

THE HIGH COURT
JUDICIAL REVIEW

[2012 No. 226 J.R.]

BETWEEN**M.A.A. (A MINOR SUING THROUGH HER NEXT FRIEND MOTHER A.A.) (NIGERIA)****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL****RESPONDENT****AND****THE MINISTER FOR JUSTICE AND EQUALITY****NOTICE PARTY****JUDGMENT of Mr. Justice Eagar delivered on the 17th day of December, 2015**

1. This is a telescoped application for an order of certiorari in respect of the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal") to affirm the decision of the Refugee Applications Commissioner (hereinafter referred to as "the Commissioner") that the applicant not be declared a refugee.

2. The relief sought is as follows:

- a. An order of *certiorari* quashing the decision of the respondent dated the 24th February, 2012, as notified by letter of 1st March, 2012, affirming the recommendation of the Commission that the applicant should not be declared to be a refugee.

Grounds upon which relief is sought

3. The grounds upon which relief is sought are:

- a. The Tribunal erred in law and in fact and applied an incorrect standard of proof in holding that on the evidence before it, including the medical evidence, family circumstances of the applicant and the country information, the Tribunal is not convinced that the applicant is at risk of being branded a witch in Nigeria on account of her having Hirschsprungs Disease.

The finding of the Tribunal in the impugned decision, is not supported by the medical and photographic evidence submitted concerning the applicant's disease when considered in light of the objective country information before the Tribunal which expressly noted that children with swollen bellies are at risk of being accused of witchcraft and also that children from broken families are at greater risk of being branded witches. The Tribunal member adopted a standard a standard of proof that required her to be 'convinced' that the applicant would be vulnerable to being branded a witch as opposed to considering whether there is a reasonable degree of likelihood that the applicant is at risk of being branded a witch. The Tribunal imputed a requirement that the applicant suffer 'constant' abdominal distention in order to be vulnerable to being branded a witch without having regard to the reasonable likelihood that changes in her physical appearance may increase the risk she faces of being branded a witch as opposed to negating it.

- b. The Tribunal member acted in breach of fair procedures and contrary to the applicant's best interests as a minor in failing to take appropriate steps to address any doubts she had concerning the past, current or future manifestation of the applicant's medical condition or with respect to her medical reports before her and in failing to satisfy herself by way of further inquiries, including the obtaining of an alternative expert report, that there is no reasonable likelihood that the applicant may be branded a witch in Nigeria by reason of her medical condition, including in circumstances that her condition were to deteriorate or not be controlled in Nigeria.

The Tribunal member had photographic evidence and a medical report confirming the severe and intermittent nature of the abdominal distention the applicant suffers on account of her disease. Nevertheless, the Tribunal member placed undue emphasis on the presentation of the applicant on the one occasion the Tribunal observed her without any or any due regard for the explanation given by the applicant's mother as to why the applicant's abdomen was not distended on that occasion. Given the gravity of the matters in question and the best interests of the minor applicant, the Tribunal was obliged to obtain her own independent medical report to clarify her understanding of the nature and manifestation of the applicant's medical condition. The Tribunal member expressly stated that the applicant may benefit from remaining in Ireland to have access to health care as supported by her medical reports and also accepted that there may have been problems with the provision of medical services to patients in Nigeria. However, the Tribunal relied on a US health report stating that the disease is controllable in the long term without having any regard for whether the same prognosis can apply for a person living in Nigeria where the medical treatment is unlikely to be as accessible and of the same quality.

- c. The Tribunal member erred in law and in fact in her assessment of whether the applicant, in relation to her fear of

being branded a witch in Nigeria, is at risk of treatment amounting to persecution in that the Tribunal member has applied an incorrect test for persecution and/or has reached conclusions which are unreasonable and are vitiated by material error of fact in the failure of the Tribunal member to fairly and thoroughly consider all manifestations of the treatment suffered by children accused of witchcraft in Nigeria and in the failure of the Tribunal member to have due regard for the impact of the accumulation of measures faced by the applicant from the perspective of the applicant who is a minor. The Tribunal member erred in finding that such treatment does not amount to persecution.

The country information before the Tribunal evidenced that children accused of witchcraft in Nigeria are at risk of being tortured, abused, abandoned and even killed as a result of the stigma and persecution they face and as a result of exorcism and similar activities they can be subjected to. The country information also noted that it was extremely difficult for children with disabilities to complete primary education.

d. Having regard to the evidence before the Tribunal, including the applicant's family's own personal experiences and country information submitted, the Tribunal erred in law and in fact, and applied an incorrect test for state protection, in assessing the applicant's fear of persecution, comprising sexual violence, on account of her membership of the particular social group comprising female children.

The Tribunal's findings in the impugned decision are not supported by country information before it which described the incidence of rape and gender based violence in Nigeria as endemic, widespread and shrouded by an entrenched culture of impunity and the Tribunal member was incorrect to say there is no evidence of 'arbitrary' rape by the authorities of women and girls in Nigeria. The Tribunal member imputed a requirement that there be a complete breakdown of State apparatus in Nigeria as opposed to considering and assessing the appropriate question which is whether the State authorities in Nigeria are unwilling or unable to provide adequate protection from the specific form of persecution feared by the applicant, in this case rape and sexual violence.

Affidavit grounding the Statement of grounds

4. The statement of grounds was grounded in the affidavit of mother of the applicant, A.A., sworn on the 23rd February, 2012. She swears that she is the mother and guardian of the minor applicant herein and affirms the belief that the decision of the respondent affirming the recommendation of the Commission that her daughter should not be declared a refugee is unlawful.

5. She avers that her daughter was born in the State on the 1st October, 2009, although she is not an Irish citizen. Soon after her birth she was diagnosed with a life-long irreversible condition called Hirschsprungs Disease. As a result she had surgery when still an infant and requires on-going specialist paediatric care to manage the disease. As a result she had surgery when still an infant and requires on-going specialist paediatric care to manage the disease. At present in Ireland, where the disease is controlled as best as possible and where her daughter has the benefit of proper specialist health care and access to the specialist diet and medication required, her daughter still needs her assistance, using a special instrument, to have a bowel motion. Whenever she has not had a significant bowel movement, her abdomen becomes physically distended with causes her great discomfort and discomfort. She is deeply fearful that if her daughter is forced to return to Nigeria, she will be isolated and ostracised from society due to her physical disability and that she will be at risk of being accused of being a witch.

6. She is aware that children who are accused of witchcraft in Nigeria are subject to extremely abusive and violent treatment as well as discrimination and exclusion from society. The risk that her daughter will be accused of witchcraft is increased due to her family's broken composition, her husband was deported to Nigeria in 2009 and has since tried to divorce her, and the status of the family as an all female household. She is further feared that her daughter will be subjected to sexual abuse and potentially rape if returned to Nigeria due to being a vulnerable girl which, in the conditions prevalent in Nigeria is sufficient to expose a girl to such risks. The mother of the minor applicant states that both she and her deceased daughter, A., have suffered rape and sexual harassment in Nigeria and she is further aware of many other women and girls who have suffered similar fates in Nigeria.

