

# OPERATIONAL GUIDANCE NOTE

## NIGERIA

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#### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Nigeria and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Nigeria Country of Origin Information at: [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.4** With effect from 2 December 2005 Nigeria is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. Asylum and human rights claims must be considered on their individual merits. If, following consideration, a claim made on or after 2 December 2005 by a man who is entitled to reside in Nigeria is refused, case owners must certify it as clearly unfounded unless satisfied that it is not. A

claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Nigeria is not listed in section 94 in respect of women. However, if a claim from a woman is refused, case owners may certify it as clearly unfounded on a case-by-case basis if they are satisfied that it is so clearly without substance that it is bound to fail. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

## Source documents

1.5 A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

- 2.1 Nigeria is a democratic federal republic with a multi-party political system, comprising the Federal Capital Territory and 36 states. Executive powers of the federation are vested in the President, who is the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces. The president is elected by universal suffrage for a term of four years. The legislative powers of the country are vested in the National Assembly, comprising a Senate and a House of Representatives. The 109-member Senate consists of three senators from each state and one from the Federal Capital Territory, who are elected by universal suffrage for four years. The House of Representatives comprises 360 members, who are also elected by universal suffrage for four years. The ministers of the government are nominated by the president, subject to confirmation by the Senate.<sup>1</sup>
- 2.2 Local municipal elections took place in December 1998 and state legislative elections were held in January 1999. The People's Democratic Party (PDP) secured about 60 per cent of the votes cast in the municipal elections and 50 per cent of the votes cast in the state legislative elections. National legislative elections were held on 20 February 1999. In those elections, the PDP secured 215 seats in the 360-member House of Representatives and 66 seats in the 109-member Senate. A presidential election was held on 27 February 1999, which was won by Olusegun Obasanjo, with 62.8 per cent of the votes cast. Obasanjo was formally inaugurated as President of Nigeria on 29 May 1999. A new constitution was formally promulgated on 5 May 1999, and came into force on 29 May 1999. Four years later, presidential and legislative elections were held in April and May 2003. Obasanjo won the 2003 presidential election, and his PDP party won large majorities in the 2003 legislative elections. Following the elections held in April and May 2003, Obasanjo was inaugurated as president on 29 May 2003. A new federal government was set up in July 2003. In May 2006, the Nigerian Senate rejected a bill to amend the constitution to allow President Obasanjo to seek a third term in office.<sup>2</sup>
- 2.3 On 14 April 2007, state governor and state assembly elections throughout the country took place. A local observers group stated that the elections were marred by abuses and intimidation. The elections were reportedly also marred by violence. The Independent National Electoral Commission (INEC) announced that the PDP had won 26 out of 33 states where the results had been issued, and that the elections in two states had to be cancelled due to widespread irregularities. On 21 April 2007, federal legislative (National Assembly) and presidential elections were held. On 23 April 2007, INEC declared that Umaru Musa Yar'Adua of the PDP won the election with 24.6 million votes (72 per cent of the votes cast). Muhammadu Buhari (All Nigeria Peoples Party), won 6.6 million votes (19 per cent of the votes cast), and Atiku Abubakar won 2.6 million votes (7 per cent of the votes cast). Umaru Musa Yar'Adua announced his cabinet in July 2007, but Buhari and Abubakar have rejected the outcome of the election and have pursued their grievances through the courts. Local and international observers have also stated that the election was seriously flawed, with poor organisation and vote rigging identified as particular problems.<sup>3</sup>

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<sup>1</sup> Home Office COI Service (COIS) Nigeria Country of Origin Information Report 2007 (Background Information: Political System)

<sup>2</sup> COIS Nigeria Country Report 2007 (Background Information: History)

<sup>3</sup> COIS Nigeria Country Report 2007 (Background Information: History & Recent Developments), Foreign and Commonwealth Office (FCO) Country Profile, British Broadcasting Corporation (BBC) News 'Poll report

- 2.4** Basic human rights freedoms are enshrined in the constitution including the right to life, the right to personal liberty, the right to a fair trial, freedom of expression and of the press, freedom of religion and the right to dignity of the person. The new constitution has been a source of tension since its introduction in 1999. Critics of the new constitution claim that it concentrates too much power in the central government, defying the aspirations of many Nigerians for a looser federation. Other areas of contention include the dominance of the Federal Government in the control of state police and the appointment of judges.<sup>4</sup>
- 2.5** The election of a civilian government under President Olusegun Obasanjo in February 1999 ended 17 years of military rule. Under a succession of military leaders, but most notably under General Abacha, whose death in 1998 paved the way for civilian rule, human rights abuses were reportedly sponsored by government, using the army as the guardians of law and order. After Abacha's death those whom he had detained for so-called 'political crimes', including Obasanjo himself, were quickly released. Others, including the press and civil society groups opposed to Abacha's regime, were able to express their views without fear of reprisal. The advent of civilian rule also resulted in wider freedom of expression within the community at large and a recognition by Obasanjo's Government that the police should take over the army's civilian policing functions. To help underpin the new dispensation, Obasanjo directed additional funds to the National Human Rights Commission (NHRC) and appointed a panel under Justice Oputa to hear grievances from those who had suffered under former regimes.<sup>5</sup>
- 2.6** Obasanjo's Government had a professed commitment to improve the human rights situation in Nigeria. Many of the serious abuses that have occurred since the restoration of democracy are reportedly a result of the ill-trained security forces' use of excessive force and their poor treatment of protesters, criminal suspects, detainees and convicted prisoners. This reflects the scale of the problems Obasanjo inherited from his military predecessors, particularly rebuilding the police force from scratch in a country facing so many other urgent and complex issues, such as inadequate infrastructure, endemic corruption and severe levels of poverty. Obasanjo ended the pattern of systematic state-sponsored human rights abuses that were believed to be prevalent under military rule, but the law enforcement agencies still suffer from a lack of resources, particularly inadequate training. The Federal Government's human rights record nevertheless remained poor in 2006 and government officials at all levels were reported to have continued to commit abuses.<sup>6</sup>
- 2.7** In recent years, Nigeria has repeatedly been shaken by outbreaks of intercommunal violence that have reportedly been fuelled by government mismanagement and political manipulation. Since 1999 more than 10,000 Nigerians have died in violent clashes along intercommunal lines, and 2006 saw dozens of such incidents erupt around the country. In February 2006, more than 100 people were killed and thousands displaced in a wave of interconnected religious riots that began in the north-eastern city of Maiduguri and spread to Bauchi and Anambra states. The underlying causes of Nigeria's chronic intercommunal strife (including ethnic and religious divisions and competition for scarce economic opportunities) often overlap with and exacerbate one another. The police and military have on occasion been implicated in such acts of violence themselves and in some cases, unscrupulous political leaders have reportedly manipulated intercommunal tensions or sponsored violence to advance their political positions.<sup>7</sup>

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will incite Nigeria' dated 24 August 2007 & BBC News 'Nigeria's president names cabinet' dated 26 July 2007

