Neutral Citation: [2013] IEHC 481

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2009 / 623 J.R.

Between:/

K. D. [NIGERIA]

APPLICANT

-AND-

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 1st day of November 2013.

1. The applicant claims that she has suffered persecution by reason of her membership of the *Osu* caste in her native Nigeria and that she fears further persecution if returned to her country of origin. Both the Refugee Applications Commissioner and the Refugee Appeals Tribunal recommended that she should not be granted refugee status. The Tribunal Member seems to have accepted that she is *Osu* and that the *Osu* face persecution, but he found that the protection of the Nigerian State is available to her and that she could reasonably be expected to relocate outside of Igboland where the *Osu* caste system is confined. The applicant therefore seeks an order quashing the decision of the Tribunal dated the 21st April, 2009. A telescoped hearing took place on the 18th June, 2013, at which Ms Eve Bourached B.L. appeared for the applicant and Mr Daniel Donnelly B.L. appeared for the respondents.

Background

2. The applicant applied for asylum in 2006 on the following basis. She is of the Igbo tribe and a Christian and is labelled *Osu* or "outcast" under Igbo traditions. She said the idea of *Osu* comes from her forefathers and that *Osu* people are seen as slaves and cannot marry freely and do not associate with other people. Her sisters were all over 40 and had not married and her mother had been married but was sent away because she was *Osu*. She also claimed that her mother had a heart-attack and died because of the frustration of what happened to her daughters.

3. Her own claimed circumstances were that she was born in Imo State in 1981 and completed her secondary education there before moving to Enugu State where she was self-employed as a hairdresser. In 2003 when she and her boyfriend, who was Igbo, discovered that she was pregnant, they decided to marry. When she told him of her *Osu* status he was furious and demanded that she terminate the pregnancy. She refused and he abandoned her. Their son was born in 2004 and he now lives with one of her older sisters in Port Harcourt. In 2005 she began a relationship with another Igbo man. She disclosed her *Osu* status at an early stage of their relationship. He was a Christian and did not believe in outcasts and therefore did not object. However his family refused to accept their relationship once they discovered she was *Osu* and they walked out of the family marriage negotiations. His father and brother also verbally abused her. When she became pregnant in June 2006, his three brothers came to her house and physically assaulted her so that she miscarried. Her neighbour brought her to hospital and called the police who arrested her partner's brothers. A week later when she was released from hospital she went to the police station and gave a statement. By then her attackers who had been arrested had been released on bail and the police said her intended father-in-law had promised he would sort things out as it was a family matter.

4. The applicant thereafter hid from her prospective in-laws, but they became aware of the continuing relationship when she was seen at a party with her fiancé and she was again threatened at her home by the father-in-law. The following month, November 2006, she returned from visiting her aunt to find her house on fire. Her neighbour told her that the thugs who set fire to the house believed she was in the house and intended to kill her, and advised her to disappear. She went to the State headquarters of the police and made a statement. They sent people to investigate and arrested her fiancé's brothers but advised her to go abroad to save her life. Her fiancé took her and her son to her sister's house in Port Harcourt but one of his brothers followed them there. The applicant fled through the back door and her fiancé brought her to Lagos where he paid an agent to arrange her travel to Ireland, leaving her son behind. Her fiancé also remained behind and it is unclear whether she is still in contact with him.

5. The applicant submitted a number of documents in support of her claim. These included a letter from the Commissioner of Police of Enugu State to the Assistant Inspector General of the Nigerian Police dated the 20th November, 2006,[1] a letter from her local maternity hospital dated the 25th June, 2006, a photograph of a terrace of at least four houses destroyed by fire and her birth certificate. In December 2006 she was informed that the Commissioner had made a negative recommendation on the basis of both credibility grounds and the availability of a relocation alternative. In his Section 13 report [2] the Commissioner found that the applicant "*had supplied limited knowledge regarding outcasts in Nigeria and could possibly have provided more information in that regard*." However no other finding was made on her *Osu* status. The Commissioner said he could not verify the authenticity of the documents submitted and that it was impossible to prove or disprove the allegations made. It was reasonable, he said, to expect her to relocate within Nigeria and she had not provided a reasonable explanation for failing to do so. He also felt that the police would surely have attempted to investigate her claim rather than advise her to leave Nigeria. Her account of her travel to Ireland was also disbelieved.

