Neutral Citation Number: [2009] IEHC 51

THE HIGH COURT

JUDICIAL REVIEW

2006 1261 JR

BETWEEN

A. A. T.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Clark delivered on the 11th day of February, 2009.

1. The applicant is seeking an order of certiorari quashing the decision of the Refugee Appeals Tribunal (RAT), dated 5th October, 2006, to affirm the earlier recommendation of the Office of the Refugee Applications Commissioner (ORAC) that she should not be granted a declaration of refugee status. Mr. Pádraig Cullinane B.L. appeared for the applicant and Ms. Sinéad McGrath B.L. appeared for the respondents. The hearing took place at King's Inns in Court 1 on 3rd February, 2009.

2. Leave was granted on the 31st July, 2008, by O'Keeffe J. to challenge the validity of the RAT decision on the following ground:-

> *"The first named Respondent acted in breach of the Applicant's right to fair procedures in the manner in which it determined the Applicant's appeal, namely on the basis of the availability of state protection and without any indication that this was to be the sole basis of the decision. Thereafter, the Tribunal erred in:-*
>
> a. failing to consider all the evidence, and in particular all the evidence submitted by or on behalf of the Applicant, and supported by country of origin information, relating to the unavailability of adequate state protection;
>
> b. failing to consider all the country of origin information, and in making selective use of the country of origin information which was relied upon;

c. insofar as changes in the Applicant's country of origin were relied upon, failing to undertake any individualised analysis as to how to such changes affected the Applicant's situation;

d. failing to apply the correct legal principles relating to state protection. In particular, no regard was had to the adequacy or otherwise of the perceived protection available from the state."

Factual Background

3. The applicant is a national of Nigeria and a Muslim of Yoruba ethnicity. Her account of events is as follows: she was born in Lagos Island in 1984. She attended primary school from 1992 to 1996 and secondary school from 1996 to 2003. After finishing school she became a professional lawn tennis player at The Echo Club in Lagos; she also earned money by collecting balls at the tennis club.

4. Following a tournament, she was approached by a woman from Benin City she knows only as "Mrs. Rose", who told the applicant she had a future as a professional tennis played in Europe and offered to take the applicant to the U.K. She obtained a visa for the applicant to enter Germany and they left Nigeria together on 11th February, 2005. Instead of going to the U.K. or Germany, Mrs. Rose brought the applicant to Italy via France. Until that point, the applicant had a passport but Mrs Rose took it from her upon arrival in Italy. She then told the applicant she would have to work as a prostitute to repay the sum of €48,000 for her travelling expenses etc. When the applicant refused, Mrs. Rose contacted her family, threatening them that they had to repay the money owed.

5. The applicant did not at any stage work as a prostitute. She met a Yoruban man at a party in Italy in March, 2005, and moved in with him. She got a job working at a tennis club. She says Mrs. Rose knew where she was working and would come to the tennis club and on the way home would beat the applicant and collect the money she had earned. The applicant claims to have then become pregnant by her Yoruban boyfriend. Once three months pregnant she stopped paying tennis and instead worked at coaching. Mrs. Rose continuously assaulted her, sent people to assault and beat her parents at their home in Nigeria, and arranged for her boyfriend to be assaulted and left in a coma. He spent one month in hospital and when he was discharged said he was scared of Mrs Rose and deserted the applicant who was then six months pregnant. He did not report the serious assault to the Italian police.

6. The applicant claims to have told a playing partner named Edward at the tennis club of her situation and he assisted her to flee to Ireland by giving her an I.D. card "as his wife" and which was then collected from her. She did not pay him any money. She travelled to Ireland by bus and by ship, arriving at a place six or seven hours from Dublin. She says she was afraid to go to the police in Italy as she feared deportation and she now fears Mrs Rose would have her and her baby killed if she were to return to Nigeria. She says she could go to the police about Mrs Rose if returned to Nigeria but that Mrs Rose could bribe them and they could arrest the applicant for other reasons. She said she did not know about any women's groups that could support her.

