Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03014/2015

THE IMMIGRATION ACTS

Heard at: Field House
On: 21st January 2020

Decision & Reasons Promulgated
On 14th April 2020

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

CLU
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

For the Appellant: **Ms Dirie of Counsel, instructed by Wilson Solicitors LLP**
For the Respondent: **Ms Jones, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Nigeria born in 1991. She appeals with permission the decision of the First-tier Tribunal (Judge Rai) to dismiss her protection appeal.

2. The basis of the Appellant's claim is that she fears gender-based violence up to and including Female Genital Mutilation (FGM) at the hands of her father and/or his wider family. She cannot reasonably be expected to relocate to another part of Nigeria because she is a lone woman with mental health issues.

The Respondent refused to grant protection on the 9th November 2015 and the Appellant appealed.

3. The First-tier Tribunal found as fact that the Appellant is an Igbo woman of royal lineage. She was born out of wedlock and as a result she suffered discrimination from her father and other members of the family. When she was seven, and her younger sister only three, their mother fled the family home after suffering serious domestic violence. After their mother left the girls were repeatedly subjected to violence at the hands of their father, who was both physically and emotionally abusive. When he discovered that the Appellant was being sexually molested by a family acquaintance, he blamed her. He suggested that her behaviour, and the fact that she was being abused, were the result of her refusal to undergo FGM: he made repeated reference to the fact that she had not been 'cut' and expressed a wish that she undergo the procedure. When the Appellant was 17 her mother returned to Nigeria and managed to get her and her sister out, first to Gambia and then on student visas to the United Kingdom. Since her arrival here the Appellant has experienced the psychological sequalae of her childhood abuse: the evidence before the First-tier Tribunal indicated that she has been diagnosed with depression and suffers from trauma related anxiety.

4. The First-tier Tribunal accepted that the Appellant has spoken to her father by telephone and via social media and that he has threatened her and told her that she was ungrateful for leaving Nigeria after everything he had done for her. An expert witness instructed by the Appellant's solicitors sent a representative in Nigeria on a field visit, who reported that her paternal home area has an FGM rate of 23.4%.

5. What the First-tier Tribunal did not accept was that Appellant's father would in fact carry out his threats. Although he had made reference to FGM when she was a child, he had not in fact enforced the procedure on her. He is obviously a 'connected' individual who knows a lot of people in the Nigerian community in the United Kingdom, yet he has not sent anyone to physically intimidate or harm her here. He may make similar assertions today but lacks the means or motivation to locate the Appellant and enforce the procedure on her. The Appellant's sister has returned to Nigeria but there is no evidence that she has been subject to FGM. Nor did the First-tier Tribunal regard as 'credible' the assertions of the expert witness that an intermediary had contacted the Appellant's father who had confirmed in conversation that he would have his daughters cut. The First-tier Tribunal was further satisfied that there would be a sufficiency of protection provided by the Nigerian state. For those reasons, the appeal was dismissed.

Error of Law: Discussion and Findings

6. The primary difficulty with the determination of the First-tier Tribunal is its structure.

7. The first task for the Tribunal was to decide whether the Appellant has a well-founded fear of persecution in her home area today. Given its findings that both she, and her mother, were in the past subjected to serious domestic violence at the hands of their father, there was an operative presumption that she would continue to face a real risk of harm today: see paragraph 339K of the Immigration Rules. The next stage should have been for the Tribunal to consider whether there are good reasons to believe that the risk of harm has abated: given that it accepted that the Appellant's father continues to threaten her, and behave in a way generally consistent with a domestic abuser, it is hard to see that the presumption of harm could have been rebutted. The next question should then have been whether the Appellant could reasonably be expected to avail herself of an internal flight alternative.

8. The Tribunal did none of that: it instead embarked upon an assessment of whether the Appellant faces a risk of harm from her father "worldwide", taking into account such irrelevant matters as whether he has managed to 'reach' her in London, or whether he would have the means to locate and kidnap her the minute she landed in Nigeria. This was an error in approach.