6. In January 2008 the applicant's solicitors submitted a Notice of Appeal to the Tribunal which was supplemented shortly afterwards by detailed grounds of appeal and written submissions. In relation to internal relocation it was noted in the submissions that she is a single mother without family ties or connections. Over the following months the Tribunal was furnished with a volume of COI relating to the *Osu* caste system and with six previous positive Tribunal decisions relating to applicants claiming persecution because of religious inter-marriage in Nigeria, including between *Osu* and non-*Osu*.

The Impugned Decision

7. The Tribunal Member outlines the applicant's evidence and the submissions made at her oral hearing, where she substantially

reiterated the claim made to the Commissioner. He made no express finding on her *Osu* status but the tone of his decision suggests (and the respondents accept) that he accepted her to be *Osu*. He referred to COI on the origins of the Osu caste system and noted that while certain states have enacted laws outlawing discrimination against the *Osu*, these laws are seldom enforced. His decision focuses on the availability of state protection and relocation. The only credibility finding in the decision was contained in the final paragraph when, after his consideration of state protection, it was stated: "*It would appear that [her fiancé's] family had many opportunities to kill her. They did not do so and no explanation has been given to explain why the death threats were not carried out*." This finding was not followed up and its effect on the overall assessment of the claim is unclear. As the respondents agreed that the Tribunal accepted that the applicant was *Osu*, it is a highly problematic finding, but was not specifically challenged in these proceedings.

8. In relation to state protection, the Tribunal Member rejected her claim that she received no protection from the police as her assailants had been arrested and detained in custody, and bail was apparently set and paid by her fiancé's father. He concluded that the police did intervene and had not considered the assault to have been a purely domestic issue. He noted that although it is frequently alleged that the Nigerian police are corrupt, there was no suggestion in this case that the police were corrupt, partisan or under pressure as a result of financial inducements. He found that, according to the applicant's evidence, the police acted in accordance with the requirements of their office. He referred to information on police corruption from a Nigerian NGO, the *Constitutional Rights Project*, which says that legal assistance is available to victims of human rights abuses and that if a person suspects the police have been induced to bury a complaint, the person can take the complaint to a different level and furthermore a somewhat similar attitude was taken by the founder of another human rights group based in Port Harcourt. He found it implausible that the police told her to leave Nigeria when she went to them after her home was burned down. The police knew she had been severely assaulted and it was not credible to suggest they would tell her to seek protection elsewhere. Referring again to two named COI reports he observed that illegal acts such as threatening behaviour are criminal offences and would be treated as such by the Nigerian authorities.

9. On internal relocation the Tribunal Member noted the applicant's evidence that she was unwilling to relocate as she was not familiar with any part of Nigeria other than the south-east, i.e. Enugu and surrounding areas. He found this difficult to understand since she had left Nigeria and come to a totally alien environment rather than relocating to a place like Port Harcourt. He also found that the Igbo presence in Nigeria centres around the south-east and that the Osu caste system is indigenous to Igbo culture and is not recognised in other parts of Nigeria where there is little Igbo influence. He concluded that "*The Applicant failed to discharge the burden on her by satisfying the Tribunal that she would be unable to relocate elsewhere in Nigeria*". He therefore made a negative recommendation.