Procedural Background

7. The applicant was heavily pregnant when she arrived in the State on the 21st April, 2006. She applied for asylum three days later, completing an ASY-1 form and a questionnaire. She gave birth to a daughter on the 30th May, 2006. Her s. 11 interview was conducted on the 4th July, 2006. Among other issues, her knowledge of tennis was tested; she was unable to answer a number of the

tennis-related questions relating in particular to the Davis Cup or to the Nigerian team's performance. She sought to explain her lack of knowledge by saying that the Davis Cup was a competition for men and she knew only about women's tennis. She submitted a sports certificate and several photographs to ORAC but she did not submit any identity documentation.

8. A report was compiled under s. 13(1) of the Refugee Act 1996 on 6th July, 2006. The report referred to country of origin information (COI) to the effect that Nigerian women are trafficked to Italy but that the Government prohibits the practice and many initiatives have been implemented in that respect; it then cites "Appendix - UK Home Office Report on Nigeria". The appendix is not in the bundle of documents that is before the Court and there has been some dispute as to what document was contained in it; I will return to this issue in due course.

9. The s. 13 report found it to be credible that the applicant was a tennis player and may have supported herself in Nigeria by participating in tournaments, and went on to assess whether state protection was available to her in Italy or in Nigeria. It noted that the applicant had not applied for asylum in Italy and did not seek protection there, and was unable to provide a reasonable explanation for same. It concluded that there was no evidence that the Nigerian state was complicit in her difficulties or that she had any difficulties there before she left, and that "[i]t would be possible for her to avail of police protection if she returned there.

10. The s. 13 report then noted that there were many discrepancies in the applicant's account of how she was trafficked to work in Italy as a prostitute. In particular, it was found to be implausible that the applicant never worked as a prostitute but was able to openly work in a tennis club and live with her boyfriend for over a year in the same area as Mrs Rose, her alleged trafficker, even though Mrs Rose was continuously threatening and assaulting the applicant. It also found that there was no evidence that if she were to return to Nigeria her life would be in danger, noting that she claims to be a sports person and played professional tennis in Nigeria, and would therefore be able to return and re-establish herself in Nigeria. It was found that s. 11B (a), (b), (c), (d), and (f) of the Refugee Act 1996, as amended, were relevant and material because the applicant had not provided a reasonable explanation for the absence of identity documents and for her claim that Ireland was the first safe country she arrived in since departing Nigeria; she had not provided a full and true account of her travel to Ireland; and she had not submitted any travel documents to confirm where and when she arrived.

11. The applicant filed a Form 1 Notice of Appeal on the 30th July, 2006. Attached to that document were two country of origin information (COI) reports, namely an extract from a U.S. Department of State Country Report on Human Rights Practices in Nigeria of 2004 dealing with "Trafficking in Persons", and a West Africa Review report written by Osita Agbu in 2003 entitled "Corruption and Human Trafficking: The Nigeria Case". Also attached were two pages containing extracts from a British-Danish FFM report of 2006. By letter dated the 29th August, 2006, the applicant furnished an ID card of the Lagos State Lawn Tennis Association bearing her photo, and her original birth certificate.

12. An oral appeal hearing was held on the 5th September, 2006. No attendance note of the hearing is before the Court; the Court is therefore reliant upon the information set out in the RAT decision and in the applicant's grounding affidavit. A negative decision issued on the 5th October, 2006; it is that decision that is the subject of the within proceedings.

The Impugned Decision
13. The RAT decision follows the usual structure: it first set out the applicant's evidence including the evidence given under cross-examination at the oral appeal hearing, next addressed "the law", and then turned to the analysis of the claim. The comparative brevity of the decision is, it seems, largely attributable to the fact that the Tribunal Member did not replicate lengthy legal provisions as appears to have unfortunately become the practice of many of her colleagues.