9. As to whether there is a sufficiency of protection available to this Appellant, Ms Dirie submitted that the Tribunal's reasoning at paragraph 43 of its decision is inadequate: "in general, effective state protection is likely to be available". That finding is made absent any detailed consideration of the country background evidence, nor indeed the finding that the Appellant had been subjected to approximately ten years of serious harm at the hands of her father, with no state intervention at all. I accept that the assessment of state protection is flawed for a failure to take all relevant material into account. Whilst the First-tier Tribunal records that the "CPIN confirms that FGM is unlawful in Nigeria" that is plainly not the whole picture, as the CPIN itself acknowledges:

> '2.5.8 In general, the Federal State is likely to provide protection. However, it remains difficult to obtain protection in all states outside the Federal capital of Abuja where FGM is prevalent. Each case will need to be considered on its particular circumstances taking into account factors such as the person's age, socio-economic circumstances, education, ethnicity and the area they will return to.'

10. Although she contested the grounds generally I should note that Ms Jones on behalf of the Respondent was prepared to accept, in respect of the final ground, that the Tribunal did not give particularly clear reasons for rejecting one element of the expert report. The Tribunal expressly accepted that the author, Abaobi Nkeokelonye, is an expert and that significant weight can be attached to her evidence. Part of Ms Nkeokelonye's research methodology was to use trusted researchers in Nigeria to undertake field visits, and to elicit from the Appellant's father his views on matters including FGM. He told the researcher that although he was Christian, and perceived to hold progressive views within that faith, the church and Christian values must not be allowed to erode

"certain cultural practices". He was not moved by popular opinion on matters such as FGM. It was particularly important to him that this tradition be preserved within his family, because of its royal lineage: "royal families live by different standards and not by general standards, according to him". He further told the researcher of his displeasure with his daughter who had refused to undergo this procedure. The Tribunal appeared to discount all of this on the grounds that it was not 'credible' that such a conversation took place. Ms Jones accepted that if this man is a violent and controlling patriarch who also performs a public role as a pastor it is in fact plausible that he would divulge such information to someone ostensibly interested in finding out his views of matters concerning Christianity vis-à-vis 'traditional' Igbo cultural practice.

11. For all of these reasons, the decision of the First-tier Tribunal is set aside. The issues on remaking are:

    a) Whether there is good reason to believe that the Appellant no longer faces a real risk of harm at the hands of her father;

    b) Whether the Nigerian state is able and willing to provide a sufficiency of protection;

    c) Whether it would be unduly harsh to expect the Appellant to internally relocate.

Risk

12. As I note [at my §7 above], the First-tier Tribunal accepted that the Appellant has been subject to serious physical and psychological ill-treatment at the hands of her father in the past. Although that finding is preserved and I need say no more about it, I note for the sake of completeness that the evidence of that harm is compelling. A medico-legal report by Dr Bernadette de Jager dated the 12th May 2017 confirms several areas of scarring to the Appellant's body, some typical of her having been beaten with a cane, and some highly consistent with her having been cut repeatedly with a blade. A series of psychological reports by Clinical Psychologist Dr Eileen Walsh, to which I return in detail below, find that the Appellant continues to suffer profound psychological harm resulting from her experiences, such that a diagnosis of complex Post-Traumatic Stress Disorder and Major Depressive Disorder have now been made. These reports are to be read in conjunction with the Appellant's own detailed, and harrowing, evidence of about her childhood and adolescence, and all of that set against the background of country background evidence which shows violence against women and children to be commonplace in Nigeria.

13. The question is whether the Appellant remains at risk from her father today. Ms Jones points out that the statistics on FGM do not indicate that the practice is routinely performed on adult women, and she questions whether the Appellant's father would continue to pose a threat to the Appellant, particularly given that her younger sister has, for reasons unknown, elected to return to the fold of her paternal family. As I noted at the initial hearing in this

matter, the risk of FGM is just one element of the threatened harm in this case. It is part and parcel of the patriarchal norms, and violence, that governed the Appellant's family life in Nigeria. Her father believed that he controlled every aspect of her existence, and as she grew into womanhood this included her sexuality. FGM, like domestic violence, is all about control. Given his past behaviour, and applying the *Demirkaya* presumption in paragraph 339K of the Rules, I can see no good reason to believe that he would behave any differently towards his daughter today. Indeed it seems likely that her departure from Nigeria and her prolonged absence would exacerbate his response.

