



RPD File No. / N° de dossier de la SPR : MB7-04620

Client ID No. / N° ID client : XXXX

Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

**Claimant(s)**

**Demandeur(e)(s) d'asile**

XXXX XXXX XXXX

**Date(s) of Hearing**

**Date(s) de l'audience**

April 4, 2019

**Place of Hearing**

**Lieu de l'audience**

Montréal, Quebec

**Date of Decision  
and Reasons**

**Date de la décision  
et des motifs**

April 26, 2019

**Panel**

**Tribunal**

Charles Côté

**Counsel for the Claimant(s)**

**Conseil(s) du (de la/des)  
demandeur(e)(s) d'asile**

Alexander Abotsi

**Designated Representative**

**Représentant(e) désigné(e)**

N/A

**Counsel for the Minister**

**Conseil du (de la) ministre**

N/A

## REASONS FOR DECISION

### INTRODUCTION

[1] **XXXX XXXX XXXX**, a citizen of Nigeria, is claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

### DETERMINATION

[2] The panel determines that the claimant is a refugee under section 96 of the IRPA.

### ALLEGATIONS

[3] The claimant's allegations are set out in her Basis of Claim Form (BOC Form).<sup>1</sup> She alleges that she fled Nigeria to escape her family, the chief XXXX XXXX and his son XXXX XXXX, as well as the networks they control within her church and the Nigerian army. She alleges that she married in XXXX 2016 without her parents' consent and that her parents wanted her to marry XXXX XXXX. She alleges that he wanted to force her to marry him following the death of one of his two wives in XXXX 2016. She alleges that she was kidnapped and held captive at XXXX XXXX's home for one month until she was able to escape and take refuge at a friend's home on XXXX XXXX, 2017. Using her Canadian visa, she left Nigeria on XXXX XXXX, 2017, and entered Canada on XXXX XXXX, 2017, at Pierre Elliott Trudeau Airport.

### ANALYSIS

[4] The panel is of the opinion that the claimant's fear has a nexus to one of the five Convention grounds. Consequently, her claim for refugee protection was considered under section 96 of the IRPA. In its analysis, the panel considered the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.<sup>2</sup>

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<sup>1</sup> Document 2 – Basis of Claim Form.

<sup>2</sup> *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, Immigration and Refugee Board of Canada (IRB), effective November 13, 1996.

## Identity

[5] The claimant's personal identity as a citizen of Nigeria was established by means of her testimony and the supporting documentation entered into evidence, namely the certified true copy of her passport.<sup>3</sup>

## Credibility

[6] The panel finds that the claimant was a credible witness. Her testimony at the hearing was spontaneous and detailed. The panel noted no omissions, inconsistencies or contradictions in the allegations made in support of her claim.

[7] The claimant testified about the circumstances that led her to flee Nigeria. While the documentary evidence on the country states that forced marriages are "not common" in the south of the country,<sup>4</sup> where the claimant resided, the panel is of the opinion that her testimony established that this was in fact the situation in which she found herself.

[8] The claimant testified at the hearing and stated in her BOC Form that her family was, in some respects, subordinate to the clan of chief XXXX XXXX, because the chief had taken the claimant's father, an orphan, under his wing and made him his XXXX XXXX. She stated at the hearing and in her BOC Form that, in 2006, she visited the chief to thank him for paying for her education and that, at that time, he raped her. The claimant's testimony concerning this incident is consistent on all points with her BOC Form, and she added details that strengthened her credibility. She then testified about her mother's reaction when she confided in her: she told her that it was fortunate that such a powerful man was interested in her.

[9] The fact that she did not seek police assistance following the rape is consistent with the documentation on the country:

... "most Nigerian women who experience physical or sexual violence do not seek help from anyone" and less than one third of women that have experienced violence

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<sup>3</sup> Document 1 – Information package provided by the Canada Border Services Agency or Immigration, Refugees and Citizenship Canada.