The Submissions

10. The applicant challenges the legality of the decision on a number of grounds which can be summarised as follows; the Tribunal Member:-

> (i) Failed to assess the two core aspects of her claim – first, her fear of her partner's family members and secondly, her fear of persecutory discrimination at the hands of the Igbo by reason of her *Osu* ethnicity *per se*. He focused only on her fear of her in-laws and neglected to consider the wider societal discrimination feared;
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> (ii) Reached irrational, perverse and unreasonable findings on state protection in light of the COI furnished which clearly indicates that the state apparatus is unable to protect the *Osu* and that anti-discriminatory laws are seldom enforced;
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> (iii) Relied on COI on state protection which is irrelevant to the claim and which was not disclosed to the applicant in breach of Section 16(8) of the *Refugee Act 1996*;
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> (iv) Erred in failing to identify a location to which the applicant could relocate and as such acted in breach of Regulation 7 of the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006).
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> (v) Erred in law in finding that the burden was on the applicant to establish that relocation to another part of Nigeria was not a valid option;
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> (vi) Failed to have regard to the COI before him which suggests that it would be unduly harsh to expect the applicant to relocate; and
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> (vii) Failed to have regard to previous decisions furnished, two of which are relevant.

11. The respondents dispute the characterisation of the applicant's claim as being two-limbed. The applicant did not claim to fear generalised persecution as an *Osu* but rather that her *Osu* ethnicity was the background to her specific fear of her partner's family. Her legal representatives are seeking to present her case in a broader way than the case actually made. The respondents draw the Court's attention to the unusual nature of the police report which, even taken at face value, shows that her attackers (members of the 'V' family) were arrested. In the first attack, she was brought to hospital and when she was discharged she learned that her attackers had been released on bail and one of the 'V' family had said it was a family affair. It was not the police who had said that; it was a family member. Thus there was police intervention and state protection was available. The COI reports relied on by the applicant are very general and not of great assistance. While the Tribunal Member could have phrased his findings on state protection in a better way, the findings are nonetheless sound. While there may have been a technical breach of Section 16(8) of the *Refugee Act 1996*, his reliance on undisclosed reports does not relate to the operative part of the judgment and the applicant has not suffered any prejudice. In relation to internal relocation the respondents submit that the applicant claimed a fear of persecution at the hands of a small number of non-state actors in a particular area (i.e. her partner's family). They rely on the judgment of Ryan J. in *P.O. (Nigeria) v. The Minister* [2010] IEHC 513. On the matter of the previous decisions, the respondents submit there will always be difficulties as each case relies very much on its own particular facts.

THE COURT'S ANALYSIS

12. As noted at the hearing, the Court does not accept that the Tribunal Member focused unduly on the applicant's immediate fear of her in-laws or that he failed to consider the wider discriminatory persecution faced by the *Osu* in Igbo society. Any focus on her trouble with her in-laws was a reflection of her evidence as a whole, which was specific to her in-laws and did not relate to general discrimination against the *Osu*. However that said, the Tribunal Member was clearly aware and accepted the general conditions of exclusion and discrimination towards the *Osu*.

13. The unusual background to this case is that although volumes of COI describe the ingrained hostility and fear of contamination of the Igbo generally to those labelled as *Osu*, who generally lived in segregation, the applicant's narrative indicates that until the

question of marriage arose she did not suffer any personal discrimination based on her *Osu* status, whether in education, free movement, employment, access to the police or health services. She did not live in a designated *Osu* area; she travelled freely from her home state of Imo to Enugu; she enjoyed a full secondary education; she worked in direct personal physical contact with the general Igbo community as a hairdresser and she rented an apparently large house in the town where she raised her son as a single mother. Her lifestyle did not match any description of *Osu* being shunned generally as she described an apparently normal life spent visiting, working, dating, attending parties and living in ordinary Igbo society. She either knew remarkably little about the *Osu* or she chose to volunteer little information: this was remarked upon by the Commissioner but not by the Tribunal. Her main complaint at her Section 11 interview was that her sisters did not marry and her mother was *'sent away'* with no further elaboration. Her problems began only when her intended in-laws met her own family in preparation for a traditional marriage. At that stage she suffered the full effects of the cultural prejudices against the *Osu* and the culturally accepted taboo of marriage between *Osu* and non-*Osu*. While this Court may look with a degree of sceptical enquiry at the foolhardiness of any stigmatised group (where marriage outside their caste is forbidden) engaging in pre-marriage negotiations for a traditional marriage without first establishing that each party was aware in advance of each other's social status, tribe and village, this issue was not canvassed by either decision maker. The case made was, unlikely as it may be, that a meeting was arranged between the applicant's family[3] and her fiancé's family in preparation for a traditional marriage, where customs are paramount, and when the realisation dawned that the applicant was *Osu*, the prospective in-laws were aghast at the idea, withdrew from the negotiations and forbade the marriage.