14. At the start of her analysis, the Tribunal Member was careful to note that she had considered all the papers submitted for the purpose of the appeal and all the matters required to be considered under s. 16(6) of the Refugee Act 1996. She went on to deal somewhat briefly with the well-foundedness of the applicant's fear, noting that the applicant claims to fear persecution by reason of her membership of a particular social group, i.e. women who are trafficked and forced into prostitution contrary to their religious beliefs. She addressed that fear as follows:-

> *"Thus if one accepts the evidence as proffered by the applicant, it may be that there is a genuine subjective fear present and a valid basis for it. Further, even if it is accepted that the fear the applicant has is a well-founded one, account has to be taken of the availability of the forces of the State to counter that fear."*

15. On this "even if it is accepted" basis she went on to assess the availability of state protection without expressing any concrete conclusion on the well-foundedness of the asserted fear. In that regard, she noted as follows:
"If persecution does not emanate from a State, it has to be demonstrated that the State is either unwilling or unable to provide protection. The State is not required to provide perfect protection."
16. She then referred to the U.S. Department of State report of 2004 submitted by the applicant, summarising its contents to the effect that NAPTIP was established in 2003 to combat trafficking; that the NPF and Nigerian Immigration Service (NIS) also have anti-trafficking units; that inadequate funding for NAPTIP and other anti-trafficking efforts remains a major constraint; that the number of trafficking cases investigated and prosecuted had increased during 2004 but it is difficult to determine how many cases were pursued owing to poor record keeping; that NAPTIP, the NPF and the NIS have overlapping roles; and that victims indicate that the police, security forces, immigration and custom officials have complicit and collaborative behaviour; that NAPTIP had briefed heads of police and immigration on the issue and was working with the Ministry of Aviation to address corruption; that the law provides punitive measures albeit that NAPTIP and the NPT found no evidence of official complicity and no officials were prosecuted, tried or convicted for trafficking related offences.

17. The Tribunal Member also cited the U.S. Department of State report to the effect that various bodies collaborate to provide food and transportation and logistical assistance to reunite trafficked children with their families; that a 120-bed government-donated shelter is in operation in Lagos, run by the IOM and NAPTIP; that government efforts to combat trafficking increased in 2006 but inadequate funding remains a major constraint; that efforts were being made to provide witness protection through the police; that a brochure exists for those who wish to pursue prosecution and was distributed to deportees and had prompted at least one woman to contact NAPTIP; that strong efforts are made in several southern states to protect victims; and that victims are no longer criminalised or detained with criminals as they were in previous years. The Tribunal Member concluded thus:-

"Thus while it is clear that trafficking is a problem in Nigeria and there are allegations of institutionalised complicity in trafficking, the issue here relates to the future risk to the applicant. It is clear from the country of origin information submitted that procedures are in place for her protection should this applicant report her situation to the authorities and should she need to locate her mother in Nigeria. Going forward, her fears with regard to being treated as the criminal as opposed to the victim are not well founded, i.e. victims are no longer criminalised or detained with criminals themselves as they were in previous years."

18. She went on to find as follows:-

"[…] as there is no cogent evidence that the state, which is able to afford protection, would be unwilling to do so I am of the opinion that there is a sufficiency of protection available and consequently the principle of surrogacy does not arise".

19. A separate application for asylum has been submitted on behalf of the applicant's child and judicial review proceedings are pending in that case.

Preliminary Issue: The Home Office Report

20. An issue arose at the hearing of this application that merits some comment. Reference was made in the body of the s. 13 report to extracts from a U.K. Home Office report on Nigeria. In the applicant's grounding affidavit, a U.K. Home Office report on Nigeria of April, 2006, which runs to 212 pages was exhibited in its entirety. It emerged at the hearing of this application that this U.K. Home Office report was not in fact appended to the s. 13 report and was not before the Tribunal Member.