14. Somewhat unusually however, the Appellant in this case need not simply rely on the *Demirkaya* presumption of renewed harm. That is because she has obtained clear evidence that her father's attitudes remain unchanged. First there was her own credible evidence, accepted by the First-tier Tribunal, that he has since her arrival in the United Kingdom made threats to her over the telephone and social media platforms. Second, and in greater detail, is the evidence contained in Ms Nkeokelonye's report. Ms Nkeokelonye is an academic researcher focusing on social development in Nigeria, with a particular focus on gender issues. She has acted as a consultant to a number of UN agencies, DFID and USAid amongst others. No issue is taken with her expertise. I found her report to be clear, well-sourced and balanced.

15. Ms Nkeokelonye explains the background to the evidence she offers in her report. She asked a colleague in Lagos to visit the Appellant's father at his church in order to assess the size of the congregation etc (at the time this was considered relevant to the question of his 'reach' within Nigeria – I would observe that an example of the balance shown in the report is that it is found to be small and rather insignificant outside of his neighbourhood). Ms Nkeokelonye further asked her colleague to try and elicit his views on social matters such as FGM and women in society generally. I have altered the text in accordance with my own anonymity order:

> "97. I note that the client expressed fear of being forced to undergo FGM by her father upon her return to Nigeria. At the time of this research, an on-going phone discussion was initiated between an intermediary and [*the Appellant's father*] to further elicit information on his personal views regarding the intersections of culture and religion, with a focus on relevant issues in Anambra state such as the Osu Caste system and FGM. In his responses, [*the Appellant's father*] though perceived to be very progressive with his religious belief, was of the view that in spite of the widespread adoption of the Christian values, certain cultural practices must not be eroded as they remain an integral part of a people's identity.
>
> 98. Alluding to the practice of FGM, [*the Appellant's father*] explained that though FGM, like the abolished Osu Caste system, was perceived as a dying tradition, he was not moved by popular opinion or his religious belief in such issues due to the fact that the [*Appellant's family*] was of royal lineage. Royal families lived by different standards and not by general

standards, according to him. He further gave examples of an FGM-related ritual which the female members of their family had to undergo. **He expressed displeasure on the fact that his first daughter, whom he was not in good terms with, had – with the support of her mother – refused to undergo this family tradition. He made it clear that only the marriage of a daughter could prevent him from ensuring she honours the family tradition. In his words:**

> ***"My daughter is greatly influenced by the ex-wife who is aware of our family tradition and refuses to comply. If my daughter ever comes into the country without a husband, she will be picked up from anywhere in Nigeria and delivered to Nnewi to honour this family tradition. I joined in ensuring female children born to my siblings undergo this, my own children shouldn't be different".***

100. There is an apparent paradox to the character of [*the Appellant's father*], he portrayed a complex personality in that he had selective beliefs that were not objectively consistent with the Christianity which he professed. His belief in traditional rituals that strengthen his royal lineage contradicted his faith. This kind of apparent contradiction is far from being uncommon among some Nigerian Pastors.

101. Further enquiries were made through the members of the Lagos and Anambra state chapters of [*Appellant's home village*] associations on the religious background of the [*Appellant's family*] ... Findings revealed a peculiar trend among the [*Appellant's family*] in [*the home village*]. While they strongly profess the Christian faith with about four members of the family serving as Pastors in different churches, they also placed a strong value on tradition even when it negated their faith. For example, a brother of [*the Appellant's father*] who is known to be a Pastor is also a renowned polygamist.

102. Further enquiries were made to ascertain the claim that [*the Appellant's family*] was of royal lineage. While they are not known to be the present ruling family in [*their home village],* they have been strongly associated with some of the crowned heads.

103. Royal families in Nigeria are known to enjoy some privileges that ordinary families do not. They are sometimes judged by a different standard. The system of governance in Nigeria recognises conflicting values of customary laws as relevant to modern state governance, creating an immunity shield for certain practices of the royal families that aid in perpetuating abuse of human rights."

16. Having taken all of that evidence into account I am satisfied that as of today's date there remains a real risk of serious harm to the Appellant in her home town of Lagos, as well as her ancestral home state of Ananbra. That harm includes physical 'domestic' violence and FGM.

Protection

17. Both parties referred extensively to the country background information on Nigeria. Before I turn to examine that evidence it is appropriate that I mark Ms Dirie's submission that there has already been a failure of state protection for the Appellant, who was during her childhood in Nigeria sexually, physically and mentally abused. Whilst that forms the background to my forward looking risk assessment, it cannot properly be determinative of it, not least because the Appellant was then a child but is now a woman; furthermore the Respondent submits the situation for women in Nigeria to be constantly improving. I therefore assess the matter of protection with reference to the current evidence.