14. None of these odd features were remarked upon by the Tribunal Member who focused on the wider issue of forbidden inter-marriage with *Osu*. Notwithstanding the applicant's description of her life as one of apparent participation in the community at large, he recited the generally acknowledged fact that society's contact with the *Osu* caste is purely superficial, that intermarriage is usually forbidden and that while some states have enacted laws outlawing discrimination against the *Osu*, these laws are seldom enforced. He accepted that the *Osu* caste system places culturally defined limits on individual members in terms of mobility and interaction and that serious relationships of love or inter-marriage between the lower caste and the rest of the community are usually forbidden, clearly demonstrating that he was aware of the discrimination faced by the *Osu* as outlined in the COI furnished by the applicant. He was also clearly aware that the views described in the reports, blogs and articles submitted by the applicant and attributed to her prospective in-laws were held by the Igbo at large, and that the *Osu* are denied the opportunity to fully participate in the political, economic and social life of the community. He did not seek to minimise the indefensible treatment of the *Osu* by the Igbo community which was described in the applicant's COI.

15. As he made no credibility findings, it must be implied from his decision that he accepted that the applicant was indeed *Osu*, that she suffered a threat of death at the hands of her fiancé's family because she was *Osu* and that the highest placed police officer in Enugu State wrote to his regional superior reporting his advice to the applicant that for her own safety she should leave the state.

16. On that basis, the decision to affirm the Section 13 recommendation that the applicant should not be declared a refugee is squarely based on two findings - (i) state protection was available notwithstanding that she was *Osu* and (ii) she could reasonably be expected to relocate internally. The applicant challenges and the respondents defend both of those findings.

State Protection

17. The assessment of state protection was based on the applicant's own account of how the police intervened when she complained to them. The Tribunal Member found that according to her evidence the police had acted in accordance with the requirements of their office. This finding was not that, objectively, state protection is generally available to *Osu* but rather that, subjectively, on her own evidence, state protection had been available to her. The evidence was that her attackers (who entered her home in June 2006 and assaulted her to such an extent that she miscarried) were arrested, held and released on bail. The Tribunal was entitled to infer that bail is a conditional release from custody where security is lodged or pledged to ensure appearance at subsequent court hearings. Her fiancé's brothers were not therefore simply released because their father pleaded that he would sort out the *'family matter'*. This is not a case, as Mr Donnelly pointed out, where the police showed no interest in the case because they deemed the complaint a family matter. They investigated and made arrests and the suspects were released on bail. The Tribunal Member said he had difficulty accepting that the same police who had acted appropriately for the assault would take a different attitude following the more serious arson / attempted murder attack and instead recommend that she should go abroad. That is undoubtedly an opinion which was open to the Tribunal Member based on the evidence given by the applicant.

18. What is not clear about the decision on state protection is whether the Tribunal Member simply did not believe the applicant's claim that she was advised to leave – perhaps a reasonable conclusion – or whether he did not believe that she made a complaint in respect of the second (arson / attempted murder) incident. He did not mention the quite extraordinary police report in which the head of police in Enugu State outlines the applicant's problems with her in-laws and then seeks the approval of the regional supervisor of his proposal in these terms:-

> *"In view of the intervention of the family head who asked the police to shelve the crime contending that it is a family matter. I am of the opinion that [the applicant's fiancé] should as a matter of urgency do everything humanly possible to take his fiancé out of the state to save her life since two of them are out to get married at all cost otherwise there would be bloodshed. This recommendation is subject to your approval, which I do believe would avert the intended bloodshed by the suspects please".*