21. Counsel for the respondents drew the Court's attention to a reference in the ex tempore judgment of O'Keeffe J at the leave stage to a paragraph from the U.K. Home Office report citing the view of the Chairman of the National Human Rights Commission of Nigeria that:-

"The Nigerian police force are insensitive to women. They sometimes go out of their way to intimidate and harass women. They might, for example, arrest an unaccompanied woman for soliciting in an attempt to obtain a bribe. […].

There is little provision to support women facing domestic violence, female genital mutilation and trafficking. Where it exists, it is inadequate. The national agency for the prohibition of trafficking persons and the other related matters in the federal capital development agency provides some shelters and counselling. […]."

22. An Executive Officer of the RAT has sworn an affidavit saying that the U.K. Home Office report was not before the Tribunal. She says that the only COI submitted to the Tribunal by the applicant was the West Africa Review report of 2003 and the U.S. Department of State report of 2004. She explains that although there is a reference in the s. 13 report to the U.K. Home Office report in fact that document was not appended to that report and what was appended was a U.S. Department of State Country Report on Human Rights Practices in Nigeria of 2004. In other words the s13 report should have referred to a USDS report rather than the UKHO report.

23. Counsel for the respondents submitted that the applicant cannot rely on COI that was never produced to the Tribunal Member for the purposes of this judicial review. In reply, counsel for the applicant did not concede that the UK report was not before the Tribunal, but he indicated that he was not pursuing any arguments in relation to the U.K. Home Office report. In the circumstances, I will proceed to consider the applicant's arguments without considering the contents of the said report. It is nevertheless unsatisfactory if it were the case that a document which was not used at the RAT oral hearing was opened to O'Keeffe J and relied by him in his decision.

THE APPLICANTS' SUBMISSIONS

24. The applicant's complaints in respect of the RAT decision centre upon the Tribunal Member's finding that the Nigerian State was able to afford protection and that there was no cogent evidence that it was unwilling to do so. Counsel for the applicant criticises that finding and submits that although the State may be willing to afford protection to persons in the situation of the applicant, COI indicates that it is plainly unable to do so. Reliance is placed on the decision of the English Court of Appeal in Noone v. Secretary of State for the Home Department (Unreported, 6th December, 2000), where it was held that the true test with respect to state protection is not whether any law exists outlawing the activity that amounts to persecution but, rather, whether the state concerned provides reasonable protection in practical terms.

25. Counsel for the applicant submits that it is unclear what documents were relied upon by the Tribunal Member, including country of origin information (COI), and it is contended that the Tribunal Member ignored very relevant information and that it was insufficient to state that she had considered all of the documentation. In particular, he contends that the Tribunal Member erred by:-

a. According undue weight and relying selectively on the U.S. Department of State report;

b. Failing to consider the contents of the West Africa Review report of 2003 adequately or at all.

(a) Selective use of COI

26. As noted above, the Tribunal Member focused in her decision on the U.S. Department of State report submitted by the applicant with his Notice of Appeal. Counsel for the applicant submits that this is a "broad brush-stroke" report and that the Tribunal Member unfairly used the information in it selectively. Reference is made to the Tribunal Member's comment that a 120-bed shelter in a building donated by the government had been set up in Lagos; it is submitted that such a shelter is put a drop in the ocean and cannot be seen as an adequate response such that the applicant's fears would be allayed, and that the Tribunal Member missed the point by holding such an initiative up as a panacea to the problems faced by victims of trafficking such as the applicant. It is contended that the situation would be different if COI indicated that such a shelter was available in every town but that is not the situation here.

27. Counsel for the applicant did not make any submissions on the British-Danish FFM report, two pages of which were before the Tribunal Member.

(b) Failure to consider conflicting COI

28. Counsel for the applicant contends that the West Africa Review report is an accepted source of objective information and that it is probative of the applicant's

evidence with respect to her experience of being trafficked. He opened to the Court various paragraphs of the report which he considers relevant to the trafficking of young, vulnerable Nigerian women to Italy and which he submits are corroborative on an objective basis of the applicant's evidence and indicative that the details of her claim are consistent with generally-known facts.