<sup>4</sup> COIS Nigeria Country Report 2007 (Background Information: Constitution)

<sup>5</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraph 2.3)

<sup>6</sup> COIS Nigeria Country Report 2007 (Human Rights: Introduction) & UK-Danish Fact Finding Mission Report January 2005 (paragraph 2.5)

<sup>7</sup> COIS Nigeria Country Report 2007 (Human Rights: Introduction & Freedom of Religion) & Human Rights Watch (HRW) World Report 2007: Nigeria

### 3. **Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Nigeria. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims).
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at: <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 The Niger Delta**
- 3.6.1** Some applicants will make an asylum and/or human rights claim on the grounds that they fear ill-treatment amounting to persecution at the hands of gangs or the security forces working in the interests of the oil companies that operate in the Niger Delta. Such claims are often submitted by young Ijaw males and are based on the individual's fear of the security forces or the oil companies because they refuse to sell or move from sought after land in the region.
- 3.6.2 *Treatment.*** In recent years, the oil-rich Niger Delta has remained the scene of recurring violence between members of different ethnic groups competing for political and economic power, and between militia and security forces sent to restore order in the area. Violence between ethnic militias often occurs within the context over control of the theft of crude oil. Despite a robust military and police presence in the region, local communities remain vulnerable to attack by militias, criminal gangs, and the security forces themselves. Oil companies rarely speak out publicly about such abuses as some of their own practises have reportedly contributed to the ongoing conflict in the region.<sup>8</sup>

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<sup>8</sup> COIS Nigeria Country Report 2007 (Human Rights: Armed Militia Groups in the Delta Region), Amnesty International (AI) Annual Report 2007: Nigeria, HRW World Report 2007: Nigeria, HRW World Report 2006: Nigeria, IRIN: Nigeria 'Lull in Port Harcourt fighting is likely to be temporary' dated 20 August 2007 & IRIN: Nigeria 'Residents flee heavy fighting in Niger Delta's main city' dated 17 August 2007

- 3.6.3** There were reports in 2005 and 2006 that the security forces demolished communities and killed and injured people to protect the interests of the oil companies in the Niger Delta. Community activists who protested against oil companies in pursuit of rights and resources faced violence and arbitrary detention. The security forces reportedly responded with disproportionate force against those considered to be hindering oil production or harbouring criminal groups. The Federal Government has in many cases rejected calls for independent and impartial inquiries into abuses by these forces, which operate under its direct control.<sup>9</sup>
- 3.6.4** **Sufficiency of protection.** Oil companies sometimes employ and subsidise the living expenses for private individuals or community members to protect their interests, but in most instances it is the police and the security forces that provide security to the oil industry in the Niger Delta. Leading these forces has been a Joint Task Force, an army-led unit that includes officers from the navy, military, paramilitary Mobile Police (MOPOL) and regular police force. The Joint Task Force was formed in 2003, with codename 'Operation Restore Hope', to protect major oil installations as strategic national assets and to combat increasing kidnappings of oil company personnel, attacks on police stations and military patrols, interruptions to oil production and oil thefts, as well as communal unrest.<sup>10</sup>
- 3.6.5** In recent years the oil companies operating in the Niger Delta have reportedly come under greater scrutiny with regard to their social responsibility in the region, and several companies are signatories of the Voluntary Principles for Security and Human Rights (including Chevron and Shell). These principles are intended to guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights. They apply wherever the company operates but have no monitoring mechanism, making it difficult to evaluate companies' adherence.<sup>11</sup>
- 3.6.6** In most reported instances it is the security forces that have been responsible for ill-treatment on behalf of the oil companies in the Niger Delta, often with impunity. Even in cases where privately employed individuals are responsible for such actions, it is unlikely that the victims of such actions would be able to seek and receive adequate protection from the state authorities.<sup>12</sup>
- 3.6.7** **Internal relocation.** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practise. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.<sup>13</sup> Though this category of applicants' fear is of ill-treatment/persecution by the security forces, it relates only to those who reside in the Niger Delta region of Nigeria and there is no evidence to suggest that the security forces would maintain interest in such applicants were they to reside in another part of the country. Therefore, relocation to an area of Nigeria outside of the Niger Delta would be an effective way of avoiding any risk of ill-treatment and would not be unduly harsh.
- 3.6.8** **Conclusion.** Whilst applicants from the Niger Delta may face harassment and ill-treatment at the hands of security forces who work to protect the interests of the oil industry, they are unlikely to be able to establish that they face treatment amounting to persecution based solely on their residence there. Applicants who are able to demonstrate that they face a level of harassment and ill-treatment amounting to persecution at the hands of the security forces in the Niger Delta region will not be able to seek redress from the authorities. Such

<sup>9</sup> COIS Nigeria Country Report 2007 (Human Rights: Armed Militia Groups in the Delta Region) AI Annual Report 2007: Nigeria & AI - Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta

<sup>10</sup> COIS Nigeria Country Report 2007 (Human Rights: Armed Militia Groups in the Delta Region) AI Annual Report 2007: Nigeria & AI - Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta

<sup>11</sup> AI - Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta

<sup>12</sup> COIS Nigeria Country Report 2007 (Human Rights: Armed Militia Groups in the Delta Region), AI Annual Report 2007: Nigeria, AI Annual Report 2006: Nigeria, AI - Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta, HRW World Report 2007: Nigeria & HRW World Report 2006: Nigeria

<sup>13</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

applicants, however, have the option to relocate internally to another area of the country outside of the Niger Delta region where they will not be of continuing interest to the security forces feared. Therefore, a grant of asylum or Humanitarian Protection will not be appropriate for this category of claim.

### 3.7 Membership of MASSOB

- 3.7.1** Some applicants may express a fear of persecution by the Nigerian authorities on account of their association with, or membership of, the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB).
- 3.7.2** *Treatment.* MASSOB claims to be an un-armed non-violent movement that advocates a separate state of Biafra for the Igbo, the dominant ethnic group in the Igbo speaking southeast states of Abia, Anambra, Ebonyi, Enugu and Imo. The Federal Government banned the movement in 2001, alleging that its activities threatened the peace and security of the country. Despite the ban, MASSOB has continued to pursue its campaign for self-determination. Although MASSOB does not appear to enjoy the level of support which would represent a serious political threat to the Government, some MASSOB members have reportedly been harassed by the police, acting on orders from the Government and its leader, Ralph Uwazuruike, has been arrested several times. Although many of those members of MASSOB who have been arrested are quickly released without charge, or released on the order of courts, some, including Uwazuruike and six of his deputies, have been held for longer periods.<sup>14</sup>
- 3.7.3** It is not known whether MASSOB issues membership cards to its members. MASSOB has however produced an independent Biafra State flag, and issued a currency, which are both illegal.<sup>15</sup> Political opposition groups such as MASSOB are in general free to express their views, although those that take part in illegal demonstrations or other illegal activities [eg raising the "Biafra" flag or being in possession of "Biafra" currency] may face arrest and prosecution for any offences that have been committed.<sup>16</sup>
- 3.7.4** In 2006, members of MASSOB reportedly initiated frequent violent clashes with the Government, particularly in Onitsha and Anambra states. Police sometimes reacted by arresting large numbers of MASSOB members. For example, in June 2006 police in Anambra State suspected MASSOB of kidnapping four police officers and responded by arresting 69 people. Two others were killed in the arrest sweep. Formal charges against the 69 arrested persons were not announced by year's end.<sup>17</sup>
- 3.7.5** *Sufficiency of protection.* As this category of applicants' fear is of ill-treatment by the Federal Government, they cannot apply to these authorities for protection.
- 3.7.6** *Internal relocation.* As this category of applicants' fear is of ill-treatment by the Federal Government, relocation to a different area of Nigeria to escape this threat is not feasible.
- 3.7.7** *Conclusion.* The human rights situation has reportedly improved since the return to civilian rule in 1999. However, the Federal Government does not take any chances with any groups that threaten the unity of the country such as MASSOB, whose members will usually be from the Igbo speaking southeast states of Abia, Anambra, Ebonyi, Enugu and Imo. The leadership of MASSOB, i.e. 'those that energise and mobilise support for the movement', and those affiliated with the leaders, are at risk of arrest and detention by the