19. It is difficult to understand why the Tribunal Member made no comment on this letter, on its content or on the likelihood that the Commissioner of Police for Enugu State would take such a personal interest in the safety of a young woman alleged to be *Osu* and then write to an even higher police authority, no less a person than the Assistant Inspector General of the Nigerian Police, seeking approval for his recommendation that she should leave the State. This was surely a matter going to credibility. Whether leaving the State meant literally that – leaving Enugu State (i.e. relocating internally) – and not leaving the State of Nigeria (i.e. to seek international protection), was not considered by the Tribunal Member who paid little heed to the truly remarkable letter and omitted to observe that the letter for all its oddities actually states that *"when we reached the scene of the incident (the house fire) it was shocking to see that a whole one storey house*[4] *had been burnt down completely, and from our investigation conducted it was traced down to Mr[MV]'s family which without wasting time has been arrested immediately i.e. Mr [CV] and Mr [DV]."*

20. If the veracity of the letter was accepted, as appears to be the case, it indicates a second instance of investigation followed by arrest arising from a complaint made by the applicant and supports the Tribunal Member's finding that the police acted in accordance with the requirements of their office. However, it also (somewhat illogically) indicates that the police at the highest level accepted that they were unable to protect the applicant even though they had arrested members of her fiancé's family. It is not clear from the Tribunal decision if the letter was accepted or even considered. In the circumstances, the finding on the availability of State protection is lacking in clarity and is incomplete.

Internal Relocation

21. Proceeding on the assumption that the Tribunal accepted that the applicant was *Osu* and a member of a particular social group facing discrimination which could amount to persecution at the hands of her in-laws, the Court is of the view that the decision either stands or falls on the second principle applied; the internal relocation option. It was apparent at the close of the hearing that although other criticisms were also made of the decision, the primary issue for determination was the adequacy of the internal relocation finding.

22. The assessment of internal relocation is governed by Regulation 7 of the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) – commonly known as the 'Protection Regulations' – which provides:

> *"(1) As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm.*
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> *(2) In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."*

23. Counsel very helpfully compiled and submitted an agreed booklet of case law pertaining to the assessment or examination of internal relocation under Regulation 7. The most relevant judgments are those of Birmingham J. in *C.A. v. The Commissioner* [2008] IEHC 3 and *G.O.B. v. The Minister* [2008] IEHC 229; Cooke J. in *D.T. v. The Minister* [2009] IEHC 482, *W.M.M. v. The Tribunal* [2009] IEHC 492, S.B.E. v. The Tribunal [2010] IEHC 133 and *A.A. (Morocco) v. The Tribunal* [2011] IEHC 389; Ryan J. in *P.O. (Nigeria) v. The Minister* [2010] IEHC 513; Hogan J. in *C.E. v. The Minister* [2012] IEHC 3; this Court in *S.I.A. v. The Tribunal* [2012] IEHC 488; and Mac Eochaidh J. in *B.O.B. v. The Tribunal* [2013] IEHC 187.

24. The Tribunal Member's conclusion on internal relocation was based on two preliminary findings: - (i) the *Osu* have significant problems but those problems are restricted to Igboland in south eastern Nigeria; and (ii) the police were in a position to protect the applicant from her in-laws. On the issue of the applicant's willingness to consider relocation outside of Igboland he found her rationale that she would know no-one there unreasonable in light of her decision to travel to Ireland – an alien country where she has no family support and is without her son and fiancé. It was therefore found that she had not discharged the "burden" of satisfying him that she would be unable to relocate.

25. In the Court's view, there could be no argument with the Tribunal's factual findings if the Tribunal Member had fully discussed his suggested relocation area of Port Harcourt with the applicant at the appeal hearing and if he had conducted an inquiry into whether, having regard to her personal circumstances and the conditions on the ground in Port Harcourt, she could reasonably be expected to stay in Port Harcourt and whether meaningful state protection would be available to her there.

26. There is no doubt that persons acknowledged to be at risk in one locality of a country may lawfully be refused refugee status on the grounds that protection is available elsewhere inside the state of origin [5] If, following a careful inquiry, it is established that a claimant could reasonably be expected to stay in another part of his/her own country where there is no risk of persecution for a Convention reason or where meaningful protection from such persecution is available, that claimant can lawfully be refused recognition of refugee status.