29. Counsel submitted that the following passage sets the backdrop:-

> *"In times past, slavery and slave trade existed in various forms: people became slaves as war captives, criminals were punished with enslavement, and in some cases individuals in impoverished circumstances sold their relatives. However, in whatever form it took, it was quickly realized by most civilizations that the practice was the basest of crimes against humanity."*

30. He highlighted the statement in the section entitled "Corruption in the Nigerian State" that "To say that corruption is rampant in Nigeria is to restate the obvious." He also drew the Court's attention to the following passage in that section:-

> *"For Nigeria, various factors have been identified as instrumental in enthroning corrupt practices. These include, briefly, the nature of Nigeria's political economy, the weak institutions of government, a dysfunctional legal system, a culture of affluent and ostentatious living that expects much from "big men," extended family pressures, village/ethnic loyalties, and competitive ethnicity."*

31. Counsel did note very fairly that the report goes on to note the steps that have been taken to combat the problem of corruption, including the setting up of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) mandated to monitor and indict corrupt public officials. It then lists a number of "[p]ast futile interventions against corruption", including the Corrupt Practices Decree of 1975, the Public Officer (Investigation of Assets) Decree no. 5 of 1976, and various other initiatives. The report notes as follows:-

> *"That the country is still preoccupied with the issue of corruption today speaks to the fact that all these interventions failed. The situation also implies that law making alone cannot solve this problem. Other policy options must be explored."*

32. Under the heading "Nigeria: The Global Problem of Human Trafficking", the report refers to the Nigerian Police Force and the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF), as follows:-

> *"WOTCLEF […] estimates that "an average of 4 Nigerian girls are deported every month." The effect of human trafficking especially on the victims is better told than experienced. An interview with one of such victims revealed that in Italy Nigerian women forced into prostitution are compelled to have sex with anything from four to twelve men in a day. Put crudely these women, unlike drugs that are used once only, can be used repeatedly before they are ultimately discarded. For traffickers, the profits are too high, and the penalties too low, to resist the trade. Many of the women arrested and repatriated were trafficked mainly to Italy, Belgium, Holland and France. Others were known to have moved to the Arab World and the Far East in search of greener pastures but were eventually lured into prostitution."*

33. Counsel also highlighted the following passage in the same section:-

> *Those behind this trade trick the young women into travelling outside the country with promises of lucrative jobs in Europe. Once they leave, their leaders compel them to go into prostitution, ostensibly to fund their journey to Europe. Many of these women never get to the promised destination but are usually abandoned midway. A report of the International Organization for Migration noted that in many cases traffickers seize their victims' travel documents and sell the women to brothel owners. The victims are then told that to recover their document they would have to repay the cost of their transportation and subsistence. Failed escape attempts usually end in severe confinement and physical assault, and families of those who succeed in running away can be threatened with violence."*

34. Counsel for the applicant contends that the above passage mirrors the experiences of the applicant in the present case and that the Tribunal Member failed to consider the information contained in the West Africa Review report in any detail. He argues that the Tribunal Member therefore failed to assess information by which the applicant discharged the burden of proof, and he argues that it was insufficient to state that she had carefully considered all of the papers submitted.

THE RESPONDENTS' SUBMISSIONS

35. Ms. McGrath B.L., counsel for the respondents, urged the Court to take a step back when assessing the Tribunal Member's findings on state protection and to look at the RAT decision as a whole, including the background to the application for asylum, the applicant's asserted fear of persecution, and her account of the events that precipitated her application for asylum. She argues that this is an unusual case insofar as the applicant does not actually claim to have engaged in prostitution while in Italy although she says she was trafficked for that purpose. The Court is also urged to recall that the applicant has accepted that she never sought protection from the Italian police and did not apply for asylum in Italy.

(a) Selective use of COI

36. Counsel for the respondents rejects the submission that the Tribunal Member engaged in selective use of COI. She submits that there is no direct contradiction between the three COI documents that were before the Tribunal Member (namely the West Africa Review, the U.S. Department of State report, and the British-Danish FFM report) insofar as the broad thrust of those documents is that no evidence exists that people who are returned are tracked down by agents or madams.