7. On account of these fears, and once she had the opportunity to address such things considering the difficulties arising regarding her daughter's illness and her husband and eldest daughter's deportation, she attended at the Office of the Refugee Applications Commissioner on the 21st April, 2011, and made an application for asylum on behalf of her daughter. She attended two interviews with the Commissioner on behalf of her minor daughter.

8. By letter of the 3rd August, 2011, her daughter was notified that the Commissioner was recommending that she not be declared a refugee and enclosed with that letter was a copy of the section 13(1) report with appendices.

9. Her solicitor submitted a Form 1 notice of appeal to the Tribunal by fax on the 24th August, 2011, which was acknowledged by the Tribunal by letter of the 7th September, 2011. Her daughter's oral appeal was scheduled for the 13th October, 2011. On the 12th October, 2011, her solicitors submitted to the Tribunal two sets of detailed representations in support of her daughter's appeal, enclosing two medical reports concerning her daughter's condition. In these submissions, her solicitors quotes from three previous Tribunal decisions (numbers 69/470/09, 69/11810/05B and 69/4224/03BC) which were directly relevant to her daughter's claim.

10. She attended her daughter's appeal hearing on the 13th October, 2011 for the purposes of presenting her claim while her minor daughter remained at home. The mother of the applicant felt that the hearing would be very difficult with her present. At the appeal hearing the presenting officer of the Commissioner submitted a number of documents to the Tribunal member comprising a copy of the UK Operational Guidance Note for Nigeria of September 2011, a number of short articles from the Stepping Stones Nigeria website and a report on Hirschsprung Disease from the National Digestive Diseases Information Clearinghouse which is a Department of Health and Human Services institute. Her solicitor submitted copies of these submissions and medical reports which had been faxed to the Tribunal the previous evening and also submitted a photograph the applicant's mother had taken the night before the hearing which showed her distended stomach. The Tribunal member noted at the hearing that she might reconvene a further hearing in order to see M.

11. By letter of the 1st November, 2011, her solicitor submitted to the Tribunal member the original photograph of her daughter and referred the Tribunal member to an article entitled 'The Right to health in Nigeria' by the University of Aberdeen. This correspondence was acknowledged by the Tribunal by letters of the 2nd and 4th November, 2011.

12. A second appeal hearing was scheduled for the 6th December, 2011, in order to facilitate the Tribunal member to observe her daughter who attended on that date. The hearing was very short and informal. Her daughter was upset and crying. Her daughter had not eaten since the day previously and had been in hospital and so her stomach had not been as distended as it is on previous occasions. Both she and her solicitor explained this to the Tribunal member. At the reconvened hearing, her solicitor submitted a Stepping Stones Nigeria report of May 2011 regarding witchcraft accusations in Nigeria to the Tribunal.

13. By letter of the 20th January, 2012, her solicitor wrote to the Tribunal enclosing a medical report from Dr. Cartlidge dated the 16th December, 2011, in which Dr. Cartlidge noted that the abdominal distension caused by her daughter's disease is severe at time and intermittent in nature depending on whether bowels have move sufficiently in recent times. Her solicitor also enclosed an email attaching a photography concerning the murder of her daughter, A., in Nigeria, who had been deported from Ireland to Nigeria in 2009 and a report on the recent sectarian violence in Nigeria.

14. By letter dated the 1st March, 2012, her daughter was notified that the respondent was affirming the recommendation of the Commissioner that she should not be declared a refugee.

Applicant's claim to the Refugee Appeals Tribunal

15. The hearing of the Tribunal took place on the 13th October and the 6th December, 2011. The applicant claims to possess a well founded fear of persecution on the grounds of her membership of a particular social group and religion.

16. The report notes that the applicant's claim is based on the grounds set out in the notice of appeal and the submissions provided by the applicant's solicitor.

17. In respect of the applicant's claim by way of background, the report notes that the applicant was born on the 1st October, 2009 in Mullingar Regional Hospital. Her mother, A.A., presented a claim on behalf at the hearing on the 13th October, 2011, and her solicitor has provided comprehensive submissions and supporting documents in support of her claim. The hearing was reconvened briefly on the 6th December, 2011, at the request of the Tribunal member to view and meet the applicant, as she was unable to attend the hearing on the 13th October.

18. At the hearing on the 13th October, 2011, the applicant's mother provided the following evidential support of the applicant's claim. She claimed that the applicant suffers from Hirschsprungs Disease and her belly is distended because of her condition; she had bowel problems and is still only taking milk (she is now over two years of age). She had an operation at six weeks of age, which was unsuccessful and she will have to have another operation when she is older. She does not think that her daughter will get treatment for her condition in Nigeria because her condition is severe and it will be expensive to treat. She believes that in Nigeria, without financial resources one will not receive the requisite medical attention. The applicant's mother is not a rich woman and could not afford private medical care for her daughter.

19. A.A. explained that the applicant's father was deported from Ireland with her sister some time in 2009. When the applicant's mother contacted her husband after M's birth, he said he did not want anything to do with her. He has attempted to divorce his wife with did not want any further contact with either herself or their children.

20. The applicant's mother has provided the applicant's birth certificate in support of her claim and three medical reports dated respectively the 30th September, 2011, 28th May, 2011, and the 16th December, 2011.

21. The applicant's mother expressed the following fears for the applicant if she were to return to go and live in Nigeria:

- a. The applicant will be isolated because people will accuse her of being a witch due to her appearance and medical condition. She will not be accepted anywhere in Nigeria, including school and she will be unable to concentrate on her education as a result;
- b. the applicant's mother said that the police in Nigeria are corrupt and that they rape children. She claimed that she was raped by them approximately twenty years ago;
- c. she also fears that if the applicant goes to Nigeria the family of her father will force her to undergo female genital mutilation. She explained that they are Yorubas of the Ogboni cult where female children have to undergo this procedure.

22. The applicant's mother said that she could not relocate internally within Nigeria, as anywhere she goes with the applicant; people will look at her and say that she is witch. She felt the same when she was in Nigeria, that a person with a disability, especially a child with a large belly, would be branded a witch.

Analysis of the applicant's claim

23. The minor applicant, who suffers from Hirschsprungs Disease, claims through her mother and next friend that she will be at risk of persecution in Nigeria due to her membership of a particular social group comprising children in Nigeria suffering a serious disability/medical condition.