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<sup>14</sup> COIS Nigeria Country Report 2007 (Human Rights: Movement for the Actualisation of the Sovereign State of Biafra - MASSOB) & BBC News 'Nigeria rebel wife still defiant' dated 16 July 2007

<sup>15</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraph 3.1.20) & COIS Nigeria Country Report 2007 (Human Rights: Movement for the Actualisation of the Sovereign State of Biafra - MASSOB)

<sup>16</sup> COIS Nigeria Country Report 2007 (Human Rights: Movement for the Actualisation of the Sovereign State of Biafra - MASSOB)

<sup>17</sup> COIS Nigeria Country Report 2007 (Human Rights: Movement for the Actualisation of the Sovereign State of Biafra - MASSOB)

authorities on account of their political opinion. Less prominent persons who are affiliated with MASSOB might be at risk of ill-treatment by the authorities in order to intimidate others. Normally anonymous sympathisers of MASSOB do not draw the adverse attention of the authorities.

**3.7.8** If it is accepted that the applicant has had significant political involvement in MASSOB and has previously come to the adverse attention of the authorities, then a grant of asylum is likely to be appropriate. However, the number of such claims is likely to be very small and given the prominence of the individuals concerned the identity and veracity of their claims can be readily verified. Applicants who assert that they have been detained in connection with MASSOB activities for short periods of less than a few days on a limited number of occasions, and have not been seriously ill-treated, will be clearly unfounded. Those applicants who describe low-level activities and have not previously come to the attention of the authorities would not be in need of international protection and such claims will be clearly unfounded.

### **3.8 Fear of Bakassi Boys (or other vigilante groups)**

**3.8.1** Some applicants will make an asylum and/or human rights claim on the grounds that they fear ill-treatment amounting to persecution at the hands of the 'Bakassi Boys' or other similar vigilante groups.

**3.8.2** *Treatment.* Vigilante groups have in the past been prevalent in Nigeria taking the law into their own hands because the police, until recent years, had not had the capacity to do so. However since 1999, the Nigerian Police Force (NPF) has grown in size and capacity and now has a much higher profile. Some vigilante groups have now been brought within and under the control of the NPF. They are registered with and operate under the supervision of NPF and are akin to services like the 'neighbourhood watch' scheme in the UK and operate principally at night. The accounts of those that claim to be ill-treated by such groups can be easily verified by asking for the particular name, location and dates of any such incidents.<sup>18</sup>

**3.8.3** In contrast to the above-mentioned registered groups, there are a number of non-registered vigilante groups which have been described as 'outlaws' or 'militias'. These groups are reported to have committed very serious human rights violations and have also reportedly been responsible for violent inter-ethnic clashes. These groups are to be found in various locations throughout Nigeria and include O'odua People's Congress (OPC), Yan Daba, and Egbesu Boys as well as various warlords, militias and cult gangs in the Delta and other regions.<sup>19</sup>

**3.8.4** The Bakassi Boys is a group active mainly in Abia, Anambra and Imo states that has reportedly been responsible for many extrajudicial executions, often carried out publicly. They patrol the streets in heavily armed gangs, arrest suspects, determine guilt on the spot and exact punishment, which may involve beating, 'fining', detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.<sup>20</sup>

**3.8.5** *Sufficiency of protection.* Membership or association with these groups or economic support for them is not itself illegal but any illegal acts those groups or members of those groups might commit are criminal offences and will be treated as such. For example, threatening behaviour or otherwise preventing people from going about their normal lives will be treated appropriately. The NPF deal with individuals within these groups in the context of any illegal activities committed by the individual. There have been prosecutions for such destructive behaviour and the courts have handed down sentences that have reportedly ranged from between two and six years according to the seriousness of the

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<sup>18</sup> COIS Nigeria Country Report 2007 (Human Rights: Vigilante Groups)

<sup>19</sup> COIS Nigeria Country Report 2007 (Human Rights: Vigilante Groups)

<sup>20</sup> COIS Nigeria Country Report 2007 (Human Rights: Vigilante Groups)

offence. Many though have been charged and are still awaiting trial. Any member of the Bakassi Boys or other similar vigilante group would be arrested if he or she had committed any crime or had acted in a destructive manner. However, it has been reported that in practise few complaints are made to the NPF about the Bakassi Boys (and other similar groups) for fear of reprisals from those groups.<sup>21</sup>

**3.8.6** The Federal Government strongly oppose the Bakassi Boys and other similar vigilante groups and have instructed the police to suppress their activities. According to reports, however, the NPF have had only limited success in dealing with these groups and some political figures at state level have been reported to have used these groups at times for their own ends.<sup>22</sup>

**3.8.7** *Internal relocation.* The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practise. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.<sup>23</sup>

**3.8.8** Internal relocation to escape any ill-treatment from non-state agents is almost always an option. As would be expected, some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.<sup>24</sup> In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

**3.8.9** *Conclusion.* The human rights situation has improved since the return to civilian rule in 1999. The Federal Government are clearly determined to tackle the problems of vigilantes, various warlords, militias and cult gangs. For applicants who fear, or who have experienced, ill-treatment at the hands of these groups, there is a general sufficiency of protection and they are also able to safely relocate within the country. Applicants who fear ill-treatment at the hands of vigilante groups surreptitiously acting on behalf of rogue politicians or officials at state level will also be able to safely relocate within the country to escape such treatment. General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection. Applications under this category therefore are likely to be clearly unfounded and as such fall to be certified.

### **3.9 Religious persecution**

**3.9.1** Some applicants make an asylum and/or human rights claim based on the grounds that they are not free to practise their religion and that they would face ill-treatment amounting to persecution at the hands of the authorities as a consequence. Some applicants may express fear of Shari'a courts in northern Nigeria whilst other may have a fear of Hisbah groups who operate at local level in northern Nigeria to enforce Shari'a.