18. The Respondent's case can be summarised as follows. First that in general terms the government of Nigeria demonstrates a willingness and ability to provide a sufficient level of protection to its citizens, in that it has an operative legal and criminal justice system. That it meets this baseline *Horvath* standard, in respect of the population generally, was not contested by Ms Dirie.

19. The Respondent further relies on the measures taken by the Nigerian government to combat FGM. The 2019 Country Policy and Information Note *Nigeria: Female Genital Mutilation (FGM*) sets out how the Violence against Persons (Prohibition) Act 2015 (hereinafter VAPP) is a federal law that prohibits *inter alia* female circumcision and that the penalties include four years' imprisonment for any perpetrator found guilty: I note that Ananmbra state is one of the few to have specifically adopted this federal law. Of this evidence, Ms Dirie strongly contested that VAPP provides anything approaching a *Horvath* sufficiency of protection for women within the 'private sphere' of the family.

20. The first difficulty, submits Ms Dirie, is that FGM, like domestic violence against women generally, is perceived to be a private matter for individual families to resolve. Whilst both are officially outlawed, the evidence suggests that the state will defer to the family as the primary adjudicator on such matters. Ms Dirie asked me to place weight upon an expert report by Ms Victoria Ijeoma Nwogu, a barrister and solicitor of the Supreme Court of Nigeria with over 18 years' experience in the fields of gender and human rights. Ms Nwogu acts as a consultant to a number of international organisations and has published widely on women's issues in West Africa, in particular in respect of trafficking, domestic violence and FGM. I accept that Ms Nwogu appears well placed to comment on the issues in this appeal. She writes:

> "53. The way law enforcement officers respond to violence against women, specifically domestic violence, portrays societal attitudes to the status of women. As I have stated earlier, Nigeria is a patriarchal society, the father or male figure is held in total respect and awe as the head of the household. His powers are wide reaching in controlling the actions and destiny of the members of his family. A study presents this position, '*The husband derives power from being the supposed provider and head of the family,*

which is ideologically based. The power includes coercive power which is often manifest in physical and mental subjugation through violence.' In reacting to domestic violence Nigerian society always defers to this position of superiority of the male head and every opinion is sympathetic to maintaining his position. The woman is blamed for acts of violence that she suffers; she often faces insinuations that she has called the violence upon herself by disobedience, insubordination or some fickle provocation. In such instances, the woman will win little sympathy from society. Where harm suffered through violence is evident the family/society can sympathize and offer support to the woman only for a short time but will quickly begin to persuade the woman to return to her home, citing issues of family honour and pride, economic security and advantages of remaining in a marriage whether abusive or otherwise, sentimental issues with remaining to protect the children, and especially the customary obligation of a woman to remain in her home and submit to the authority of her husband no matter the circumstances.

54. The Amnesty International report confirmed this position with the findings it made that,

> *'On a daily basis, women are beaten and "punished" for supposed transgressions, raped and even murdered by members of their family. In some cases, vicious acid attacks leave them with horrific disfigurements. Girls and young women are forced into early marriage by parents and relatives. In many communities, the traditional practice of female genital mutilation continues to traumatize young girls and leave women with lifelong pain and damage to their health. Such violence is all too frequently excused and tolerated in communities where women are assigned an inferior role, subordinate to the male head of the family and effectively the property of their husbands. Husbands, partners and fathers are responsible for most of the violence against women.'*

55. The police are also ineffective in protecting citizens as cited above and women are less able to secure police protection and investigation into gender-based crimes than men due to gender stereotypes about the roles and status of men and women. The attitude of Police towards women complainants is discriminatory and patronizing. As the USSD 2016 report has shown, women complainants may even face the threat of rape from Police officers."