24. The applicant attended the Tribunal on the 6th December, 2011, and she presented as a normal and lively child, who got out of her buggy and walked around the hearing room. Her mother explained that her stomach is normally distended, but the Tribunal member could see no evidence of this at the hearing. According to the Tribunal member her appearance bore no relation to the photograph of the child with a swollen belly furnished by her solicitor to the Tribunal by letter dated the 1st November, 2011. There have been three medical reports provided from Medicentre, Tullamore, Co. Offaly which form that the applicant has Hirschsprungs Disease. The most comprehensive medical report, that dated the 28th May, 2011, from Dr. Rachel Cartlidge states that Hirschsprungs Disease is a serous condition of the large bowel causing serious problems with bowel function and that surgery to relieve bowel obstruction was required at two weeks of age for the applicant in Our Lady's Children's Hospital, Crumlin and that children with Hirschsprungs Disease will require regular ongoing paediatric, specialist and dietetic review. The Tribunal member was mindful that none of the three medical reports indicate that the applicant's surgery was unsuccessful or that the applicant suffers from constant stomach distension. The only reference to abdominal distension is in the report written post-hearing dated the 16th December, 2011, from Dr. Cartlidge which states that "the abdominal distension caused by the disease is severe at time and intermittent in nature depending on whether bowels have moved sufficiently in recent times".

25. The Tribunal member is not convinced, having had the opportunity of seeing the applicant at the hearing on the 6th December, 2011, and considering these medical reports; that she suffers from constant abdominal distension of such severity that she would be vulnerable to being branded as a witch anywhere in Nigeria due to her appearance and in particular her swollen belly, or that she would be denied access to education or would suffer discrimination such as to amount to persecution within the meaning of the Convention.

26. As regards to access to medical treatment, the Tribunal member referred the judgment of Clarke J. in *E.M.S. v Minister for Justice, Equality and Law Reform* (Unreported, High Court, 21st December. 2004) who considered the principles of membership of a particular group, albeit in the context of a HIV/AIDS suffer. He ruled that "where there is, therefore an inappropriately low level of

health care given within that country to a group who form a social group for the purposes of refugee law, and where, having regard to the low level of health care provided within that country, the treatment of that group from a health perspective, may be regarded as discriminatory to a significant degree, it seems to me to be arguable that same amounts to a sufficient level of discrimination to give rise to a claim of persecution”.

27. While some reports on file indicate that there may be problems in the provision of medical services to patients in Nigeria, including the high prices of drugs coupled with there being a lack of essential medicines in the public sector. The Tribunal member declined to find, having considered these reports that these abuses are due to a policy view taken against people suffering from diseases such as Hirschsprungs Disease in Nigeria by the Nigerian authorities. The National Digestive Diseases Information Clearinghouse report on this disease indicates that Hirschsprungs Disease is controllable in the long term. The applicant's mother has not provided the Tribunal member with any evidence to establish that the applicant would not receive medical treatment for Hirschsprungs Disease in Nigeria or having regard to the level of resources in Nigeria, that she would be treated in a discriminatory manner such as to amount to persecution pursuant to para. 54 of the UNHCR Handbook.

28. The applicant claims to be at risk of persecution in Nigeria as a member of a particular group comprised of children and/or female children in Nigeria. The applicant's mother alleges that she was raped by the police in 1990 and she believes they are corrupt and abusive towards women. The applicant's solicitor has provided comprehensive written submissions in support of the claim of the applicant which refer to extracts from recent reports highlighting abuses within the Nigerian police force including corruption, human rights abuses and gender based violence affecting women and girls in Nigeria. While the Tribunal member accepted that there may well be such problems and some barriers to women and girls seeking protection in Nigeria, a State is not expected to provide absolute protection to its citizens against serious harm, or persecution. Nigeria is a democracy and there is no evidence of a complete breakdown of the State apparatus in this country or the arbitrary rape by the authorities of women and girls therein.

29. The Tribunal member considered all reports made available in this claim, including the aforesaid Guidance Notes dated September 2011 which confirms there is a criminal justice system comprising the police, the courts and the prisons and several complaint mechanisms in Nigeria. While the applicant's mother has provided a report dated the 12th January, 2012, on recent sectarian violence in Nigeria, she has not provided any evidence as to why the applicant, as a young female child would be targeted anywhere in Nigeria on religious grounds if she were to return to Nigeria.

30. The Tribunal member does not find that, having considered all reports made available in this asylum claim and all the evidence provided on behalf of the applicant, that the applicant would be more vulnerable to gender based violence as a child suffering from a medical condition or due to her family, or being part of a single mothered family in Nigeria.

31. The applicant's mother claims that her daughter, A., was killed in Lagos in July 2010. This occurred in what appeared to be a knife attack yet the police did not investigate her case. She has provided a photograph, allegedly of her daughter A., showing some of her injuries. An e-mail, sent on the 20th December, 2011, from an alleged friend, vouched for these events. The Tribunal member noted that it is impossible to identify from the photograph what the injuries were and by whom they incurred, in addition to part of the right hand column of the e-mail appearing to be missing. The Tribunal member stated that as these documents had not been either verified or authenticated, they are not of any evidential value in this claim for asylum.

32. The applicant's mother also fears that if the applicant goes to Nigeria her father or his family will force her to undergo female genital mutilation. She examined they are Yorubas and part of the Ogboni cult and in their culture a female child has to undergo this procedure. The applicant's mother explained that she did not want her daughter to undergo this procedure and she gave evidence that when she contacted the applicant's father after her birth, he did not want anything to do with the applicant. She said the last contact she had with her husband was in May 2010 when he told her that he did not want anything to do with her or her children. The Tribunal member stated that the applicant's mother has thus failed to convince her that it is reasonably likely that the applicant's father or his family would attempt to locate the applicant in the future and force her to undergo female genital mutilation if she were to go with her mother to Nigeria.

33. The Tribunal member continued that, even if she had not made this finding, she found there no reason why the applicant's mother could not relocate to live with the applicant in a different part of Nigerian to where she had lives previously with her husband. A large city such as Port Harcourt was suggested by the Tribunal member. The aforementioned Guidance Notes dated September 2011 and other reports on the file confirm that women fearing female genital mutilation can safely relocate to another part of Nigeria where the family members who are pressuring them to undergo the procedure would be unlikely to trace them. Port Harcourt is a large and cosmopolitan city with residents comprising many different ethnic groups and tribes. Here, the Tribunal member believes, the applicant would be able to live in safety, away from any alleged threats of being traced by her father or his family and having female genital mutilation imposed upon her.

34. The applicant's mother presented as an articulate lady who is well-educated by Nigerian standards and who should, as an accountant, be able to provide for herself in such a city while she may have certain difficulties in any such new location either within Nigeria or elsewhere. The Tribunal member had previously expressed her finding that it is not reasonably likely that the applicant will be branded a witch due to her appearance any where in Nigeria.