**3.9.2** *Treatment.* Approximately half of Nigeria's population practises Islam, about 40 percent practises Christianity, and the remaining 10 percent practise traditional indigenous religions or no religion. Many persons combine elements of Christianity or Islam with elements of a traditional indigenous religion. The predominant form of Islam in the country is Sunni. The Christian population includes Roman Catholics, Anglicans, Baptists, Methodists, Presbyterians, Evangelical, and Pentecostal Christians.<sup>25</sup>

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<sup>21</sup> COIS Nigeria Country Report 2007 (Human Rights: Vigilante Groups)

<sup>22</sup> COIS Nigeria Country Report 2007 (Human Rights: Vigilante Groups) & UK-Danish Fact Finding Mission Report January 2005 (paragraphs 3.3.1 - 3.3.11)

<sup>23</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

<sup>24</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 4.3.1 & 4.3.2)

<sup>25</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Religion)



- 3.9.3** The Nigerian constitution provides for freedom of religion, including freedom to change one's religion or belief, and freedom to manifest and propagate one's religion or belief in worship, teaching, practise, and observance. While the Federal Government generally respects religious freedom, there have been some reported instances in which limits were placed on religious activity to address security and public safety concerns.<sup>26</sup>
- 3.9.4** Several state governments prohibit open-air religious services held away from places of worship due to fears that these religious services may heighten inter-religious tensions or lead to violence. In 2006, the Kaduna State Government enforced a ban on processions, rallies, demonstrations, and meetings in public places on a case-by-case basis.<sup>27</sup>
- 3.9.5** Shari'a penal code was introduced in 2000 in the 12 northern, largely Muslim, states of Zamfara, Sokoto, Kebbi, Niger, Kano, Katsina, Kaduna, Jigawa, Yobe, Bauchi, Borno, and Gombe. Muslims in these 12 northern states automatically come under the jurisdiction of the Shari'a courts. Muslims can opt to have their case judged by the parallel criminal justice system but few opt for non-Shari'a courts. Non-Muslims are not automatically under the jurisdiction of Shari'a courts but can opt to have their case heard in a Shari'a court and there is a formal legal consent form, which they have to sign if they elect to do so.<sup>28</sup>
- 3.9.6** Shari'a courts have handed down death sentences since Shari'a was extended to criminal law in the 12 northern states in 2000. There has, however, been only one recorded execution under Shari'a law in Nigeria, that of Sani Yakubu Rodi in January 2002. According to the UK-Danish Fact Finding Mission Report of January 2005, only three sentences of amputation have actually been carried out with the last one being in mid-2001. In 2006, sentences of amputation were handed down in some cases for offences other than theft, but no sentences were carried out. Similarly, several stoning or amputation sentences that were pending appeal or sentence implementation from previous years were not carried out during 2006, often because they were held up by the lengthy process of appeals.<sup>29</sup>
- 3.9.7** If a person awaiting trial before a Shari'a court or a convicted person runs off he or she is not pursued and under Shari'a law no action is taken. However, according to reports the individual concerned will risk not being considered a 'complete Muslim'. The individuals concerned are reportedly encouraged to repent, but there is no rush to punishment. The effect is to ensure that punishment is the last resort. Punishment is used more as a deterrent and to aid faith. Individuals must accept Shari'a as a matter of faith.<sup>30</sup> The Nigerian Police Force does not return anyone to the jurisdiction of a Shari'a court if he or she has relocated elsewhere in Nigeria in order to escape Shari'a jurisdiction.<sup>31</sup>
- 3.9.8** In most northern states, hisbah groups have been formed at a local level to enforce Shari'a laws such as banning the sale and consumption of alcohol, the wearing of indecent clothing by women and arresting of petty thieves, often without authorisation by the Shari'a court. Some observers have compared the role of the hisbah to that of vigilante groups operating in other parts of Nigeria. The hisbah share some characteristics with these groups but there are also significant differences. Like other vigilante groups, the hisbah are made up mostly of locally-recruited young men who usually patrol their own neighbourhoods and sometimes instantly administer punishments on people suspected of carrying out an offence, without, or before handing them over to the police. Hisbah members have been responsible for flogging and beating suspected criminals, but there have not been any reports of killings by hisbah members. Hisbah members may carry sticks or whips but unlike some vigilante

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<sup>26</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Religion)

<sup>27</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Association and Assembly)

<sup>28</sup> COIS Nigeria Country Report 2007 (Human Rights: Shari'a Penal Codes & Freedom of Religion) & UK-Danish Fact Finding Mission Report January 2005 (paragraphs 6.2.3 - 6.2.28)

<sup>29</sup> COIS Nigeria Country Report 2007 (Human Rights: Introduction, Shari'a Penal Codes, Death Penalty & Freedom of Religion) & UK-Danish Fact Finding Mission Report January 2005 (paragraphs 6.2.3 - 6.2.28)

<sup>30</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 6.2.3 - 6.2.28)

<sup>31</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraph 4.3.3)

groups in other parts of Nigeria, they do not usually carry firearms.<sup>32</sup>

**3.9.9 Sufficiency of protection.** As this category of applicants' fear is of ill-treatment by the authorities at state level, they cannot apply to these authorities for protection.

**3.9.10 Internal relocation.** Although the Shari'a legislation to a large extent is identical in each of the 12 states where it has been implemented, there is no reported inter-state co-operation or co-ordination between the justice systems. Breaking Shari'a law in one state will not mean that the individual faces prosecution under Shari'a law in another state. According to reports, if someone on Shari'a -related charges in one of the northern states leaves that state, the police will not arrest and bring him/her back to the state. This is because the police are a federal institution with no responsibilities for a court system not following federal law and hisbah groups do not operate or have any influence outside of their own state.<sup>33</sup> Applicants who claim a fear of local hisbah vigilante groups are able to safely relocate elsewhere in Nigeria where the particular hisbah do not operate or have any influence.

**3.9.11** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.<sup>34</sup>

**3.9.12** Internal relocation to escape any ill-treatment by hisbah groups is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.<sup>35</sup> In the absence of exceptional circumstances, it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

### **3.9.13 Caselaw.**

**PI [2002] UKIAT 04720 (CG)** The appellant was a member of the Igbo tribe and a Christian. The IAT find that although there have been religious riots in Lagos there is nothing to show that Christians in general are not able to live in peace there or elsewhere in the south-west.

**Court of Session – Olatin Archer.** (JR of a determination of a Special Adjudicator, 09-11-01) Internal flight is available to Christians fleeing from violence in northern Nigeria

**3.9.14 Conclusion.** The right to religious freedom and expression is enshrined in the Nigerian constitution and there are no reports of anyone experiencing any problems with the Federal Government in practising their chosen religion. Claims under this category will therefore be clearly unfounded and as such should be certified

**3.9.15** Applicants who express a fear of Shari'a courts have the constitutional right to have their cases heard by the parallel (non-Islamic) judicial system and as such their claims are likely to be clearly unfounded and fall to be certified. Applicants expressing fear of Hisbah vigilante groups are able to safely relocate elsewhere in Nigeria where such groups do not operate or have any influence. Claims made on the basis of fear of hisbah groups are therefore also likely to be clearly unfounded and will similarly fall to be certified.