27. However, it seems to the Court that the Tribunal was in error when he held that this particular applicant bore the "burden" of establishing that she could not relocate. While the reasons she offered were insubstantial, the burden fell on him to conduct a shared investigation on the availability of a safe relocation area once he found that she was at risk of future harm because of her membership of a particular social group (the *Osu*), who are targeted for institutional or systematic discrimination.

28. The following principles can be said to apply to an assessment of the internal relocation alternative:-

> (1) An inquiry into the availability of internal relocation is only appropriate where a protection decision-maker ***accepts*** that the applicant has a well-founded fear of persecution for a Convention reason in his country of origin ***but*** that risk is localised and does not extend to the whole of the state.
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> (2) Internal relocation has no logical part to play in a decision if ***no well-founded fear*** of persecution is accepted or if it is found that the persecution feared has no Convention nexus;
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> (3) A large number of decisions refer to the relocation option notwithstanding a finding that there is ***no well-founded fear of persecution on credibility grounds***. In such cases, what the decision maker really means is, *'if what you say is true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger'*. These *'even if'* findings are not internal relocation alternative findings requiring adherence to Regulation 7 but are part of a general examination of whether an applicant has a well-founded fear of persecution.
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> (4) *Localised Risk*: Where it is ***accepted*** that an applicant has a well-founded fear of persecution for Convention reasons but that fear is ***localised*** and confined to a particular area, it is relevant to consider the possibility of internal relocation as an alternative to refugee status. In such cases, Regulation 7(1) of the Protection Regulations requires the protection decision maker to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful state protection in the proposed area of relocation are key.
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> (5) Where there is a well-founded fear of persecution and a general area has been identified as an alternative to refugee status then the protection decision-maker must pose two questions: (i) *is there a risk of persecution / serious harm in the proposed area of relocation*? If not, (ii) *would it be reasonable to expect the applicant to stay in that place*?
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> (6) ***Absence of Risk***: Where the persecution feared is of a general or public character such as a religious or tribal conflict or oppression by a political regime which controls a particular region or city, it will be necessary to consult appropriate up-to-date COI to determine whether the risk of persecution / harm is genuinely absent from the proposed area of relocation. In such cases the decision maker must engage in a detailed and careful enquiry as to the general circumstances prevailing on the ground in the proposed area, in accordance with Regulation 7(2).
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> (7) If the persecution feared emanates from private or domestic actors, such as a threat from a particular family member, ***and*** a Convention nexus has been established, the protection decision-maker must make an objective, common sense

appraisal of the reality of whether the risk faced by the applicant could be avoided by moving elsewhere, having regard to the applicant's own evidence.

(8) ***Reasonableness***: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his / her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as '*I won't know any one'*, but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues.

(9) The UNHCR *Guidelines on International Protection: Internal Flight or Relocation Alternative* (2003) indicate that consideration should be accorded to whether the applicant could lead a relatively normal life in the selected place of relocation without undue hardship, *in the context of the country concerned*. Unless there is objective evidence that the general circumstances prevailing in the proposed area are harsh – for example if the proposed area is the site of a conflict or a humanitarian crisis – there is in general no obligation to seek out a specific town or detailed information on economic and social conditions in the proposed location. However, if a specific objection is taken by the applicant to the location this objection must be examined.

(10) *Burden of Proof*: There is a shared burden of proof. The protection decision-maker who accepts a well-founded fear of persecution but determines that refugee status is not appropriate because internal relocation is available must conduct a careful enquiry to identify a safe relocation area, having regard to up-to-date objective evidence about that area and also to the applicant's own evidence in that regard.

(11) *Fair procedures*: As a matter of fair procedures the proposed safe area should be notified to and discussed with the applicant to establish whether he/she could reasonably be expected to stay there. The applicant is obliged to cooperate, to answer truthfully, to provide all relevant information available to him / her to determine the reasonableness of the relocation area and to provide information on any personal factors which would make it unreasonable or unduly harsh for him / her to relocate rather than being recognised as a refugee;

(12) No state is obliged to consider the internal relocation alternative even when the Convention-related persecution feared is confined to a particular part of the applicant's state. States can recognise an asylum seeker as a refugee solely on the basis the criteria under Section 2 of the Refugee Act 1996, without ever turning to the relocation alternative.