35. The applicant's solicitor has submitted three previous decisions of the Tribunal relating to other appeals. The Tribunal member notes that given the facts of the herein case and the current country of origin information made available in the appeal, she found that the previous decisions submitted are not of sufficient relevant to the instant appeal to warrant a conclusion that the current recommendation be overturned.

36. The Tribunal member has taken into account the rights of children, including the protection needs of a child under the Convention on the Rights of the Child. In view of her findings, as detailed above, she did not find that the applicant, as a minor, would be denied any protection rights available to her under this Convention. In arriving at this conclusion, she considered all extenuating circumstances, including the fact that the applicant suffers from Hirschsprungs Disease and is the child of a single mothered family and that her sister is suffering from anxiety.

37. Based on the above reasons, the Tribunal member was satisfied that any subjective fears alleged on behalf of the applicant have not been supported on an objective basis and she has not established that there is any reasonable degree of likelihood that the applicant has a well founded fear of persecution on any grounds set out in the Refugee Act 1996 (as amended).

38. However the Tribunal member did state that she has sympathy for the applicant in that she is a child who may benefit from remaining in Ireland so that she can have access to health care, as supported by her medical reports. But for the above reasons she was founded to be a refugee in accordance with the Act of 1996. She noted that it is outside the ambit of the Tribunal to consider

any other protection which may be available to her in this jurisdiction.

Submissions on behalf of counsel for the respondent

39. Counsel on behalf of the applicant Ms. Teresa Blake S.C., with Ms. Aoife Gillespie B.L., advances four grounds in relation to the impugned decision.

i) Standard of proof and determination of risk

40. It is firstly submitted that the Tribunal member has applied an incorrect standard of proof to the determination of the minor applicant's asylum appeal. The Tribunal member has adopted a standard of proof that required her to be "convinced" that the minor applicant "would be" vulnerable to being branded a witch or "would be" denied access to education or "would" suffer discrimination amounting to persecution. The Tribunal member was in effect applying a standard of proof higher than the balance of probability and more closely equated to beyond reasonable doubt. Enquiring whether the Tribunal member is "convinced" the applicant "would" be persecuted is indicative of an examination of whether persecution would be, at a minimum, "probable" or arguably "certain" in the event of the applicant's return to Nigeria. Ms. Blake S.C., advances the argument that this is an incorrect standard of proof.

41. It is well-settled that the standard of proof to be applied to the determination of refugee status is a low standard, lower than the balance of probabilities.

42. It is further submitted that in reaching the above conclusion the Tribunal member erred in law and in fact, acted in breach of fair procedures and failed to have regard to the best interests of the minor applicant. It is submitted that the decision of the Tribunal member is not supported by the medical evidence before the Tribunal considered together with objective country information before it and having regard to the minor applicant's personal circumstances including her age, family make-up and disability.

43. Ms. Blake S.C., asserts that the Tribunal member was required to consider the application in accordance with the applicant's best interests and having due and proper regard to her young age and vulnerabilities, in keeping with Article 24 of the Charter of Fundamental Rights, Recital 12 of the Qualifications Directive and the UNHCR Guidelines on Child Asylum Claims. Counsel further noted the judgment of this Court in *G.H. (A Minor) v Refugee Appeals Tribunal & Ors* [2015] IEHC 583 as follows:

"20. The first principle in relation to an application by a minor applicant is that the best interests of the child shall be the primary consideration for the Commissioner and for the Refugee Appeals Tribunal. In minor applicant cases the Tribunal must assume a greater share of the burden of proof as opposed to the requirement in adult asylum claims that the burden of proof remains with the applicant at all times."

44. The evidence before the Tribunal member is indicative of the risk the minor applicant faces of being branded a witch and / or being discriminated against and subjected to persecution on account of her disability / medical condition included a number of reports from various reputable and objective sources, including the UN and US State Department. In particular, the country information establish that child witchcraft accusations are widespread and that children with disabilities and those from broken homes were most at risk of such accusations. Very specifically the country reports noted that children who had a unique character, erratic behaviour or who had any physical abnormality, including a swollen belly, are especially vulnerable to witchcraft accusations.

45. It is of note that in rejecting the risk that the minor applicant might be accused of witchcraft, the Tribunal member makes no reference to the country information submitted in the course of the appeal nor does she reject or distinguish any of the country information or identify country information which undermines the applicant's claim. It is submitted that the conclusion of the Tribunal member that the minor application is not at risk of being branded a witch was unreasonable and was not supported by the country information before her and that, in reaching this conclusion, the Tribunal member erred in law and in fact and failed to have regard for relevant consideration as required to do pursuant to Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006).

46. It is further evident from the Tribunal member's conclusion as set out above and by her earlier statement in the decision, that none of the three medical reports indicate that the minor applicant suffers from "constant stomach distension", that the Tribunal member imputed a requirement that to be at risk of being branded a witch, the minor application must suffer "constant" abdominal distension. It is submitted that such a pre-requisite does not flow from the country information which refers to any physical abnormality, erratic behaviour and even being a two year old whose health deteriorates as factors giving rise to a risk. Ms. Blake S.C., notes that where a child with a swollen belly is expressly identified in the country information as at risk of being branded a witch, it was necessary for the Tribunal member to explain why it would be the case that a child whose physical appearance changed intermittently to include sometimes having a swollen belly and sometimes not, would somehow avoid the risk of such arbitrary and cruel labelling. Conversely, it is submitted that there is a reasonable likelihood that the risk of being branded a witch is increased by such changes in appearances.

47. In this context, the Tribunal member further failed, in the assessment of the risk of witchcraft accusations facing the minor applicant, to acknowledge and account for the disruption in health care provision she would face upon return to Nigeria and to factor into her assessment the risk this may pose to her ability to continue to control her disease. The medical evidence established that whilst controlled by specialist care and oversight in Ireland, the minor applicant still experienced a swollen belly. The medical reports further stated that a delay in treatment would be a danger to her health.

48. With respect to access to healthcare, the Tribunal member accepts that "there may be problems in the provision of medical services in patients in Nigeria including that drugs can be expensive and there can be a lack of essential medicines in the public sector". At the end of her decision the Tribunal member expresses sympathy for the minor applicant and that "she is a child who may benefit from remaining in Ireland so that she can have access to healthcare as supported by her medical reports." Whilst the Tribunal member does state that she has not been provided with any evidence to establish that the applicant would not receive medical treatment for Hirschprung's Disease in Nigeria, this is in the context of consideration of a separate distinct basis for persecution arising on the basis of denial of healthcare in and of itself. Notwithstanding the context of the statement, it is clear that this statement is entirely inconsistent with the other statements of the Tribunal member set out above, and whilst, as one might expect, there was no information regarding access to treatment specifically for Hirschprungs Disease, the information before the Tribunal member, which was broadly accepted, clearly identified pervasive and real problems for patients seeking to access any healthcare in Nigeria.