## **3.10 Female Genital Mutilation (FGM)**

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<sup>32</sup> COIS Nigeria Country Report 2007 (Human Rights: Shari'a Penal Codes) & UK-Danish Fact Finding Mission Report January 2005 (paragraph 6.2.16)

<sup>33</sup> COIS Nigeria Country Report 2007 (Human Rights: Shari'a Penal Codes)

<sup>34</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

<sup>35</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 4.3.1 & 4.3.2)

- 3.10.1** Some female applicants seek asylum on the basis that they, or their children, would be forcibly required by family members to undergo female genital mutilation if they were to return to Nigeria.
- 3.10.2 *Treatment.*** Female genital mutilation (FGM) is a cultural tradition that is widely practised in Nigeria. The Nigeria Demographic and Health Survey (NDHS) have estimated the FGM rate at approximately 19 percent among the nation's female population, and the incidence has declined steadily in the past 15 years. While practised in all parts of the country, FGM is reportedly much more common in the southern part of the country, where prevalence rates for women aged 15-49 reportedly reach almost 60 percent. The NDHS survey found that women from northern states are less likely to undergo the severe type of FGM known as infibulation and that the age at which women and girls were subjected to the practise varied from the first week of life until after a woman delivers her first child; however, three-quarters of the survey respondents who had undergone FGM had the procedure before their first birthday.<sup>36</sup>
- 3.10.3 *Sufficiency of protection.*** The Nigerian constitution outlaws inhumane treatment but also provides for citizens to practise their traditional beliefs. The Federal Government publicly opposes the practise of FGM but there are at present no federal laws banning FGM throughout the country. In 2006, however, the Ministry of Health, women's groups, and many NGOs sponsored public awareness projects to educate communities about the health hazards of FGM. Some states (Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers States) have enacted legislation at state level banning the practise of FGM and many other states are in the process of doing so. However, in spite of these laws and campaigns the custom of FGM continues. In its National Economic Empowerment and Development Strategy (NEEDS), which was launched in May 2004 the Federal Government stated its intention to intensify its campaign for the eradication of harmful traditional practises such as FGM.<sup>37</sup>
- 3.10.4** In states where FGM is prohibited in law, a female seeking to avoid FGM in spite of pressure from her family to do otherwise has the opportunity to make a complaint to the Nigerian Police Force (NPF) or the National Human Rights Commission (NHRC). However, in practise very few such complaints are made to those bodies. The matter is usually dealt with within the family and on occasion traditional leaders might also be asked to intervene. However, the 'traditional attitude' of a police officer or a village council would normally determine their level of concern and intervention. Cultural attitudes would still be prevalent and some victims would probably never have the courage to take their case to court. It has been reported that most women therefore resort to relocating to another location if they do not wish to undergo FGM.<sup>38</sup> Furthermore, there are between 10 and 15 NGOs operating throughout Nigeria who are exclusively devoted to support women including those escaping FGM.<sup>39</sup>
- 3.10.5 *Internal relocation.*** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practise. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.<sup>40</sup>
- 3.10.6** Internal relocation to escape any ill-treatment from non-state agents is almost always an option. As would be expected, some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.<sup>41</sup> In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or

<sup>36</sup> COIS Nigeria Country Report 2007 (Human Rights: Women)

<sup>37</sup> COIS Nigeria Country Report 2007 (Human Rights: Women)

<sup>38</sup> COIS Nigeria Country Report 2007 (Human Rights: Women)

<sup>39</sup> COIS Nigeria Country Report 2007 (Human Rights: Human Rights Institutions, Organisations and Activists)

<sup>40</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

<sup>41</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 4.3.1 & 4.3.2)

other ties in any new location, to internally relocate to escape this threat.

**3.10.7 Conclusion.** Whilst protection and/or assistance is available from governmental and non-governmental sources, this is limited. Those who are unable or, owing to fear, unwilling to avail themselves of the protection of the authorities, can safely relocate to another part of Nigeria where the family members who are pressurising them to undergo FGM would be unlikely to be able to trace them. Women in that situation would if they choose to do so, also be able to seek assistance from women's NGOs in the new location. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate and such claims should be certified as clearly unfounded.

### **3.11 Victims of trafficking**

**3.11.1** Some victims of trafficking may claim asylum on the grounds that they fear ill-treatment or other reprisals from traffickers on their return to Nigeria. Trafficking in women, most commonly to work as prostitutes overseas, is a widespread and increasing problem in Nigeria. Often victims of trafficking have sworn a blood oath to a 'juju shrine' and to the juju priest of their local community. The victims are most likely in debt to a madam who may have sponsored their travels abroad.

**3.11.2 Treatment.** There is a strong political will within the Federal Government to address the problem of human trafficking and positive steps have been taken to address the problem. The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act was enacted in 2003 and in August the same year the National Agency for the Prohibition of Traffic in Persons (NAPTIP) was established under the provision of that legislation. NAPTIP is the focal point for the fight against human trafficking and child labour and the rehabilitation of the victims of trafficking in Nigeria. NAPTIP's remit includes co-ordination of all laws on trafficking in persons, enforcement of the laws and to taking charge, supervising, controlling and co-ordinating efforts on the rehabilitation of trafficked persons.<sup>42</sup>

**3.11.3** Through its National Investigation Task Force, NAPTIP conducts investigations and monitoring activities as well as bringing prosecutions of traffickers. The task force has the mandate to operate anywhere in Nigeria using both Nigerian Police Force and immigration facilities at state and local level and even in neighbouring countries. Preliminary data indicated that during 2006 NAPTIP investigated 65 new cases and prosecuted 25 cases. It was reported that at year's end many of these cases were pending, and eight convicted traffickers were serving prison sentences. Observers attributed the low conviction rate to witnesses' reluctance to testify and the slow progress of cases through the courts.<sup>43</sup>

**3.11.4** NAPTIP also assists victims of trafficking and in cooperation with other stakeholders (local NGOs, international organisations, and foreign aid agencies) has established shelters for victims in Abuja, Benin City and Lagos. Trafficked women who return to Nigeria are met by NAPTIP representatives at the airport and many participate in the rehabilitation schemes that NAPTIP offers. However, through resource constraints there are no long-term shelters in Nigeria for returned or deported victims of trafficking and the existing centres only provide shelter, rehabilitation and reintegration training for a maximum of two weeks.<sup>44</sup>

**3.11.5** The Nigerian authorities do not view women who have been trafficked as criminals but as victims of crime. Women who had worked as prostitutes abroad would not in general face negative social attitudes from their community. Most people will hold the women in high regard due to the fact that they have been to Europe and probably have more financial means. Often their relatives consider them a breadwinner.<sup>45</sup>

**3.11.6 Sufficiency of protection.** There is conflicting information about the ability of traffickers to

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<sup>42</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