(13) The threshold to be reached before internal relocation is considered is high. The applicant would be recognised as a refugee but for the fact that he can safely relocate. The inquiry is commensurately careful.

29. Having extracted those general principles it is important to emphasise that when reviewing an internal relocation finding, the context in which internal relocation was considered is all important. The first question to be asked is whether the internal relocation finding was preceded by a finding that the applicant had established a well-founded fear of persecution on Convention grounds. If it was, it must be considered whether the persecution was found to emanate from state actors or from non-state actors and also whether it was localised or general. If it was not preceded by a finding of a well-founded fear, was it a finding made in the overall assessment of the applicant's general claim? The situations differ enormously as does the Court's review of the finding, especially since there is no legal impediment to a protection decision-maker assessing the credibility of the asylum seeker's evidence as to whether he had considered relocating away from the asserted fear before taking the drastic step of coming to Ireland and whether he would consider relocating on return to his country of origin. If a relocation option finding is made where there is no well-founded fear of persecution, there is obviously no requirement for careful inquiry into a safe location, the availability of state protection or the applicant's personal circumstances. The finding is unnecessary, unhelpful and generally wrongly described as 'internal relocation' and the failure to adhere to Regulation 7 is not a reason for impugning an otherwise lawful assessment of whether there is a well-founded fear of persecution for Convention reasons.

30. Thus an '*even if I am wrong'* finding which goes on to suggest internal relocation is not the equivalent of carefully exploring an antidote to a well-founded fear of persecution for Convention reasons and is often merely a facet of credibility. A reviewing Court must bear in mind that not every case which contains the 'internal relocation' phrase is subject to Regulation 7 principles. When a claim is rejected on credibility grounds and includes the statement that '*even if I am wrong in my assessment of your credibility, there is in any event no good reason why you do not simply move and put a distance between you and the village elders / neighbours / spouse / mother in law'* as the case may be, it is not appropriate to characterise the credibility decision as an internal relocation decision as it is not an exploration of a relocation alternative to refugee status.

Application to this Case

31. In the circumstances of the present case, where the Tribunal appeared to accept that the applicant was credible in her claim and had a well-founded fear of persecution for Convention reasons in Igboland, and where the finding of police protection was incomplete and unclear, the obligations under the UNHCR Guidelines and Regulation 7 apply and the assessment of internal relocation was therefore deficient. When the Tribunal Member elected to consider an internal relocation alternative to refugee status instead of rejecting her case on credibility or other grounds, he took on the obligation to enquire which part of Nigeria would be safe for her to live in, where the *Osu* are not persecuted and where she would be safe from her fiancé's family and also whether in light of her personal circumstances it would be reasonable to require her to relocate there. The Tribunal Member identified Port Harcourt as the proposed place of relocation without commenting on the applicant's claim that her brother-in-law followed her there and located her within one day. He did not have any regard to the question of whether the *Osu* encounter problems generally in Port Harcourt and if so, whether effective state protection would be available to them there. While Port Harcourt is probably 200 km from Enugu it is still in south-eastern Nigeria, but it is not stated whether the city is outside of Igboland and whether the concept of *Osu* is known there. While nothing in the applicant's personal circumstances as described to the Commissioner and the Tribunal would objectively make it unduly harsh for her to relocate to Port Harcourt were that location found to be free from any risk of persecution as she is a young, educated English-speaking Christian woman with a very transferable occupation, the Tribunal Member simply did not address his mind to that question. He did not look to any COI on Port Harcourt. While she said that all her sisters lived there and indeed that her son now lives there and therefore it may well be that it would be an obvious relocation option for family support reasons, there was no reasoning given for its selection as the chosen area of relocation.