49. Country information clearly established that "except for the wealthy, quality healthcare is denied to the vast majority of Nigerians". Moreover, the evidence of the applicant's mother was that she would not be able to afford medicines or treatment and that she was disowned by her family and effectively divorced. This factual background was not rejected by the Tribunal member and required to be considered in the assessment of the risk for the minor applicant with respect to such grave and serious matters as to

whether she is at risk of being branded a witch in Nigeria.

50. Counsel further submits that the Tribunal member erred in law and in fact in failing to have regard to the accumulation of circumstances relevant to the minor applicant which establish a reasonable likelihood that she is at risk of being persecuted if returned to Nigeria by being branded a witch. In terms of the accumulation of circumstances, the factors relevant to the assessment of risk facing the applicant on return to Nigeria which ought properly to have been considered by the Tribunal member included her medical condition and the risk of exacerbation if not treated and / or not treated effectively in Nigeria, her age, her gender, her family's status as a single female headed household, her sister's mental health difficulties, the circumstances the family would face on return and her best interests. These factors are in line with those in *Karanajaran v Secretary of State for the Home Department* [2000] 3 AER 449.

ii) Assessment of medical evidence

51. Counsel notes that it is apparent from a reading of the Tribunal member's decision that she harboured doubts and concerns regarding the physical manifestation and presentation of the minor applicant's disease. Although no clear or direct findings are set out in the decision. There is an opaqueness in the decision which leaves counsel with the distinct impression that the Tribunal member did not believe or accept the extent to which the minor applicant suffers with a distended stomach or perhaps even if she did at all. The Tribunal member further queried the applicant's mother's evidence regarding the operation the minor applicant underwent at two weeks of age.

52. In reference to having seen the minor applicant at the reconvened hearing in December, 2011, the Tribunal member records in the decision under challenge that "she could see not evidence of [the applicant] having a distended stomach". The Tribunal member proceeds to note that the applicant's appearance on that occasion "bore no relation to the photograph of the child with the swollen belly furnished by the solicitor to the Tribunal". The Tribunal member states that "she is mindful that none of the three medical reports indicate that the applicant's surgery was unsuccessful or that the applicant's (sic) suffers from constant stomach distension". The Tribunal member observes that the only reference to abdominal distension is in the report written post hearing from Dr. Carlidge and proceeds to conclude that having seen the child she is not convinced the minor applicant would be vulnerable to being branded a witch due to her appearance and in particular her swollen belly. The Tribunal member does not indicate the weight or significance she attaches to the medical report nor does she identify the factors which have led her to proceed in the decision by preferring her own non-medical view of the physical manifestation of the child's illness.

53. The approach adopted by the Tribunal member with respect to the minor applicant's disability was suggestive of a credibility assessment, casting doubt on photographic evidence and medical statements presented to her on the basis of her own views on seeing the child on one isolated occasion.

iii) Treatment amounting to persecution

54. The Tribunal member states in her decision that she is not convinced that the minor applicant would be vulnerable to being branded a witch in Nigeria or that she would be denied access to education or would suffer discrimination such as to amount to persecution within the meaning of the Convention.

55. Counsel submits that the Tribunal member erred in law and in fact in her assessment of the country information concerning the treatment of children in Nigeria who have been branded a witch. The decision of the Tribunal member in this respect is unreasonable and vitiated by material error of fact in the failure of the Tribunal member to fairly and thoroughly consider all manifestations of the treatment of children accused of witchcraft in Nigeria and failing to have due regard for the impact of the accumulation of all measures from the perspective of the minor child.

56. The country information before the Tribunal member clearly established that a child accused of witchcraft was likely to suffer discrimination and abuse very clearly amounting to persecution. Such abuse was documented in country information reports, and in particular the Stepping Stones reports, included evidence of physical, psychological, emotional and sexual abuse and in some cases resulted in death. Counsel refers in particular to the Stepping Stones (UK) report entitled 'Report on Accusations of Witchcraft Against Children in Akwa Ibom State Nigeria' (2011) which reports on documented cases in which children were accused of witchcraft and the suffering and abuse they were subjected to, including being denied access to education.

57. The DFID UK Government Disability Scoping Study, April 2008 found that "disabled people in Nigeria, in particular those living in a rural area, find it extremely difficult to complete primary education, as well as finding it virtually impossible to obtain long-term, sustainable employment. This scenario is further compounded when gender disparities are taken into account".

58. Counsel advances the claim that the Tribunal member has made no attempt or set out any basis on which this country information may be construed to support the conclusion reached by the Tribunal member and has acted in breach of her obligations arising in respect of the consideration of such information.

59. It is submitted, that having regard to the appropriate approach, namely consideration of Article 9(2)(f), Qualifications Directive, paras. 15 and 16 of the UNHCR Guidelines on Child Asylum Claims and the jurisprudence of this Court in *G.H. (A Minor) and F.A. (Pakistan) v Refugee Appeals Tribunal*, the Tribunal member ought to have adopted to the assessment of persecution, and having regard to country information and reports before the Tribunal member, it is unreasonable and irrational to conclude that the relevant treatment does not constitute persecution and the Tribunal member has failed to consider the impact of the accumulation of measures facing the minor applicant from the perspective of a young child.

iv). Risk of gender-based violence

60. It is submitted that the Tribunal member erred in law and in fact and applied an incorrect test for state protection in dismissing the case presented that the minor applicant is at risk of sexual and gender based violence in Nigeria by reason of her status as a young girl including, with regard to her medical condition/ disability and membership of a family headed by her mother which, it is submitted, places her at greater risk of suffering sexual and gender based violence in that State.

61. Counsel refers to the submissions presented to the Tribunal on the minor's behalf on the 12th October, 2011, which detail the basis for this fear and the country information supportive of the risk arising therefore. As consistently expressed by the applicant's mother throughout the minor applicant's asylum application, she genuinely and strongly fears her child will suffer sexual abuse and persecution in Nigeria. The applicant's mother's fears in this respect arise in part from her own experience and past persecution as having been subjected to gang rape in Nigeria, and, upon reporting the matter to the police, being raped by the authorities. Counsel stated that in the absence of having rejected the applicant's mother's evidence in this respect, it must be presumed that the Tribunal member accepted it. The applicant's mother further believes her daughter is at increased risk of such a fate having discovered that her older daughter, was also the subject of sexual abuse on being returned to Nigeria in 2009.

62. In determining the risk of persecution comprising sexual and gender based violence, the Tribunal member accepts that there may well be such problems as were referred to in the 'comprehensive written submissions in support of applicant's claim which refer to extracts from recent reports highlighting abuses within the Nigerian police force including corruption, human rights abuses and gender based violence affecting women and girls in Nigeria'. The Tribunal member further accepts that there are some barriers to women and girls seeking protection in Nigeria.