<sup>43</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

<sup>44</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

<sup>45</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

seek reprisals against the victim if they were to return to Nigeria before the madam or the agent has been satisfied with payments. Some reliable sources believe that whilst there is a real risk of such reprisals there was no record of it ever having happened; whilst others are aware of rare (one or two) such incidents.<sup>46</sup>

- 3.11.7** The Federal Government provided limited funding for assistance to victims in 2006. NAPTIP served as the point of contact for immigration and police officials when victims were found. Five hundred victims passed through the agency during 2006. NAPTIP directly provided overnight shelter to victims, and agency officials connected victims to nongovernmental or international organisations for shelter, counselling, and reintegration assistance. NAPTIP established a hot line for victims and anyone seeking or wanting to provide information regarding trafficking, and received an estimated five hundred calls during 2006. In some cases, the Federal Government helped victims repatriate to the country and reunited trafficked children with their families. The Ministry of Labour and Productivity, in collaboration with NAPTIP, the police, and other federal agencies, provided food, transportation, and other logistical assistance to reunite internally and externally trafficked children with their families.<sup>47</sup>
- 3.11.8** The Federal Government continues to operate the 120-bed shelter in Lagos, with involvement by the IOM. NAPTIP also operates shelter facilities at secure locations in Abuja and Benin City, and in Akwa Ibom and Kano states. The Federal Government provided some funding for protection activities in 2006 and for victims serving as witnesses, divisional police officers were appointed to serve as witness protection officers. NAPTIP officials and the officer worked together to provide assistance. NAPTIP outreach efforts were based on a series of 'town hall' meetings with community leaders, traditional leaders, teachers, school children, and other groups to raise awareness of the dangers of trafficking, legal protections, and available resources. Several state governments in the south continued strong efforts to protect victims during 2006. For example, in Edo State Idia Renaissance operated a youth resource centre, (funded by UNICEF and foreign organizations) that provided job-skill training and counselling to trafficking victims and other youths.<sup>48</sup>
- 3.11.9 *Internal relocation.*** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practise. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.<sup>49</sup>
- 3.11.10** Internal relocation to escape any ill-treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.<sup>50</sup> In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.
- 3.11.11** Those that contract victims of trafficking are often members of the same family or other who operate in a particular locale. In such circumstances, it is possible for the victim to safely relocate to another area within Nigeria without risk of those who contracted the victim being able to contact them.

**3.11.12 *Caselaw.***

**JO [2004] UKIAT 00251.** The Tribunal found that there would be a real risk of serious harm

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<sup>46</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

<sup>47</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

<sup>48</sup> COIS Nigeria Country Report 2007 (Human Rights: Trafficking)

<sup>49</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

<sup>50</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 4.3.1 & 4.3.2)

if this appellant were to be returned to her home area. However, internal flight is a viable option. The Tribunal also stated that trafficked women do not qualify as a particular social group within the terms of the 1951 Refugee Convention.

**3.11.13 Conclusion.** The increasing level and availability of support and protection from governmental and non-governmental sources, as well as the option of being able to safely relocate within the country means that applications under this category are likely to be unfounded. Large numbers of victims of trafficking have been returned to Nigeria without encountering any particular problems. Whilst applicants who express a fear of return because they have sworn an oath to a 'juju shrine' may have a genuine subjective fear, that fear is not supported by the objective situation and claims made on this basis will be clearly unfounded.

### **3.12 Fear of secret cults, juju or student confraternities**

**3.12.1** Some applicants will make asylum and/or human rights claims on the grounds that they fear ill-treatment amounting to persecution at the hands of secret cults or those involved with conducting rituals or fetish magic, known as juju [the African phrase for *Voodoo*]. Other applicants may express a fear of ill-treatment at the hands of student confraternities, often referred to as student cults.

**3.12.2 Treatment.** Secret societies or cults exist in Nigeria but, by their nature, very little is known about them. The most widely reported and studied is the Ogboni cult, though many Ogboni members reportedly self-identify the group as a social club rather than a cult or a secret society. Ordinary Nigerians are reportedly afraid of the society, believing that its members are capable of using sorcery in order to get their way. However, there is no corroborated evidence of the society using violence or recent examples of persons being forced to join.<sup>51</sup>

**3.12.3** So called 'student cults' are more correctly known as 'confraternities', they are closer to the American idea of college fraternities than religious cults. The origin of these secret confraternities can be traced back to the *Pyrates* confraternity (also known as *National Association of Sea Dogs*) which was formed by the first African Nobel Laureate, Professor Wole Soyinka at the University of Ibadan in 1953. Confraternities were originally intended to be a forum for like minded students to meet, network and assist each other in later life. They were generally seen to be a force for good and performed some significantly useful services on the university campuses. However, from the beginning of the 1980's, the activities of confraternities became violent and secretive. It has been reported that their activities include 'dealing' with any non-members who snatched a member's girl friend or 'sugar daddy' (in case of female members). Their activities also reportedly included 'settling' lecturers in cash or kind and female members of confraternities began to operate prostitution rings. Since the 1980's, these so called student cults have reportedly become more widespread. In media reports and other studies, names such as the Vikings, the Buccaneers (Sea Lords), the Amazons, the National Association of Seadogs, the Black Axe/Neo-Black Movement, the KKK Confraternity, the Eiyé or Air Lords Fraternity, the National Association of Adventurers and the Icelanders feature regularly.<sup>52</sup>

**3.12.4** Reliable statistics about the on-campus human toll of Nigeria's cult violence epidemic do not exist, but former Minister of Education Obiageli Ezekwesili estimated that some 200 students and teachers lost their lives to cult-related violence between 1996 and 2005. Cult-related clashes on university campuses continue to be reported, especially in southern Nigeria and cult groups have been implicated in other abuses including extortion, rape and violent assaults. It has been reported that the reach of many cults has, on occasion, spread beyond university campuses, with groups involved in drug trafficking, armed robbery, extortion, and various forms of street crime.<sup>53</sup>

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<sup>51</sup> COIS Nigeria Country Report 2007 (Human Rights: The Ogboni Society)

<sup>52</sup> COIS Nigeria Country Report 2007 (Human Rights: Student Secret Cults)

<sup>53</sup> COIS Nigeria Country Report 2007 (Human Rights: Student Secret Cults)

**3.12.5 Sufficiency of protection.** Membership or association with a secret cult or a student confraternity is not of itself illegal but any illegal acts those involved might commit (such as threatening behaviour or murder) are criminal offences and will be treated as such by the Nigerian authorities. As described above, the evidence shows that the Nigerian Police Force take appropriate action in such cases.