21. Ms Nwogu's evidence on this point is consistent with the conclusions in the January 2020 Country Background Note: *Nigeria,* which refers to the obstacles women face in trying to secure protection and redress in this context: violence against women in Nigeria is described as "endemic" [at §16.1.1], and the culture "highly patriarchal" [16.1.2]. The 2019 CPIN on FGM similarly records:

> '6.3.2 However, reporting with specific regard to rituals relating to marriage, marital relations and pregnancy the source noted that 'The legal practitioner stated that the police would, in general, treat ritual practices

> related to marriage, marital relations, and pregnancy or widowhood "as a family [or] community affair and may not interfere at all"'

22. It is against that background, submits Ms Dirie, that the state appears reluctant to enforce VAPP protection. Having summarised the legislation the 2019 CPIN on FGM states:

> '6.6.1 According to the 2016 Annual Report of the United Nations Population Fund/United Nations Children's Fund (UNFPA–UNICEF) Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change, published July 2017: 'There were no cases of law enforcement in 2016.'
>
> 6.6.2 28 Too Many stated: 'It has not been possible to identify any prosecutions brought under the VAPP Act in Nigeria since its introduction in 2015.'
>
> 6.6.3 An article by The Cable, a Nigerian on-line newspaper, 'Two years after ban, FGM still rampant in Nigeria' published 3 August 2017 also comments that despite the prevalence of FGM in Nigeria still no one has been convicted. Family members who are usually the offenders are hard to condemn or report as the occurrence of FGM often stays in the family.'

23. Ms Nwogu's evidence on VAPP is equally pessimistic:

> "Five years after its adoption, the effectiveness of the VAPP whether at Federal or state levels, to protect women from violence in private and public spaces or provide effective remedies for victims and punishment of offenders in Nigeria is doubtful. Law enforcement agents and institutions lack capacity and are unwilling to protect citizens from domestic violence for example. To date, there are no known cases of effective prosecution and punishment for gender-based violence against women using the VAPP in the states that have adopted it."

24. Whilst the adoption of VAPP in the Appellant's home state might be read as a positive step towards providing protection, I was taken to no evidence to indicate that there was any willingness on the part of the state to prosecute offences under VAPP. These findings are consistent with the country background information as it generally relates to women in Nigeria. The 2020 Country Background Note, for instance, recites the various laws that *could* be used to protect victims of domestic violence, before concluding [at §16.1.1]:

> "Despite these national efforts, violence against women is endemic in Nigeria (Centre for Reproductive Rights, 2016). The discriminatory attitudes against women and girls in Nigerian society contribute to the increase in violence against women as well as harmful practices such as child marriages, FGM, widowhood rites".

25. I remind myself that the Appellant is a young woman who has already been subject to significant serious harm in Lagos. I am satisfied, on the totality of the

evidence before me, that if returned there today she would face very great difficulty in obtaining state protection against the real risk posed to her by her father / her wider paternal family. The evidence overwhelmingly indicates that the police regard matters such as this as falling within the private domestic sphere, and that this reluctance to 'interfere' is one of the main reasons that prosecutions for violence against women are so few in number in Nigeria.

Internal Flight

26. The Secretary of State submits that whatever my findings on risk and protection, the United Kingdom's international obligations under the Refugee Convention are still not engaged by the facts in this case. That is because, it is submitted, the Appellant can avoid serious harm by moving to another location in Nigeria, away from her father/paternal family in Lagos and Ananbra State. Nigeria is a large country with numerous other large cities – in her submissions Ms Jones gave the example of Abuja – where a single but resourceful and educated young woman such as the Appellant could safely establish herself. The CPIN (August 2019) states that there is generally freedom of movement in the country. The Appellant is not from the conservative Islamic north where free movement of a woman might be frowned upon. The Secretary of State accepts that the test here is whether it would in all the circumstances be reasonable to expect the Appellant to relocate, or put another way, whether it would be "unduly harsh" to expect her to do so. The Secretary of State accepts that this requires a wide-ranging evaluative exercise. I am not required to assess whether young women *per se* can reasonably be expected to live alone in a city other than the one in which they formerly lived, but whether *this* young woman can reasonably be expected to do so. As such I am required to identify the relevant personal characteristics of the Appellant. I must then set these traits against the background of the prevailing country situation to determine whether the internal relocation alternative would be 'unduly harsh'.