37. It is submitted that the Court ought to take account of the fact that in circumstances analogous to the present, where applicants have claimed to fear being subjected to FGM or forced marriage or being tracked down by their traffickers, it has been found on numerous occasions, in particular by Birmingham J., that although there are considerable difficulties with the police in Nigeria it is not a situation where there is a complete breakdown of law and order and in the circumstances it is for the applicant to produce clear and convincing evidence that the State would be unable to afford protection to her.

38. The Court is urged to bear in mind the established principle that states are not required to provide perfect protection and that in the absence of a complete breakdown of state apparatus it is for the applicant to establish clear and

convincing evidence that the state is unable or unwilling to protect her. Reference was made to O.A.A. v. The Minister for Justice, Equality and Law Reform [2007] I.E.H.C. 169 and A.B.O. v Refugee Appeals Tribunal & Anor [2008] I.E.H.C. 191 where Feeney and Birmingham JJ. respectively followed the principles set out in the decision of the Canadian Supreme Court in Canada (A.G.) v. Ward [1993] 2 S.C.R. 689 to that effect.

39. With respect to the U.S. Department of State report, counsel submits that whatever about the weight of the West Africa Review, upon which she avoided comment, the U.S. report is a recognised source of COI taken on board in all jurisdictions. She argues that the broad thrust of the report is to the effect that measures are being taken and while the situation is not perfect, improvements have been made and there is a commitment to dealing with the problem of trafficking between the Nigerian and Italian governments.

40. Counsel opened various passages of the report to the Court which indicate the positive measures taken by the authorities in its efforts to combat trafficking. The report states that the law prohibits human trafficking and provides for penalties, that the National Agency for Prohibition of Trafficking in Persons (NAPTIP) was established in 2003, that the NPF and Nigerian Immigration Serice had anti-trafficking units, and that the President has a special assistant for human trafficking and child labour. The report further states:-

> *"With the existence of NAPTIP, enforcement efforts improved during the year; however, inadequate funding for NAPTIP and other antitrafficking efforts remained a major constraint. The number of trafficking cases investigated and prosecuted during the year increased; however, the precise number of cases pursued was difficult to determine because of poor record keeping and the overlapping roles of NAPTIP and the anti-trafficking units of the NPF and NIS."*

41. The report goes on to note that NAPTIP investigated 35 new cases in 2004 and many were pending at year's end, that it make arrests in 13 cases, that 4 cases involving six traffickers went to court, and that the Edo State delivered the first conviction under anti-trafficking law in November, 2004 and imposed a three-year sentence. The report then notes that an NPF Antitrafficking Task Force had been established and staffed units in eleven States, and that the Government had collaborated with the authorities in Spain, Italy and the Benin Republic and had signed a memorandum of understanding with the U.K. in November, 2004 with respect to detection methods, equipment, and victim support. The Government had established a national monitoring centre with the support of the Italian government.

42. Counsel draws the Court's attention in particular to the passage:-

> *"At the institutional level, government authorities do not facilitate or condone trafficking; however, NAPTIP received reports from informants and foreign officials that law enforcement officers and individuals in the immigration and airport authorities collaborated in trafficking across the country's borders. Victims interviewed by UNODC identified the complicit and collaborative behavior of police, security force, immigration, and customs officials. NAPTIP briefed the heads of police and immigration on the issue. NAPTIP also worked with the Ministry of Aviation to address corruption among airport officials. The law provides punitive measures for officials who aid or abet trafficking; however, during the year, NAPTIP and*

NPF found no evidence of official complicity, and no officials were prosecuted, tried, or convicted for trafficking-related charges."

43. Counsel contends that the U.S. Department of State report is balanced in its views insofar as it states that the government provided "little funding for assistance to victims", but that various agencies and organisations provided food, transportation, and other logistical assistance to reunite trafficked children with their families.