<sup>4</sup> Document 3 – National Documentation Package (NDP) on Nigeria, March 29, 2019, Tab 5.7: Prevalence of forced marriage, particularly in Muslim and Yoruba communities; information on legislation, including state protection; ability of women to refuse a forced marriage. IRB. November 9, 2012. NGA104207.E, page 2.

seek assistance (Nigeria 2013, 20). Of those that sought help, more than 70 percent sought help from their own families, nearly 30 percent from their partner's family, and 2 percent sought help from the police.<sup>5</sup>

[10] The panel also questioned the claimant about the opportunities available to her outside her family circle and the circle of influence of chief XXXX XXXX. She stated that the chief had control over her education and her employment prospects, and that he was using this control to force her to marry his son XXXX. The claimant's statements are corroborated by the country documentation. One Response to Information Request on the prospects of women in Abuja, the capital city of Nigeria, states that single women face multiple barriers, including being solicited for sexual favours by middle-men, in order to obtain work and employment.<sup>6</sup> There is no specific information on this subject pertaining to the city or region of Lagos. However, the documentation states that Lagos state is the "most organized" with respect to fighting domestic violence, but that even in this region, there are "problems with enforcement".<sup>7</sup>

[11] According to the documentary evidence, the consequences to a woman for refusing a forced marriage depend on the family.<sup>8</sup> The same evidence states that women in the southern part of the country can easily escape this fate, especially if they are more educated. The claimant's profile fits this description: she is from the south and is educated. However, she established through her credible testimony that her family was in a situation of dependency with respect to another powerful family, and this negated her efforts to free herself.

[12] The claimant testified that she got married in XXXX 2016, without her family's approval, to a Muslim man she had met through work. She provided a marriage certificate to this effect.<sup>9</sup> She explained at the hearing that, in this document, the witness is her husband's aunt, not a member of her family. At the hearing, she testified that she got married in secret, which this document appears to show. She testified that her family learned of her marriage when she moved

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<sup>5</sup> NDP, Tab 5.3: Domestic violence, including Lagos State; legislation, recourse, state protection and services available to victims (2011-October 2014). IRB. November 10, 2014. NGA104980.E, page 6.

<sup>6</sup> NDP, Tab 5.22: Situation of single women living alone in Abuja, including ability to access employment and housing; threat of violence; support services available to them (2015-June 2016). IRB. June 30, 2016. NGA105523.E, page 2.

<sup>7</sup> *Supra*, Tab 5.3, footnote 5, page 4.

<sup>8</sup> *Supra*, Tab 5.7, footnote 4, page 8.

<sup>9</sup> Document 5 – Exhibit II: Copy of her Marriage Certificate.

in with her new husband. Her father immediately told her he did not approve and denounced the marriage, which she had entered into without his consent. He demanded that she marry XXXX XXXX, the son of chief XXXX XXXX.

[13] At the hearing and in her BOC Form, the claimant stated that her problems began to worsen in XXXX 2016, when XXXX XXXX lost one of his two wives, who died in childbirth. She testified that the pressure from her family and from the XXXX clan then increased. She and her husband hid with his sister, also in Lagos, which is attested in her IMM-5669 form.<sup>10</sup> In early February, their hiding place was discovered and men came to take her by force to XXXX XXXX. Her husband, who was beaten and bound, then left Lagos for Ibadan. The claimant testified credibly on this incident.

[14] The claimant testified that she spent a little over a month in the house of her future husband, who had her watched and escorted at all times. During this time in captivity, attested in her IMM-5669 form,<sup>11</sup> a meeting took place between the XXXX, father and son, her parents, and the bishop of their church, who is also chief XXXX's nephew. At that time, the claimant's father told her that he would rather die and see her die than see her refuse to marry XXXX XXXX. She testified that, at the end of that day, she was raped by XXXX XXXX.

[15] The claimant stated that she chose to return to work rather than remain locked up. A driver and a bodyguard were tasked with accompanying her to work and bringing her back. She testified that, when she returned to work, her employer, an associate of chief XXXX XXXX, also pressured her to marry XXXX XXXX, and told her that if she did not, she would lose her job and would never again find work in Nigeria.

[16] In her BOC Form, the claimant simply states that she managed to escape. On this subject, the claimant filed an affidavit from a friend, who stated that she hid with her from XXXX XXXX to XXXX, 2017.<sup>12</sup> At the hearing, the claimant gave detailed and credible testimony on

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<sup>10</sup> Document 1 – Form IMM 5669, question 12.