Social Circumstances

27. As already noted the CPIN (August 2017) states that women are free to move and work within Nigeria without legal restriction. The CPIN does not say much else about how reasonable it might be to expect them to do so. In this I am aided by the expert report of Ms Nwogu. Her evidence on this point (uncontested by Ms Jones) can be summarised as follows:

    a) Nigeria is a heavily patriarchal society where the socio-economic activities of women are governed by systems of socialization and cultural practice which favour the interests of men above those of women;

    b) At the date that Ms Nwogu wrote her report the official overall unemployment rate was 19.7% but for the reasons summarised at (a) above for women it is much higher;

c) A high percentage of those women who are in employment operate in the informal sector, in low-income generating activities including farm work, prostitution, street hawking, itinerant labour;

d) The types of work identified at (c) very often expose women to the risk of exploitation and abuse including trafficking;

e) Whilst education and qualifications play a role in obtaining good jobs the most significant asset remain connections. Nepotism and corruption play a significant role in securing government positions and some jobs in the private sector;

f) Individuals with mental health difficulties are subject to severe stigma which would further impede their ability to access the job market;

g) Nigeria has no social housing. The ability to rent in the private sector is dependent upon a regular income. The cost of decent and sanitary housing is prohibitively high for many; landlords routinely require payment of 2 years rent in advance;

h) Those who cannot afford it populate the slum settlements dotted throughout the big cities;

i) Because of the high cost of housing, and the challenges in obtaining any regular employment, social networks, in particular family structures, remain an integral aspect of "every Nigerian's life". Nigerians choosing to go and live in another part of the country would invariably pick somewhere where they already have connections;

j) This in turn leads to the congregation of 'non-indigenous' internal migrants in certain areas, as citizens coalesce around neighbourhoods already populated by their family/extended family/ ethnic or religious group. These areas are called 'Sabongari' lit. 'the place for strangers'.

28. I have already found that the Appellant would not be able to return to either Lagos or Ananmbra states because she would face a real risk of serious harm there by her father. It is the Appellant's evidence that her mother is presently in Gambia, and her sister is resident in the USA. There is no evidence that the Appellant has any other family members to whom she could turn for support in Nigeria. These were the facts that Ms Dirie relied upon in support of her submission that the Appellant would be relocating without any family support.

29. In her submissions Ms Jones took issue with that conclusion, pointing out that the Appellant remains on good terms with her mother, who has once in the past travelled to Nigeria to offer her assistance (that being a reference to the mother's mission in 2009 to take the girls to Gambia). Ms Jones submitted that in those circumstances the Appellant's mother could be expected to return to Nigeria again and help the Appellant establish herself on that basis. I am not prepared to base my analysis of internal flight on such a speculative solution. I have no evidence before me to indicate that the Appellant's mother would be willing to return to live in Nigeria, a country she herself fled in fear of serious

harm; nor is there any evidence to indicate that she would be able to offer any material assistance to the Appellant if she did so (in fact her evidence is that she is living in straightened circumstances). More importantly it is incumbent upon me to determine the risk to the Appellant pertaining at the date of this decision. At the date of this decision the Appellant has no relatives to whom she could turn for support in Nigeria.

30. I therefore accept and find as fact that the Appellant is a lone woman who is without any social connections to look to for support. As the evidence of Ms Nwogu indicates, that is a factor of some significance, because employment opportunities are in Nigeria very often governed by nepotism. The Appellant is educated to secondary school level, but she has no tertiary qualifications and no experience of working in Nigeria, a country she left aged 17. As an Igbo indigen of Ananbra state she would be immediately identifiable as a 'stranger' to any prospective employer in, for instance, Abuja. Having taken those factors into account I am satisfied that the prospects of the Appellant securing regular employment are slim. Although she has some education and speaks fluent English without any experience or connections she is not likely to be able to find decent employment. It is far more likely that she would be left to find work amongst the other women in the informal sector. As Ms Nwogu explains, even 'legitimate' strands of this work such as street hawking can leave such women vulnerable to abuse and exploitation.

31. A further difficulty arises in the Appellant being forced to take on such low paid employment: that is that it is difficult to see how she would be able to obtain secure accommodation. There is no social housing provision. Rent in the private sector can obviously vary depending on the area, but even in a low-income/slum neighbourhood the Appellant would still be required to pay rent up front for a substantial period. Ms Nwogu's evidence indicates that this may be possible – just – if the Appellant is given an AVRP re-integration support package but this would leave her little to live on or pay the next tranche of rent. Again, the importance of having family to turn to assumes great significance in the ability of ordinary Nigerians to live a relatively normal life.