44. Reliance is placed on H.O. v. The Refugee Appeals Tribunal [2007] I.E.H.C. 299 where Hedigan J. held:-

> *"It is clear that the Tribunal must take into account COI that is submitted to it. The manner in which it balances that COI it seems to me is a matter for the Tribunal of fact. Absent some glaring and manifest flaw, I cannot see how the court could intervene in such an assessment of the facts without becoming in effect a Court of Appeal on the facts. This is something it must avoid."*
> 45. Counsel also referred to the two pages of the British-Danish FFM report of 2006 that were submitted by the applicant with his Notice of Appeal but were not opened by counsel for the applicant, and drew the Court's attention to the following references in that report; that the Executive Secretary / Chief Executive of NAPTIP considered that the fear that might be experienced by trafficked women and girls of bring forced to return to Nigeria was "unfounded"; a representative of Channels Televisions stated that there were no records of incidents involving madams or agents seeking revenge or subjecting their victims to further ill-treatment; the Presidency stated that "in general returning victims would be secure and that agents of trafficking or madams would not be in a position to persecute returned victims of trafficking"; and that WOTCLEF was unaware of whether any agent or madam had ever been able to trace and persecute a returned victim of trafficking and did not believe they would have a sufficiently organised network to trace a returned woman."

46. Counsel submits that this evidences that again, the broad thrust of the COI that was before the Tribunal Member was that no evidence exists that people are tracked down or harmed on return by agents or madams.

(b) Failure to consider conflicting COI

47. Counsel for the respondents submits that certain sections of the West Africa Review report opened by the applicant are not relevant, in particular the sections relating to corruption. It is submitted that the High Court has found on numerous occasions - Birmingham J. in particular - that although COI indicates that corruption is a problem within the Nigerian police force, the conduct of a single policeman or a group of such persons does not indict an entire force.

48. It is argued that like the U.S. Department of State report, the general tenor of the West Africa Review report document is that although state protection is not perfect and much work remains, the government has done much work to date to combat the practice of trafficking. Counsel for the respondents argues that although the first half of the report details the arrest of police officers as part of trafficking gangs and other such incidents, there is no indication that the Nigerian State condones or tolerates the practices of such corrupt officers. Reference was made to the section of that report entitled "Efforts at Combatting Human Trafficking" which begins as follows:-

> *"Besides global interventions, both Nigerian NGOs and the government are involved in efforts to combat human trafficking. Worthy of mention amongst others are the National Council of Women Societies (NCWS), FIDA, and WOTCLEF. The activities of the NGOs, especially WOTCLEF, go a long way in exposing the dimensions of this trade in Nigeria and bringing succor to many of the victims. Also worthy of note is the government's interest in fighting corruption on all fronts."*

49. That section goes on to note that drawing inspiration from the Corrupt Practices and Economic Crime Draft Decree of 1990, the administration of President Obasanjo signed into law the Corrupt Practices and other Related Offences Act, 2000 which established an Independent Corrupt Practices and other Related Offences Commission (ICPC). It notes that "[t]he efforts of the Obasanjo government in tackling corruption, though not very satisfactory, should be recognized" and, before going on to address corruption practices, states that "[i]t is widely believed that the present anti-corruption law, being a federal legislation, has positioned government in a better position to confront corruption generally."

50. The section on efforts to combat trafficking concludes as follows:-

> *"From the civil society, WOTCLEF initiated an "anti-trafficking bill drafting committee" in June 2000. The committee has drafted a bill that, if passed into law, will help harmonize the existing laws, prevent trafficking, prosecute traffickers, and protect the trafficked. The bill is still before the National Assembly. The foundation has also been in the forefront of advocacy aimed at educating the Nigerian public, especially vulnerable groups, about the extent of this problem and the need to check its continued rise. It has so far visited eleven states in the country and established vanguards/clubs in many secondary schools and institutions of higher education."*

51. Counsel accepts that there is no explicit reference to the West Africa Review report in the RAT decision but it is submitted that it was sufficient for the Tribunal Member to state that she had considered all of the documents and that although there may be instances where a document or its contents are of such importance that they merit express reference and consideration in an RAT decision, this is not such a case.