63. However, in contradiction to the above, the Tribunal member proceeds to note that 'a statement is not expected to provide absolute protection to its citizens against serious harm or persecution. Nigeria is a democracy and there is no evidence of a complete breakdown of State apparatus in this country of the arbitrary rape by the authorities of women and girls in Nigeria'. The Tribunal member further states that she does not find that the applicant would be more vulnerable to gender based violence as a child suffering from a medical condition or due to her family or as being part of a single mothered family in Nigeria.

64. Ms. Blake S.C., argues that the Tribunal member has erred in law and in fact in respect to the country information and evidence before her and has applied an incorrect for state protection.

65. A series of reports were placed before the Tribunal member which evidenced the extent of gender-based violence against girls and women in Nigeria and the extent of the absence of effective and available state protection against such abuse which were referenced and extracted from two sets of written submissions dated the 12th October, 2011 and addressed to the Refugee Appeals Tribunal.

66. In adopting an approach to state protection which required there to be a complete breakdown of state apparatus in Nigeria, the Tribunal member acted in breach of Regulation 2, Protection Regulations S.I. 518/2006 which imposes a requirement that the State operates "an effective legal system for the detention, prosecution and punishment of acts constituting persecution or serious harm and that the applicant has access to such protection."

67. In relation to the statement of the Tribunal member that there is "no evidence" of arbitrary rape by the authorities of women and girls in Nigeria. In fact the Tribunal member was referred to a study prepared by Amnesty International, 'Rape – the Silent Weapon', which found that rape by police and security forces is endemic in Nigeria, and that while rape is prevalent across all sectors of Nigerian society, the prevalence of rape committed by impunity by state actors is particularly alarming, according to counsel. Such evidence was repeated in other reports before the Tribunal member including the US State Department reports on Nigeria. Counsel argues that in proceeding on the basis that there was no evidence of arbitrary rape by the authorities, the Tribunal member relied on a fundamental error of fact and material misunderstanding with respect to the country information such that the decision is unlawful.

Submissions on behalf of counsel for the respondent

68. Counsel for the respondent, Peter Leonard B.L., made submissions in relation to the applicant's medical condition, the standard of proof and state protection.

i). Standard of proof

69. Mr. Leonard B.L., submitted that the applicant's medical condition is the primary fact upon which her asylum application is based. While the applicant, through her mother and next-friend, advances other cases as to why she has a well-founded fear of persecution, her case is based on her fear that she will not be able to receive appropriate treatment for her condition in Nigeria. A further feature of her medical condition is that her stomach is caused to distend which can result in a change to her appearance. Accordingly, the applicant claims that this alternation of her appearance gives rise to a well-founded fear that she may be perceived to be a witch in Nigeria and therefore in danger of persecution on that ground.

70. Counsel notes the wealth of judicial consideration given to the weight which should be placed on medical reports in the assessment of the asylum applications. The respondent accepts that given the applicant's age, that they have a duty to ensure that a comprehensive and full consideration was given to the applicant's medical condition and the implications being repatriated would have for that medical condition.

71. In *R.M.K. v Refugee Appeals Tribunal* [2010] IEHC 367 Clark J set out the approach that should be taken in respect of the assessment of medical evidence that "it is always a matter for the decision maker to assess the probative value of the contents of such reports...it is well recognised that there are occasions when examining physicians report on objective findings and use phrases which attach a higher probative value to those findings. Such reports are capable in an objective way of supporting the claim. Obviously, in such cases the need for reasons to be given for rejecting the probative value of the report must be fully addressed.

72. In the recent case of *M(M) v Refugee Appeals Tribunals and Minister for Justice*, Faherty J. gave a detailed analysis of how the courts have considered medical reports in the context of asylum applications and summarised her findings as follows:

"In considering any assessment of an applicant's credibility, decisions makers are obliged to consider the medical evidence in total before them;

The medical evidence must be put into the totality of the evidence to be assessed and must not be tangential or peripheral to such assessment'

It is always a matter for the decision maker to assess the probative value of the contents of such reports. . .

If medical evidence is to be rejected, it is incumbent on the decision maker to give reasons."

73. It is submitted that the respondent gave full and due consideration of the totality of medical evidence provided by the applicant in relation to her medical condition and based her findings the three medical reports submitted by the applicant. Firstly a report from Dr A Quinlan, Secondly a report from Dr Michelle Byrne and finally a more detailed report from Dr Rachel Cartlidge.

74. The respondent also considered photographic evidence provided by the applicant's mother which showed the applicant with a distended stomach, which is a known symptom of the condition. It is also the case that the respondent used her own personal observations of the applicant, in association with the medical and photographic evidence provided, in coming to her conclusions.

75. The respondent also considered the availability of appropriate medical care for the applicant in Nigeria before concluding as follows:

The Applicant's mother has not provided me with any evidence to establish that the Applicant would not receive medical treatment for Hirschsprungs disease in Nigeria or having regard to the level of resources in Nigeria that she would be

treated in a discriminatory manner such as to amount to persecution pursuant to paragraph 54 of the UNHCR handbook.

76. It is strongly denied that "the Tribunal imputed a requirement that the applicant suffer 'constant' abdominal distension" as has been suggested by the applicant. It is the case that the respondent undertook a comprehensive assessment of the applicant's condition and as the applicant had placed a significant emphasis on how the condition can affect her appearance, it was appropriate for the respondent to go to extra lengths to arrange to see the applicant and make her own observance.

77. There was no obligation on the respondent to obtain an independent medical report into the applicant's condition. The respondent was fully entitled to take cognisance of a medical report from the US which gave further insights into the applicant's medical condition.

ii). Standard of proof

1. The applicant has claimed that the respondent did not apply the correct standard of proof in assessing the applicant's fear that due to her medical condition she may be branded as a witch in Nigeria and accordingly, subject to persecution. The applicant says that the respondent "adopted a standard of proof that required her to be "convinced" rather than by applying the appropriate standard which required the respondent to consider "Whether there is a reasonable degree of likelihood." The extract from the respondent's decision that is at issue is the following:

I am not convinced having had the opportunity of seeing the Applicant at the hearing on the 6th of December, 2011 and considering these medical reports; that she suffers from constant abdominal distension of such severity that she would be vulnerable to being branded as a witch anywhere in Nigeria due to her appearance and in particular her swollen belly or that she would be denied access to education or would suffer discrimination such as to amount to persecution with the meaning of the Convention.