**3.12.6 Internal relocation.** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.<sup>54</sup>

**3.12.7** Internal relocation to escape any ill-treatment from non-state agents is almost always an option. As would be expected, some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.<sup>55</sup> In the absence of exceptional circumstances, it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

### **3.12.8 Caselaw.**

**BL [2002] UKIAT 01708 (CG).** The claimant who feared being initiated into a cult called Osugbo which was described as a demonic cult which uses ritual sacrifice, cannibalism and other rituals. The Tribunal found that there was no Convention reason for the alleged persecution; and that the published background objective material does not support the conclusion that the police or authorities in Nigeria failed to act against traditional religious cults, or support the proposition that cults are non-state agents of persecution in that the police or authorities will not or cannot exercise control and/or refuse to investigate or deal with satanic/ritualistic ceremonies which include cannibalism. The Tribunal found that there is not a real risk of mistreatment were the claimant to return to Nigeria where he could safely remain.

**WO [2004] UKIAT 00277 (CG).** The Tribunal found itself in agreement with the conclusions of Akinremi (OO/TH/01318), which found that the power of the Ogboni had been curtailed and that it had a restricted ambit. It also found the Ogboni to be an exclusively Yoruba cult and that should an appellant be fearful of local police who were members, there would clearly be some who were non-members.

**EE [2005] UKIAT 00058.** The Tribunal found that the appellant's problems were only of a local nature and that there were no facts before the Tribunal which indicated that 'it was unduly harsh to expect a resourceful widowed single woman (who has been capable of coming to the other side of the world and beginning her life again) to take the much smaller step of relocating internally within Nigeria to an area where she will be out of range of the snake worshippers in her own village'.

**3.12.9 Conclusion.** The human rights situation has improved since the return to civilian rule in 1999. The Federal Government is clearly determined to tackle the problems of vigilantes, various warlords, militias and cult gangs. For applicants who fear, or who have experienced, ill-treatment at the hands of these groups, there is a general sufficiency of protection and they are generally able to safely relocate within the country. General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection. Applications under this category therefore are likely to be clearly unfounded and as such should be certified.

### **3.13 Gay men**

**3.13.1** Some applicants will apply for asylum and/or a human rights claim based on ill-treatment

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<sup>54</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

<sup>55</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 4.3.1 & 4.3.2)

amounting to persecution at the hands of non-state agents of persecution, usually societal discrimination, due to them being gay.

- 3.13.2 *Treatment.*** Regarding societal attitudes to homosexuality, it is a widespread belief in Nigeria that homosexuality is alien to African traditional culture, and that it is the result of corrupting influences from Western colonisation and/or Arab cultural influence in the northern parts of the country. General attitudes regarding homosexuality in the population are reportedly very rigid, and there is a considerable pressure to get married. Though Nigerian society has not yet come to terms with homosexuality and gay men cannot publicly express their sexuality because they would suffer societal isolation and discrimination, gay men living in the larger cities of Nigeria may not have reason to fear persecution, as long as they do not present themselves as gay men in public. Gay men that are wealthier or more influential than the ordinary person may be able to bribe the police should they be accused or suspected of homosexual acts.<sup>56</sup>
- 3.13.3** According to Article 214 of the Nigerian Penal Code, the act of sodomy between males is illegal and the penalty is imprisonment for 14 years. Attempting to commit the offence of sodomy is also illegal and the punishment for this offence is imprisonment for seven years. Under Article 217 of the Penal Code, other male homosexual acts or practises, defined as 'gross indecency', whether in private or in public, are also illegal and the punishment for this offence is imprisonment for three years. Homosexuality is illegal under federal law; homosexual practises are punishable by prison sentences of up to 14 years.<sup>57</sup>
- 3.13.4** Though homosexuality is illegal according to Nigerian common law in the south, few cases have been tried in the courts and there is usually very little attention in the press and among the public regarding these cases. The penalty for homosexual activities depends on whether the offence is dealt with under the penal code, criminal code or Shari'a code of the various states. The penalties can vary from a few years up to 14 years of imprisonment, although in some cases only a fine will have to be paid, but under Shari'a the sentence could be death. In the 12 northern states that have adopted Shari'a, adults convicted of having engaged in homosexual intercourse are subject to execution by stoning, although no such sentences have been imposed.<sup>58</sup>
- 3.13.5** Up to the end of 2004, there were no cases of legal action taken against consenting adults. However, one death sentence regarding sodomy was handed down under Shari'a law. Jibrin Babaji was sentenced to death by stoning in September 2003 by a Shari'a court in Bauchi after being convicted of sodomy, but he was subsequently acquitted on appeal. The 3 minors who were also found guilty in this case had already had their punishment of flogging carried out before the appeal was determined. There is some evidence to indicate that the laws on homosexuality are, in some instances, enforced. In August 2007, for example, eighteen men were remanded in prison in northern Nigeria for alleged sodomy, though the charges were subsequently reduced to vagrancy. The laws also contribute to the climate of intolerance towards gay men and young men who discover that they are gay tend to hide the fact as they fear being ostracised or thrown out of the family home if their homosexuality became known.<sup>59</sup>
- 3.13.6** In January 2006, the Nigerian Government proposed a law to ban homosexual relations and same-sex marriage. The bill would make engaging in homosexual relations and entering into a same-sex marriage offences punishable by five years imprisonment. Priests or other clerics or anyone helping to arrange such a union would also be subject to a five-year jail sentence. The proposed law would also ban movements for promoting gay rights. The bill was presented to the Senate in April 2006 and in February 2007 the House of Representatives held a public hearing to discuss the proposed bill. However, the bill's

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<sup>56</sup> COIS Nigeria Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons)

<sup>57</sup> COIS Nigeria Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons)

<sup>58</sup> COIS Nigeria Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons)

<sup>59</sup> COIS Nigeria Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons) & BBC News 'Gay Nigerians face Sharia death' dated 10 August 2007



passage through the legislative process was suspended in the run up to the April 2007 elections. It has been reported that opposition to gay relations is deep-rooted, with the bulk of the north's Muslims and the south's Christians united in their hostility toward homosexuality. Gay rights activists say the proposed law would be an utter breach of human rights.<sup>60</sup>

**3.13.7 Sufficiency of protection.** Homosexual relations between men are illegal in Nigeria. Penalties have not been enforced recently, but plans proposed by the authorities in January 2006 to apply more restrictive legislation in relation to homosexuals and gay rights groups means it is unlikely that such individuals would be able to seek and receive adequate protection from the state authorities.

**3.13.8 Internal relocation.** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practise. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restrict movements of individuals.<sup>61</sup>

**3.13.9** Internal relocation to escape any ill-treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.<sup>62</sup> In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

**3.13.10 Conclusion.** While sexual relations between gay men are outlawed in Nigeria and openly gay men are likely to face societal discrimination and isolation, there have not been many cases prosecuted under the laws against gay men, and those in urban areas who do not openly present themselves as a gay man have no reason to fear mistreatment by non-state agents. The availability of a viable internal relocation alternative also indicates that gay men in Nigeria would be able to escape this threat. It is therefore unlikely that such individuals will encounter mistreatment in breach of Article 3 of the ECHR and the grant of Humanitarian Protection in such cases is not likely to be appropriate.

### **3.14 Prison conditions**

**3.14.1** Applicants may claim that they cannot return to Nigeria due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Nigeria are so poor as to amount to torture or inhuman treatment or punishment.

