were not enforced or fines were minimal and did not provide a deterrent.

Persecution on the basis of the applicant's anti-slavery activists or members of Timidria

67. The Tribunal has already found that despite his assertions to the contrary, the alleged restrictions on his freedom including his freedom of movement by the authorities did not occur. Even if the Tribunal were to accept the claim that he was detained which it does not, the evidence before the Tribunal suggests that anti slavery activists or members of Timidria have continued to operate openly in Niger and apart from the incident, there is no evidence before the Tribunal that it has experienced any further problems from the government. It has, for example taken legal action against masters and in one case which Timidria brought, the tribunal convicted the master and sentenced him to five years in prison (US State Department *Country Reports on Human Rights Practices for 2006* in relation to Niger, Section 6.c, Prohibition of Forced or Compulsory Labor) (subsequent reports have stated that the master was ordered to serve one year of a five year sentence in jail and fined the equivalent of £500 (Niger slave wins court battle against her master, 25 July 2006 <http://www.antislavery.org>). Other country information before it provides examples of situations where former slaves have been liberated by Timidria (see for example page 3 of the document entitled July 2008, Information on Niger from Anti slavery). Therefore, the Tribunal does not accept there is a real chance that he will suffer any harm including be detained by the Niger authorities if he returns to Niger on the basis of his membership with Timidria or because of his past or possible future anti slavery activities.

Bellah in Niger

68. At hearing, the Tribunal explored whether it necessarily followed that Bellah was synonymous with slavery. The applicant's adviser subsequently submitted that explanation of the relationship in most writing was minimal and that for example, Robyn Dixon had written:
- Niger's slave caste, known as the Bellah, is made up of descendants of villagers seized as slaves by victorious chiefs in tribal wars centuries ago.
69. The Tribunal accepts that Bellah are a particular social group and that the applicant is a member of that particular social group. The applicant has claimed that Bellah suffer serious harm. Whilst the Tribunal accepts that there may be some Bellah in Niger who suffer the harm claimed by the applicant, they do not suffer that harm because they are Bellah. They suffer that harm because they are slaves (see below). Whilst slaves are Bellah there is evidence that not all Bellah are slaves, for instance freed slaves show that not all Bellah are slaves. Accordingly, the Tribunal finds there is no real chance the applicant will suffer persecution for reasons of his membership to the particular social group "Bellah" because that is not the essential and significant reason for the serious harm he claims to fear and s.91R(1)(a) is not met.

70. The applicant has claimed that he will suffer future harm because of his 'slave status'. As evidence he claims to be Bellah and claims all Bellah are born into servitude and are slaves. The applicant has claimed that he is of 'servile status' and has a 'master'. According to the applicant and a witness from Anti-slavery, he remains the property of his master and subject to his control.
71. Whilst slavery undoubtedly continues to exist in Niger, it is necessary for the Tribunal to determine whether it exists as one or more particular social groups for the purposes of the Convention. This requires that the groups be identifiable by a characteristic or attribute that is common to all members. That characteristic or attribute cannot be the shared fear of persecution and the possession of that characteristic or attribute must distinguish the group from society at large.
72. The most obvious group is "slaves in Niger". However, other possible groups are "people born into servitude", "people of servile status" or "people with a master".
73. The applicant claims that being Bellah is either the common characteristic or evidence of his membership of one or more groups. Notwithstanding that the applicant is 'Bellah' the Tribunal has found that not all Bellah are slaves. Nor are they all servile or have masters. Therefore, being Bellah is not the determinative characteristic that would make any of these groups particular social groups. Nor is it conclusive evidence that the applicant is a member of any of those groups. The particular social group for which being Bellah is a common characteristic or attribute has been dealt with above.