2. The issue of the appropriate standard of proof was comprehensively considered in *A(MD) v Refugee Appeals Tribunal (O'Brien) & Minister for Justice [2009] IEHC* a judgment of Irvine J. In that case Irvine J. clearly stated that the usage of less formal language by a Tribunal in describing her conclusions does not in any way undermine that conclusion once the finding has been properly arrived at and that all relevant evidence has been considered. She said:

"The court rejects the applicant's contention that an arguable case can be made out to the effect that the Tribunal member applied the incorrect burden of proof when recommending that the applicant would be refused refugee status. Whilst the court notes that the Tribunal member accepted that the applicant gave a consistent and coherent account of events she was, in the court's opinion, quite entitled to weigh up all of the evidence presented to her in the course of the hearing including the fact that the applicant's claim was "entirely unsubstantiated" and that his evidence that he was being sought by government authorities as being "merely hearsay". She was entitled, having heard all the evidence to come to the conclusion that she did not have a sufficient weight of evidence or "objective proof" to be satisfied that the applicant had a well founded fear of persecution should he be returned to Togo. The fact that the Tribunal member used language such as she did not "feel comfortable in coming to a conclusion based upon the evidence provided" or felt herself unable to "jump to the conclusion" that the applicant was at risk from the authority does not mean that she decided the case on the basis of a gut instinct. Her decision clearly sets out all of the relevant material which she weighed in the balance when deciding whether or not the appropriate standard of proof had been met. The court does not accept that the applicant has made out an arguable case that a higher standard of proof than that which was justified was applied by the Tribunal member in the present case. The court believes that it was perfectly open to the Tribunal member to conclude that the applicant's account was credible whilst also concluding that having considered all of the evidence that the weight of that evidence including the lack of objective or corroborating evidence was such that the burden of proof had not been discharged by the applicant."

78. Accordingly, in line with Irvine J's *ratio* set out above it is clear that the respondent in this case concluded that the applicant did not have a well-founded fear of persecution in Nigeria having given full consideration to her, and her family's personal circumstances, when assessed against up to date country of origin information. In particular she gave consideration to the applicant's mother's standard of education which would assist with finding employment in Nigeria.

iii). State protection

79. It is submitted that the respondent gave full consideration to the claims of sexual violence against women and girls and including female genital mutilation which were advanced by the applicant before the Tribunal and assessed them on the basis of the applicant's personal circumstances in the context of up to date country of origin information.

80. In terms of the availability of state protection the respondent said the following:

I have considered all reports made available in this claim including the aforesaid Guidance Notes dated September 2011 which confirms there is a criminal justice system comprising the police, the courts and the prisons and several complaint mechanisms in Nigeria.

Accordingly, the Tribunal member concluded:

"I do not find having considered all the reports made available in this claim for asylum and all of the evidence provide on behalf of the Applicant that the Applicant would be more vulnerable to gender based violence as a child suffering from a medical condition or due to her family or as being part of a single mothered family in Nigeria.

81. In relation to claims that the applicant could be subject to female genital mutilation the respondent considered the specific threats raised by the applicant's mother and also considered the possibilities of relocation in Nigeria in the face of such a threat.

82. Accordingly counsel argues that this case is analogous to the circumstances that existed in *O(s)(a minor) [Nigeral] V Refugee Appeals Tribunal and Ors [2009] IEHC* where Clark J had to consider the applicant's medical condition and fears in respect of female genital mutilation. She said:

The Court is satisfied that it is clear from reading the decision a whole that the Tribunal Member fully understood the two aspects to the claim made on behalf of the infant applicant - (i) a risk of FGM and (ii) a lack of treatment for and discrimination arising from sickle cell disease - and that she carefully considered both. The Tribunal decision quoted from COI which explains that people with the disease can access treatment in Nigerian hospitals and clinics. She also

considered the family's personal circumstances as facts to be weighed in the balance when considering the availability of treatment for the child.

While it has to be accepted that FGM is highly prevalent among the Igbo people, the case before the Tribunal was of a girl whose parents were opposed to genital cutting for sound reasons. The child's father is Yoruba and the family lived in Lagos and the child's own mother and grandmother had not been cut. The risk was therefore minimal, if it existed at all and the findings of fact are soundly based.

In cases where it is accepted that an applicant has a well-founded fear of persecution for a Convention reason in a particular part of his / her country of origin and it is accepted that the risk does not exist in another part of the country then the protection decision-maker may seek to identify a general location within the country to where the applicant can reasonably be expected to relocate if returned. Internal relocation is in that case an antidote or alternative to refugee status. Here, no well-founded fear of persecution was found and therefore internal relocation in the legal sense as opposed to a common sense approach was not necessary. As the child was found not at risk of FGM if returned to Nigeria, there was in fact no need to go on to consider internal relocation and it is therefore immaterial that the decision did not identify a specific area to which the family could internally relocate.

83. In this case the applicant's father is also reported to be a Yoruba and her mother alleges that her father or his family will force the applicant to undergo female genital mutilation. However, the respondent gave full consideration to this threat, and on the basis that the applicant's mother confirmed that she had not had contact with the applicant's father since 2010, concluded that a well-founded fear of persecution in this regard did not exist.

Discussion

84. The UNHCR Guidelines on international protection in relation to child asylum claims under Convention state as follows:

"The specific circumstances facing child asylum-seekers as individuals with independent claims to refugee status are not generally well understood. Children may be perceived as part of a family unit rather than as individuals with their own rights and interests."

Further:

"Adopting a child-sensitive interpretation of the 1951 Convention does not mean, of course, that child asylum-seekers are automatically entitled to refugee status..."

Alongside age, factors such as rights specific to children, a child's stage of development, knowledge and/or memory of conditions in the country of origin, and vulnerability, also need to be considered to ensure an appropriate application of the eligibility criteria for refugee status."

85. This court is mindful also of the Guidance Note issued by the Refugee Appeals Tribunal in respect of appeals from child applicants which is dated 2015 and would not have been applied to this case. Nevertheless the court is aware that para. 22.1 states,

"[22.1] The Tribunal is aware of Child-specific grounds for an asylum application as referred to in the UNHCR Guidelines at paragraph 18. These include (but are not limited to) female genital mutilation (FGM); witchcraft rites; forced labour; Child trafficking; forced marriage; Child prostitution; Child pornography; and, recruitment of Child soldiers."

22.2 [and para. 22.3 ?] states that:

"[22.2] The Tribunal recognises that actions, which may not constitute persecution when experienced by an adult, could satisfy the persecution element of the refugee definition when experienced by a Child. In considering the protection needs of a Child it should be understood that Children are necessarily more vulnerable to the effects of torture and other forms of serious harm, and because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly treated adults."

[22.3] The principle of the best interests of the Child requires that the harm experienced in the past and/or feared upon return be assessed from the Child's perspective. An accurate assessment of the harm (and whether it constitutes persecution) requires both an up-to date analysis and knowledge of Child-specific circumstances in the country of origin including existing Child protection services."

86. The 1989 Convention on the Rights of the Child states, under Article 3 (1):

"The best interests of the child shall be a primary consideration in all actions concerning children."