<sup>11</sup> *Idem.*

<sup>12</sup> Document 5 – Exhibit VI: Copy of sworn affidavit and passport of XXXX XXXX forwarded by E-mail to the undersigned Counsel.

how she was able to escape the surveillance and take refuge with a friend until she left Nigeria. Her husband then travelled from Ibadan to give her passport.

[17] At the beginning of the hearing, the claimant verbally made changes to her BOC Form to take into account the events that had occurred since she signed her form on April 28, 2017.

[18] She testified that her husband had left Lagos six weeks after she did to travel to Port Harcourt, a city he then left when he learned that the claimant's brother had moved there. She stated that her husband is now in Benin. Furthermore, the abovementioned affidavit from her friend states that, a few weeks after she left, her father and other men went to her friend's house looking for the claimant. Since arriving in Canada, the claimant has given birth to a child, and the claimant's husband is named as the father on the child's Quebec birth certificate.<sup>13</sup>

[19] Taking all the foregoing into account, the panel determines that the claimant has a well-founded fear of persecution in Nigeria by reason of her membership in a particular social group, that of Nigerian women threatened with forced marriage.

### State protection

[20] The panel concludes that the claimant would not have access to adequate state protection in Nigeria.

[21] The claimant testified that, after she was kidnapped, her husband went to file a complaint with police, but that he told her that the police officers advised him to resolve the dispute within the family. This statement is consistent with the information on the country, including on Lagos state. The police often tell victims of domestic violence to work their problems out on their own with their family members.<sup>14</sup>

[22] A lack of police protection in the case of forced marriages can have serious consequences for the woman, including "total neglect" and ostracism. This could be "dangerous for victims". The documentation cites the case of a woman whose legs were cut off by her husband for

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<sup>13</sup> Document 5 – Exhibit I: Copy of Birth Certificate of her son.

<sup>14</sup> *Supra*, Tab 5.3, footnote 5, page 7.

constantly trying to leave him, and of another young girl whose hands were cut off. Women who try to leave a forced marriage are beaten.<sup>15</sup>

[23] The panel is of the opinion that the claimant has rebutted the presumption of state protection through clear and convincing evidence.

### **Internal flight alternative**

[24] The panel also reviewed the issue of whether the claimant had a viable internal flight alternative (IFA), specifically in Benin City. The panel ruled out the cities of Abuja and Port Harcourt, where two of the claimant's brothers have moved since she left Nigeria.

[25] The panel is of the opinion that, on a balance of probabilities, the claimant's agents of persecution cannot be described as non-state actors, because of the influence they exert within the state through their contacts within the army.

[26] The claimant testified that the XXXX family has influence throughout the country because chief XXXX XXXX is a XXXX XXXX XXXX, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. She testified that this fact has been well known in her family since her childhood. She testified that the XXXX family could not benefit from such a role with the XXXX XXXX without having contacts and networks in the government and the army. She testified that such networks work on the principle of reciprocating services and that this would allow the XXXX clan to use its network to locate her anywhere in the country.

[27] The panel concludes that her agents of persecution are also motivated to find her anywhere in the country. The claimant defied both her own family and another powerful family, as well as her church and her employer by refusing the marriage and by marrying in secret.

[28] The panel concludes that, in the circumstances, the claimant's agent of persecution amounts to a state actor and that, consequently, Jurisprudential Guide TB7-19851<sup>16</sup> is not applicable in her case, given her personal circumstances.

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<sup>15</sup> *Supra*, Tab 5.7, footnote 4, page 8.

[29] In light of all of the evidence, the panel determines that the claimant, **XXXX XXXX XXXX**, is a “Convention refugee”.

[30] Her claim for refugee protection is allowed.

*Charles Côté*

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**Charles Côté**

**April 26, 2019**

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**Date**

IRB translation

Original language: French

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<sup>16</sup> IRB Refugee Appeal Division Jurisprudential Guide: Decision TB7-19851, which addresses IFAs in major cities in southern and central Nigeria for claimants fleeing non-state actors.