Slaves in Niger

74. The common characteristic or attribute of the group "slaves in Niger" is slavery or enslavement as it is an element that unites the people who share it and makes them a cognisable group within Niger. However, to determine whether it is a group defined by the fear of persecution or even if the applicant is a member of the group it is necessary to identify what is meant by "slavery/enslavement". When the applicant's evidence is considered as a whole it is clear he views being a slave or enslaved as being subject to someone else's control. This is supported by the ordinary or dictionary definition. "Slave" means one who is the property of and wholly subject to another or one who works for and is the prisoner of another or one entirely under the domination of some influence and "enslave" means to make a slave (The Macquarie Dictionary Third Edition).
75. The Tribunal accepts that persons who are subject to someone else's control or made a slave have a common characteristic that can identify them as slaves. But if being under the domination of another or enslaved is the only persecution feared "slaves in Niger" will not be a particular social group because it would be a group defined by the persecutory conduct. However, evidence indicates that persons who are subject to someone else's control are also subject to harm such as being:

Forced to work, forced into unions or marriage, and have no control over whether their children go to school. Slaves are unable to inherit, all property belongs to the master and they are prevented from owning land. (see letter from Anti-slavery, 10 July 2008).
76. Since members of the group "slaves in Niger" have a common characteristic 'subject to someone else's control' that is not itself the feared persecution, and that sets them apart

from their society, the Tribunal finds it is a particular social group. However, the Tribunal does not accept that the applicant is a member of that particular social group. The claims that the applicant had no freedom and was forced to work for a master in the past have been rejected on the evidence and reasons set out above. The Tribunal finds that the applicant's accepted history, that is he was able to complete his schooling and to study in Place 4 in a country that is 83 per cent illiterate, he was able to travel overseas, he joined the anti-slavery organisation Timidria and he participated in its activities including in demonstrations in Place 3, Place 1 and Place 4, is, in the Tribunal's view, indicative of someone who was not subject to someone else's control.

77. The Tribunal considers on the basis of the evidence before it that the applicant will not be under the control his alleged master or anyone else in the future because the Tribunal is satisfied he has not been under anyone else's control in the past, he is a young man who has studied in a country that is 83 per cent illiterate, and he has travelled both nationally and internationally. Also, he has joined Timidria, is clearly aware of the law on slavery and in the Tribunal's view will be able to exercise his rights under the law in Niger to live freely rather than being forced to act in accordance with his alleged master's or anyone else's wishes or be punished if he disobeys. The Tribunal therefore does not accept that the applicant belongs to a class of persons who are subject to someone else's control.
78. For the reasons given above, the Tribunal is not satisfied that the applicant is a member of the particular social group 'slaves in Niger' because he is not a slave or enslaved so does not possess the common characteristic of the group.

People Born Into Servitude

79. The group "people born into servitude" is distinguished by Niger's caste system rather than whether they are slaves, that is, under the control of another. This group may also be identified as 'slave caste'. When the applicant's evidence is considered as a whole it is clear he views being born into servitude as synonymous with being Bellah on which the Tribunal has already made findings. The Tribunal accepts that members of the group "people born into servitude or of a slave caste" have a common characteristic that binds them together and sets them apart from Niger society in general. It also accepts it can be a group where the feared persecution is not the common characteristic and is identifiable. The Tribunal is satisfied that the group is a particular social group and that the applicant is a member of that group.
80. The applicant has made two claims of harm for reasons of his membership to this group. First, that he will be treated as a slave and, second, he will suffer general discrimination. While there is no doubt that people born into servitude in Niger can be treated as slaves, the Tribunal does not accept it is for reasons of their membership to the particular social group "people born into servitude or of the slave caste". Instead it is for reasons of social and economic disadvantage suffered by most of the members of that group and not by virtue of their birth. (see for example the US Department of State Reports at section 6c where it is stated that individuals had the legal right to change their situations, however if they did not act on their rights, fear, physical or social coercion play likely roles as well as a lack of viable economic alternatives for freed slaves and the witness refers to the psychological control which masters exercised over their slaves, keeping them in complete ignorance and away from town centres (folio 82 of the Tribunal's file). Members of the group with the applicant's advantages or with

access to help, for instance from organisations like Timidria, who actively liberate slaves, do not suffer slavery. In any event, for reasons relating to his education, travel and membership of Timidria, the Tribunal is not satisfied the applicant will be treated as a slave for reasons of his membership to this group