87. The Applicant has been diagnosed with a medical condition, Hirschsprungs disease. Having been born in Ireland, this is confirmed by three letters:

a. a confirmation by Dr. A. Quinlan in the Omni-practice in Tullamore which confirms that she has Hirschsprungs disease with intermittent vomiting, and a drug is prescribed.

b. Dr. Michelle Byrne of the same practice confirms that the Applicant suffers from Hirschsprungs disease.

c. In a report from Dr. Rachel Cartlidge of the same practice confirming the Applicant has Hirschsprungs. She continues in this report:

"This is a serious condition of the large bowel, which causes severe problems with bowel function. Surgery to relieve bowel obstruction was required at two weeks of age in Crumlin Hospital. The condition causes a lifelong irreversible lack of gut motility [this court's emphasis]. Uncontrolled this can lead to severe constipation, possible bowel obstruction and failure to thrive due to poor intake and mal-absorption. Children with this condition require regular paediatric, specialist review and dietician review. The Applicant attends Dr. Bates, Consultant Paediatrician, in the Dietician and Nutrition Department, Mullingar General Hospital. She is making good progress under their care. She also attends the surgery here for regular follow-up and monitoring of her general health and progress. Her health, well being,

development and even her life could be in danger if she did not have access to the above healthcare regularly here in Ireland."

d. There is a further report from a Dr. Maeve Lee of the same practice to say that:

"The Applicant needs to stay in Ireland for her care. She is underweight, has developmental delay as she is two years old and only taking milk."

It is unclear from the Tribunal decision as to whether or not the first named Respondent accepted that the Applicant suffered from Hirschsprungs disease, and the first named Respondent's decision with regard to the medical condition of the Applicant is based not on the medical reports but on her own observation of the Applicant on the 6th December, 2011.

88. It is unclear from the Tribunal decision as to whether or not the first named Respondent accepted that the Applicant suffered from Hirschsprungs disease, and the first named Respondent's decision with regard to the medical condition of the Applicant is based not on the medical reports but on her own observation of the Applicant on the 6th December, 2011. She stated in her report:

"She presented as a normally lively and attractive child, who got out of her buggy and walked around the hearing room. Her mother explained that her stomach is normally distended but I could see no evidence of the having a distended stomach at the hearing. Her appearance bore no relation to the photograph of the child with the swollen belly furnished by her solicitor to the Tribunal by letter dated the 1st November 2011."

89. The first named Respondent is suggestive of a finding of a lack of credibility, suggesting that the casting doubt on the photographic evidence and the medical statements presented to her on the basis of her own views by seeing the child on one isolated occasion. The Tribunal Member did not find that the person in the photograph furnished by her solicitor is not the Applicant. The Respondent goes on to say that there is no evidence that she suffered from constant abdominal distention of such severity that she would be vulnerable to being branded as a witch anywhere in Nigeria due to her appearance, and in particular, swollen belly, or that she would be denied access to education or would suffer discrimination such as to amount to persecution within the meaning of the Convention.

90. It is noted that the first named Respondent found that while some country while some country of origin information reports indicated that there may be problems in the provision of medical services to patients in Nigeria including that drugs can be expensive and there can be a lack of essential medicine in the public sector. She declined to find that having considered these reports, that these abuses are due to a policy view taken against people suffering from such diseases as Hirschsprungs disease by the Nigerian authorities. Of course the natural implication is that the Applicant will be required to attend the public sector hospital as there is no evidence that the Applicant's mother has any wealth and, in fact, it seems that she does not. The reality is that the Applicant's mother will not be in a position to obtain what Dr. Cartlidge indicates the Applicant requires.

91. The first named Respondent also continues her decision by suggesting that,

"Nigeria is a democracy, and there is no evidence of a complete breakdown of state apparatus in this country or the arbitrary rape by the authorities of women and girls in Nigeria".

In the redacted Tribunal decision of 69/470/09, the following quotations appear:

"In a report, "Discrimination Against Children with Disabilities", a report published by the World Organisation against Torture states:

"People and children with disability are the least cared for, and discrimination against them – both within the family and in society in general – is widespread in Nigeria: "They live on the margins of society, often ignored, neglected, and mistreated; [they remain] targets for abuse and exploitation [...]". As in other African countries, "disabled children are [often] considered taboo, because disability is associated with bad luck"."

92. In redacted Tribunal decision 69/1186/1005 B, a quotation is given from the DFID UK Government Disability Scoping Study of April 2008 which says:

"In common with the vast majority of low income countries, not least in Africa, disabled people in Nigeria encounter a plethora of attitudinal, institutional and environmental barriers that impede and militate against their active social inclusion within contemporary society. Within rural areas, it is commonly held that disability is as a result of a curse."

93. It is in this court's view not sufficient that the weight of medical evidence suggesting that the Applicant, (1) has Hirschsprungs disease; (2) uncontrolled, this can lead to severe constipation; (3) children with this condition require regular paediatric, specialist review and dietician review; (4) the Applicant needs to stay in Ireland for her care. She is underweight and her development delay is that as she is two years old and only taking milk, requires treatment and, on the basis of the country of origin information reports, is likely to be vulnerable to be identified as a "witch". In the words of the Stepping Stones Report forwarded to the Tribunal member on the 13th October 2011:

"An increasing number of children in the Niger Delta have been forced to the streets and traffic as a result of the deeply held belief in child "witches". The fear stems from the belief that a spiritual spell can be given to a person through food and drink."

Suspected witches are abandoned, isolated, discriminated, ostracised from the community, taken to the forest and slaughtered, disgraced publicly and murdered, bathed in acid, poisoned to death, often with a poisonous local berry, buried alive, chained and tortured in churches in order to extract a confession."

94. In the view of this court the Tribunal member decision with regard to her viewing of the Applicant was inappropriate and that it was open to the first named Respondent to obtain a report from the Consultant Paediatrician, Dr. Bates, or any other consultant, but the first named Respondent did not do so, but made her own medical judgement on the basis of her viewing of the Applicant.

95. This in itself is sufficient to satisfy this court that an order of certiorari should be given quashing the decision of the first named Respondent dated 24th February 2012.

96. A number of other grounds were raised by the counsel on behalf of the Applicant with regard to the standard of proof and

determination of risk in relation to risk of gender-based violence and the issue of internal relocation but there is no necessity for this court to come to make a determination in relation to these matters as the decision of the first named Respondent must fall, having regard to the assumption by the first named Respondent of a decision of making a decision based on her own observation of a severe and complicated medical condition.

Decision

97. As this is a telescoped hearing, this court will grant leave to the Applicant and quash the decision of the first named Respondent and direct that the matter be reconsidered by a separate member of the Refugee Appeals Tribunal.

Counsel for the Applicant: Ms. Teresa Blake S.C., and Ms. Aoife Gillespie B.L., instructed by Conor O'Briain, solicitors

Counsel for the Respondent: Mr. Peter Leonard B.L., instructed by the Chief State Solicitor