Mental Health

32. The evidence relating to the Appellant's mental health covers a period of four years and comes primarily from two sources:, Dr Bernadette de Jager who prepared a report in May 2017, and Dr Eileen Walsh, who first saw her in September 2016 and whose most recent report is dated 12th January 2020. No issue was taken with the expertise or conclusions of either. Due to her status the Appellant has not hitherto been registered with a GP, although I was told at the hearing that her current solicitors have assisted her in now registering and obtaining a referral for counselling.

33. The central diagnoses made by Dr Walsh (and consistent with the 2017 findings of Dr de Jager) is of severe Major Depressive Disorder, severe anxiety and

complex Post-Traumatic Stress Disorder. The Appellant currently lives with the family of an ex-boyfriend. She finds it difficult to leave her home and reports experiencing anxiety attacks when she encounters crowded places. Public transport is a particular difficulty for her. She sleeps only a few hours per night and is constantly fatigued. She finds little enjoyment in anything, including things like attending church, which she used to do. The Appellant reports findings relationships with others particularly difficult, feeling "cut-off" and afraid. She lacks concentration or the energy to do anything. Having assessed these symptoms Dr Walsh specifically considered whether the Appellant could be feigning them. In doing so she applied the guidelines in the Istanbul protocol as well as best practice guidelines for psychologists produced by an academic. She found the Appellant's clinical presentation to be entirely consistent with her reported history; that the Appellant showed no signs of exaggeration and denied the presence of multiple symptoms tended to support the thesis that her self-reported symptoms were accurate.

34. Dr Walsh opines that there are likely to be several contributing factors to the Appellant's conditions, the two central ones being her history of childhood abuse and serious trauma, coupled with the difficult circumstances in which she currently finds herself. I regard that to be a fair assessment. It has already been accepted that the Appellant has been subjected to significant abuse by her father (including neglect, emotional abuse, physical beatings) and sexual molestation by a neighbour, all inflicted as a child. She was, in effect, abandoned by her mother for a key part of her childhood. Today she finds herself in an extremely precarious position, sleeping on the sofa of a family good enough to have her. Her clinical presentation is consistent with this personal history. I accept and find as fact that the Appellant is suffering from severe Major Depressive Disorder, severe anxiety and complex Post-Traumatic Stress Disorder. The consequences for the Appellant are that she lives with ever present anxiety which inhibits her ability to form relationships with others, or to go about her 'normal' daily business. An example is given by Dr Walsh that the Appellant is unable to board a tube train.

35. Asked to comment on the provision for mental health care in Nigeria Ms Nwogu states that there is some state provision, but that it is woefully inadequate, amounting to a fraction of the 3.95% of the national budget spent on health overall. There are 4 national institutes of psychiatry, 35 government hospitals which offer generalised psychiatric care, 8 regional ones, and a number of private clinics and university departments; these cater for a population of some 190 million of whom the WHO estimates 1 in 4 suffer from some form of mental illness. Ms Nwogu draws on WHO and NGO reports, plus an academic study conducted by a Dr ME Suleiman in 2016 for the information she relates in respect of mental health provision. In summary her conclusions are that access to care is very difficult. Although the government announced various policies over the years the only operative statute in Nigeria remains the 1958 Lunacy Act, which instead of legislating for treatment, prescribes penalties and powers for detention and imprisonment. The

availability of drugs is patchy. What treatment is available must be generally be paid for; where institutions do offer free or low-cost treatment this will usually be confined to the prescription of older – and cheaper – generic drugs.

36. I am fully prepared to accept that the Appellant is reasonably likely not to receive any kind of meaningful treatment in Nigeria, but as Ms Jones fairly pointed out, since the Appellant is not currently receiving any medical attention here, there is nothing in the point that she might struggle to receive it there. That does not however mean that her conditions are irrelevant.

37. The central point made by Ms Dirie is that whilst the challenges faced by any returnee (see above) might be surmountable with hard-work, resilience and the ability to withstand hardship, for the Appellant this is not possible. The conclusions of Dr Walsh, read with the evidence of Ms Nwogu, demonstrate that the Appellant would be unable to function effectively in Nigerian society. It is likely that the anxiety that currently prevents her getting on a tube train in London would, faced with the reality of life in a strange Nigerian city, overwhelm her. I find that it is reasonably likely that the Appellant's mental illnesses would make it all the more difficult for her to obtain employment, housing and to establish a private life for herself, for the simple reason that her anxiety and fear inhibit her from speaking to people, negotiating on her own behalf or indeed functioning in the 'outside world'.