81. The applicant also claimed that in the future he would face unspecified ‘widespread discrimination’ from society in general. It is only in certain circumstances that discrimination will amount to persecution. The Tribunal has already explored the kinds of specific harm the applicant has said he fears will happen on return and has found that it is not satisfied that he has a well founded fear of being persecuted. Given the applicant’s accepted history and its findings that it is not satisfied that he has a well founded fear of being persecuted, the Tribunal is not satisfied there is a real chance that any less favourable treatment to which the applicant fears he may be subject would amount (either severally or cumulatively), to sufficiently serious harm to constitute persecution for the purposes of the Refugees Convention.

People of Servile Status

82. The group “people of servile status” is also distinguished by Niger’s caste system, but in terms of the status members hold in society rather than the caste they are born into. The Tribunal accepts that in Niger there is a servile caste with a common characteristic binding its members together and setting them apart as a recognisable group in society. It also accepts it is a group where the common characteristic is not the fear of persecution as country information shows they are subject to a variety of types of physical and psychological harm. The Tribunal is therefore satisfied that “people of servile status” is a particular social group in Niger. However the Tribunal is not satisfied that the applicant has the profile of a person of servile status in Niger. For the reasons set out above in relation to the finding the applicant is not a slave in Niger, the Tribunal finds the applicant’s advantages, history, and future good prospects in Niger society mean he is not a member of the particular social group “people of servile status”.

People with a Master

83. On the basis of country information the Tribunal finds that there is a particular social group “people with a master” in Niger. The Tribunal finds that whilst some people with a master may be subject to their master’s control, be treated as slaves, and may suffer serious harm, harm for reasons of having a master may also fall short of serious harm. Given the applicant’s history the Tribunal is not convinced the applicant continues to have a master and therefore is a member of this particular social group. However, if the applicant does continue to have a master, the applicant’s accepted history is that his master has not restricted his freedoms in the past and the Tribunal is not satisfied he has suffered serious harm in the past. The Tribunal does not accept he will suffer serious harm in the future. This is in part because he has the wherewithal to complain and exercise his right under Niger law to be free of his alleged master. The Tribunal is of the view that the country information suggests that the problem is not that the law is not enforced because there is evidence that it is but that most victims of slavery do not act on their rights for a variety of reasons including fear, physical or social coercion and a lack of viable economic alternatives for freed slaves. As the US State Department observed, most victims of slavery do not act on their rights, and the witness refers to the psychological control which masters exercise over their slaves, keeping them in complete ignorance and away from town centres (folio 82 of the Tribunal’s file).

Country information supplied by the applicant's adviser states that the police do react but only when a formal complaint is made by a slave against a master – a rare occurrence given that victims also suffer from poverty, ignorance and deprivation. (see page 11 of the adviser's submission where he refers to *The Independent's* report dated 15 May 2008). Even if the applicant does continue to have a master, the Tribunal considers on the basis of the applicant's past including his education, Timidria connections and participation with that group he has the capacity to and will exercise his rights under the law in Niger to live freely rather than being forced to act in accordance with his master's wishes and being punished if he disobeys.

84. The applicant has claimed he will suffer various forms of general discrimination in part because he has a master. Given the applicant's accepted history and its findings that it is not satisfied that he has a well founded fear of being persecuted, the Tribunal is not satisfied there is a real chance that any less favourable treatment to which the applicant fears he may be subject would amount (either severally or cumulatively), to sufficiently serious harm to constitute persecution for the purposes of the Refugees Convention.
85. After considering all the applicant's claims separately and cumulatively, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention reason. It follows that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the applicant does not satisfy the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa nor is he the spouse or a dependant of a person who holds a protection visa as required by paragraph 36(2)(b).

DECISION

86. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. PRMHSE