32. In addition, once he found that there was a well-founded fear and applied the relocation option, he erred in law in finding that the burden of proof lay on the applicant to show that it would not be reasonable to expect her to relocate. The existence of a shared burden of proof is discussed in the UNHCR *Guidelines on International Protection: Internal Flight or Relocation Alternative* (2003) at paras. 33-34:

"33. The use of the relocation concept should not lead to additional burdens on asylum seekers. The usual rule must continue to apply, that is, the burden of proving an allegation rests on the one who asserts it. This is consistent with paragraph 196 of the Handbook which states that … while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his [or her] disposal to produce the necessary evidence in support of the application.

34. On this basis, the decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned." (The Court's emphasis)

33. The Court therefore has extreme reservations as to whether the onus could ever lie entirely on the applicant to establish that she could not reasonably move elsewhere. When considering the *internal relocation alternative* (or to use the phrase favoured by academics, the internal protection alternative to seeking refugee status outside of one's own country) the Tribunal Member should have made an overall assessment of that alternative by first determining whether a safe place existed for a woman labelled *Osu* and secondly whether it would be reasonable in all her circumstances to expect her to relocate there. That consideration required discussion with the applicant and the acquisition of objective and subjective information which in her circumstances might have involved some exploration of her fiancé's circumstances and whether they could safely marry there and live together there.

Failure to consider previous positive decisions
34. The Court has some concerns on the particular facts of this case that the Tribunal Member omitted any mention of the six previous Tribunal decisions furnished. Those decisions involved positive recommendations for victims of cross-religion marriages and included one *Osu* / non-*Osu* marriage. Had those decisions been considered, they may have been helpful in providing guidance on approaching a similar claim. While there may be distinctions between the evidence presented by those applicants and this particular case, the fact remains that this claim was accepted at its height without any deeper inquiry into the deficiencies in the applicant's knowledge of *Osu* or into her apparently integrated life in the non-O*su* community. While insufficient in itself to invalidate the decision, there is some validity in the applicant's challenge on this ground.

Reliance on Undisclosed COI
35. Finally, the decision is challenged on the basis that the Tribunal Member referred to COI which he did not disclose in advance of the hearing in breach of Section 16(8) of the *Refugee Act 1996*. The Court takes notice that the references made by the Tribunal Member come from well-known and repeated extracts from annual reports on Nigeria published by the UK Home Office and the US Department of State which seem to find their way into most decisions about the level of state protection available from the Nigerian police force. Most practitioners in the field can recite the arguments for and against the proposition fairly well by heart. The argument for an effective police force is that a complainant who is dissatisfied with a particular level of the police can take his / her complaint to a higher level, while the contra argument is that in reality, that rarely happens. Therefore, while referring to undisclosed COI calls for valid criticism, in the circumstances of the now extremely well known COI, the prejudice suffered was minimal, if any. The applicant was represented at the appeal stage by lawyers who must be aware of the general tenor of the COI which is frequently referred to in Tribunal decisions regarding the Nigerian police force. The fact of non-disclosure is in the circumstances a very minor technical breach which did not affect the validity of the decision.

Conclusion
36. The Tribunal Member chose to avoid an assessment of credibility. He accepted the claim and elected to proceed on the basis that a persecuted Osu could move to safety in Port Harcourt without any investigation into whether Port Harcourt was safe, whether meaningful state protection was available there or whether there were any real obstacles in her personal circumstances to moving there. The decision will be quashed because of the want of adequate consideration of the relocation alternative in accordance with Regulation 7 and the UNHCR Guidelines. The appeal will be remitted to another Tribunal Member for fresh consideration. It is noted that the applicant has been in the direct provision system for a very lengthy period and the Court hopes that her appeal will be heard with due expedition.

1. No explanation was given as to how the applicant would have this letter

2. It is unfortunate that she is referred to in parts of the Section 13 report as "he" and "him". A similar typographical mistake occurs, however, at various places in her own written submissions dated the 19th September, 2008.

3. Her parents were said to be deceased and her unmarried sisters lived in Port Harcourt.

4. The photograph shows a terrace of at least four shops/dwellings which have been gutted by fire.

5. See e.g The Michigan Guidelines on the Internal Protection Alternative (First Colloquium on Challenges in International Refugee Law, University of Michigan [James C. Hathaway, director], 1999).