**3.14.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

**3.14.3 Consideration.** Prison and detention conditions reportedly remained harsh and in some instances life threatening in 2006. Most prisons were built 70 to 80 years ago and lack basic facilities. It was reported that lack of potable water, inadequate sewage facilities, and severe overcrowding resulted in unhealthy and dangerous sanitary conditions in 2006. Some prisons reportedly held 200 to 300 percent more persons than their designed

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<sup>60</sup> COIS Nigeria Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender Persons), HRW – Nigeria: 'Anti-Gay Bill threatens democratic reforms' dated 28 February 2007, BBC News 'Nigeria gay law risks democracy' dated 1 March 2007, BBC News 'Nigeria moves to tighten gay laws' dated 14 February 2007 & petertatchell.net 'Nigeria 'unfit' to host 2014 Commonwealth Games' dated 3 August 2007

<sup>61</sup> COIS Nigeria Country Report 2007 (Human Rights: Freedom of Movement)

<sup>62</sup> UK-Danish Fact Finding Mission Report January 2005 (paragraphs 4.3.1 & 4.3.2)

capacity. The Federal Government has acknowledged overcrowding as the main cause of the reported harsh conditions common in the prison system. Excessively long pre-trial detention contributed to the overcrowding.<sup>63</sup>

- 3.14.4** A working group assigned by the Attorney General to investigate prison conditions in Nigeria released its report in March 2005. The group found that 64 percent of inmates were detainees awaiting trial, and only 25 percent of those detainees had legal representation. Nearly two-thirds of the country's prisons were over 50 years old. All of the prisons were built of mud brick, and their sewers, food, health care, education, and recreational facilities were well below standard.<sup>64</sup>
- 3.14.5** It has been reported that disease was pervasive in the cramped, poorly ventilated facilities in 2006, and chronic shortages of medical supplies were reported. According to reports, prison inmates were infrequently allowed outside their cells for recreation or exercise and many inmates had to provide their own food. Only those with money or whose relatives brought food regularly had sufficient food; petty corruption among prison officials made it difficult for money provided for food to reach prisoners. Poor inmates reportedly relied on handouts from others to survive in 2006. Beds or mattresses were not provided to many inmates, forcing them to sleep on concrete floors, often without a blanket. It was also alleged that prison officials, police, and security forces often denied inmates food and medical treatment as a form of punishment or to extort money from them.<sup>65</sup>
- 3.14.6** Women and juveniles were held with male prisoners in 2005, especially in rural areas. The extent of abuse in these conditions was unknown. In most cases, women accused of minor offences were released on bail, however, women accused of serious offences were detained. Although the law stipulates children shall not be imprisoned, it was reported that juvenile offenders were routinely incarcerated along with adult criminals during the year. The Prison Service required separation of detainees and convicted prisoners, but in practise the method of confinement in 2006 depended solely on the capacity of the facility. As a result, there were reports that detainees were often housed with convicted prisoners.<sup>66</sup>
- 3.14.7** Harsh conditions and denial of medical treatment reportedly contributed to the deaths of numerous prisoners in 2006. According to the National [non] Governmental Organisations (NGO) Prisoners Rehabilitation and Welfare Action (PRAWA), dead inmates were promptly buried on the prison compounds, usually without notifications to their families. A nationwide estimate of the number of inmates who died in Nigeria's prisons in 2006 was difficult to obtain because of poor record keeping by prison officials. The Federal Government allowed international and domestic NGOs, including PRAWA and the International Committee of the Red Cross (ICRC), regular access to prisons in 2006. The Government also admitted that there were problems with its incarceration and rehabilitation programmes and worked with groups such as these to address those problems.<sup>67</sup>
- 3.14.8 *Conclusion.*** Whilst prison conditions in Nigeria are poor with overcrowding and poor basic facilities being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore even where applicants can demonstrate a real risk of imprisonment on return to Nigeria a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

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<sup>63</sup> COIS Nigeria Country Report 2007 (Human Rights: Prison Conditions)

<sup>64</sup> COIS Nigeria Country Report 2007 (Human Rights: Prison Conditions)

<sup>65</sup> COIS Nigeria Country Report 2007 (Human Rights: Prison Conditions)

<sup>66</sup> COIS Nigeria Country Report 2007 (Human Rights: Prison Conditions)

<sup>67</sup> COIS Nigeria Country Report 2007 (Human Rights: Prison Conditions)

#### **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Nigeria the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the categories set out below. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Nigeria.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to Nigeria due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Responsibility for health care in Nigeria is split between the different levels of government. The Federal Government is responsible for establishing policy objectives, training health professionals, coordinating activities, and for the building and operation of Federal medical centres and teaching hospitals. The states are responsible for the secondary health facilities and for providing funding to the Local Government Areas (LGAs), which are responsible for primary health care centres. In addition to government-run public facilities, there are also private health facilities, most of which are secondary level facilities. According to reports, the health care system in Nigeria is inadequately funded and understaffed, and suffers from material scarcity and inadequacy of infrastructure. Access to quality health care is therefore limited and many Nigerians do not go to government facilities first but rather seek health care from traditional healers, patent medicine stores, lay consultants and private medical practises and facilities owned by faith-based organizations.<sup>68</sup>
- 4.4.3** There is medical treatment available for those diagnosed with cancer, but availability of irradiation therapy is reportedly very limited, and restricted to a few teaching hospitals. This has led the majority of people in need of cancer treatment to travel overseas to receive it. Heavy reliance is also placed on early detection of cancers available at teaching hospitals. Similarly, there is limited ability to treat coronary illness and there are no facilities available to perform heart by-pass operations or other coronary surgical procedures. Mental health care is part of the primary health care system and actual treatment of severe mental disorders is available at the primary level. However, relatively few centres are believed to

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<sup>68</sup> COIS Nigeria Country Report 2007 (Human Rights: Medical Issues)

have trained staff and equipment to implement primary health care. Therapeutic drugs are available for those suffering from mental disorders and in recent years the Federal Government has also significantly increased the availability of drugs for treating the widespread problem of malaria.<sup>69</sup>

- 4.4.4** There are an estimated 3.6 million people with HIV/AIDS in Nigeria and the HIV prevalence among adults in Nigeria increased from 1.8 percent in 1991 to an estimated 5.4 percent in 2003. According to official estimates, Nigeria faced 200,000 new infections in 2002 and approximately 310,000 people died from AIDS related deaths in 2004. The Federal Government focuses its efforts on HIV/AIDS through the National Action Committee on AIDS (NACA) which includes prevention strategy as well as consciousness building work to overcome stigma and promote the issue that HIV is a big problem for Nigerian society. At the end of 2006, an estimated 81,000 people were reportedly receiving antiretroviral drugs.<sup>70</sup>
- 4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in Nigeria reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Nigerian nationals may return voluntarily to any region of Nigeria at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Nigeria. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Nigerian nationals wishing to avail themselves of this opportunity for assisted return to Nigeria should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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