THE COURT'S ASSESSMENT

52. In brief, the question that must be answered by this Court is whether the Tribunal Member acted in breach of fair procedures in finding that the Nigerian State is both able and willing to protect the applicant were she to return to Nigeria or whether she failed to consider all of the evidence relating to state protection, including COI, or by engaging in selective use of the COI. In other words, what this Court must assess is whether it was reasonable and rational for the Tribunal Member to conclude as she did that the Nigerian State is both willing and able to protect the applicant, in the light of the evidence and COI that was before her.

53. I have not considered the U.K. Home Office report as it seems probable that it was not before the Tribunal Member for the hearing of the appeal. I have carefully read the Tribunal Member's decision and the COI that was before her, namely the West Africa Review report of 2003, the extract of the U.S. Department of State Country Report on Human Rights Practices in Nigeria of 2004 dealing with "Trafficking in Persons", and the two-pages of extracts from the British Danish FFM report. It is unnecessary for me to rehearse the contents of

the reports at this point as they are set out above in considerable detail. The thrust of the reports is overwhelmingly to the effect that trafficking remains a problem in Nigeria and that there is evidence of corruption and complicity on the part of individual members of the Nigerian police in that practice, but that human trafficking is not tolerated or condoned by the State and that increasingly, efforts are being made to combat the practice and to support victims of trafficking who return to Nigeria.

54. The Tribunal Member's assessment of state protection must be viewed in the context of the applicant's specific asserted fear which taken at its highest is that if returned to Nigeria she would be tracked down by her trafficker, Mrs. Rose, who deceived her into travelling to Italy, and would be threatened or subjected to violence by her. Unlike many young women who are trafficked from Nigeria to Italy, the applicant was not in fact involved in any prostitution and she has not said that she fears being trafficked again or being subjected to domestic violence, forced marriage or FGM if returned. While COI does not suggest that the State provides blanket protection, or even totally adequate protection, for all returned victims of trafficking it does indicate that measures have been taken to tackle the problem and to provide some protection and support to returned victims. Much more important, that information states that the assertions that victims of trafficking were treated as criminals rather than victims on being returned to Nigeria are generally unfounded and that that there is little evidence to support the contention that people who are returned are tracked down by agents or madams. There is no suggestion that there is a complete breakdown of state institutions in Nigeria or that it is a failed state. As the applicant has not provided cogent evidence of the Nigerian State's inability to protect, I have viewed all of this information in accordance with the well established principle that states are not obliged to provide perfect protection.

55. There is no doubt that there was evidence before the Tribunal Member upon which she could have reached the conclusion that the Nigerian state is both willing and able to protect the applicant, and I am satisfied that the Tribunal Member's conclusion is aligned with the general thrust of the COI. I find no substance in the argument that she engaged in cherry-picking from that information or that she ignored any of the documents submitted by the applicant. The contents of the West Africa Review, although certainly more critical than the U.S. Department of State report or the British-Danish FFM report are not in direct contradiction with the contents of those reports which for the most part contain similar and consistent information. In those circumstances, it was not incumbent upon the Tribunal Member to make express reference to the West Africa Review and I do not accept that she did not have any regard to that document. I have come to this conclusion mindful of the well-established principle set out as follows by Feeney J. in O.A.A. v. The Minister for Justice, Equality and Law Reform [2007] I.E.H.C. 169:-

> *"[I]t is the function of the Refugee Appeals Tribunal and not this court in a judicial review application to determine the weight (if any) to be attached to country of origin information and other evidence proffered by and on behalf of an Applicant."*

Conclusion

56. In the light of the foregoing, I am satisfied that the Tribunal Member acted in accordance with fair procedures and I therefore refuse the reliefs sought.