38. This leads to a further issue raised by the report of Ms Nwogu. That is that where people are seen to be acting outwith the parameters of 'normal' behaviour in Nigeria, this is very often interpreted by others within the framework of religious or superstitious belief. Ms Nwogu cites a study conducted by two Nigerian doctors in 2010. They found that respondents to their survey held strongly negative opinions about the mentally unwell: 52% blamed witches, 44.2% attributed such behaviour to demonic possession and 30% believed that such illness were visited upon the sufferer as divine retribution. These beliefs are widely held and underpin the severe stigma and abuse faced by those suffering from mental illness. These fears feed into the notion that such individuals do not require 'care' so much as 'containment'. A Human Rights Watch study conducted between 2018 and 2019 reported that many of the 124 mental health in-patients interviewed by its researchers were found to be living in inhuman and degrading conditions. Most were shackled with heavy iron chains, and living in overcrowded and unhygienic conditions. Ms Nwogu states that the practice of chaining and beating mental health patients is widespread and well-documented in both state and private institutions.

39. I would add that although this is not directly addressed by Dr Walsh I accept that an additional burden that the Appellant would face in trying to establish herself in Nigeria would be her strong subjective fear of being found by her father. As Ms Nwogu explains, the norm is for migrating Nigerians to settle in neighbourhoods populated by others from their ethnic group/origins. As a

long woman she would be likely to attract some attention, particularly given her surname, and its royal connections. For someone with the Appellant's mental conditions these matters would, it seems to me, assume some significance. She would be constantly afraid of discovery, and all that that might entail: living with such fear is not part of the 'relatively normal life' envisaged when we consider whether internal flight is a reasonable alternative to international protection.

40. Having considered all of that evidence I am satisfied that the Appellant's serious mental health issues would present her with a significant challenge in attempting to establish herself in Nigeria. She is too anxious and traumatised to travel on public transport or establish relationships with other people. It is easy to see how this behaviour could be interpreted as 'odd' and in the context of superstitious belief be viewed with suspicion and hostility, further increasing her anxiety and depression and making it all the more difficult for her to cope with the challenges of daily life.

Conclusions

41. I have found that the Appellant has faced serious harm/past persecution for reasons of her membership of a particular social group (women) in Nigeria. I am satisfied that there are no reasons to believe such harm would not be renewed upon her return to her home area, indeed there is good evidence to show that it would be.

42. I am satisfied that there has been a failure of state protection in the past. The evidence demonstrates, to the lower standard of proof, that state protection for women facing gender-based 'domestic' violence in Nigeria is severely lacking. There would not, in the particular circumstances of this case, be a sufficiency of state protection for the Appellant.

43. I am satisfied that it would, having regard to the expert and medical evidence before me, be unduly harsh for the Appellant is she were to try and relocate within Nigeria. She has no qualifications or work experience to speak of, no family support or any other social connections that she could call upon. She is suffering from three complex mental health conditions which make it very difficult for her to function in the 'outside' world and these conditions are likely to make it all the more difficult for her to re-establish any kind of 'normal' existence in Nigeria. Further it is reasonably likely that these conditions will place her at risk of hostility/abuse from the population at large, and/or inhuman and degrading treatment, including chaining and beating in a treatment centre, should one become available.

44. It follows that the Appellant's appeal must be allowed on protection grounds, because the Appellant is a refugee.

45. In light of that conclusion, and my findings above, I need not deal separately with human rights, save to note that I regard my findings on internal flight in this case determinative of the question posed by 276ADE(1)(vi), whether the Appellant would face very significant obstacles in reintegrating in Nigeria.

Anonymity Order

46. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

47. The decision of the First-tier Tribunal has been set aside for error of law.

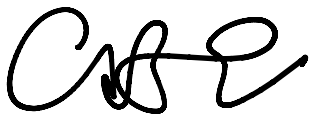
48. The decision in the appeal is remade as follows:

"The appeal is allowed on protection grounds.

The Appellant is not entitled to humanitarian protection because she is a refugee.

The appeal is allowed on human rights grounds".

49. There is an order for anonymity.



Upper Tribunal Judge Bruce
30th March 2020